

PC  
9559-2

26, 1948

No. 64 of 1945.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT, SITTING AS A COURT OF  
APPEAL, JERUSALEM.

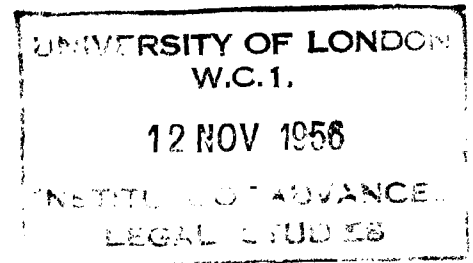
BETWEEN

THE PALESTINE KUPAT AM BANK CO-  
OPERATIVE SOCIETY LIMITED

*Appellants*

— AND —

- 10 1. THE GOVERNMENT OF PALESTINE.
2. AYISHA MUSTAFA DIRBAS.
3. LABIBA MUSTAFA DIRBAS.
4. ASSAD MUHAMMAD HASSAN ALLU.
5. ALLU AHMAD MUHAMMAD ALLU.
6. AHMAD MUHAMMAD HASSAN ALLU.
7. SUKKARA MUHAMMAD HASSAN ALLU.
8. WATFA SAID MUHAMMAD HASSAN ALLU.
9. THURAIYA AHMAD ES SARWA.
- 10 10. DHIB ABDEL QADIR HASSAN ALLU.
- 20 11. DHIBA ABDEL QADIR HASSAN ALLU.
12. DHIYAB ABDEL QADIR HASSAN ALLU.
13. KAMILA ABDEL QADIR HASSAN ALLU.
14. NIMER ABDEL QADIR HASSAN ALLU.
15. AHMAD SALIH HASSAN ALLU.
16. AMNA SALIH HASSAN ALLU.
17. FATIMA SA'D MUHAMMAD HASSAN ALLU.
18. RAUZA SAID MUHAMMAD HASSAN ALLU.
19. MAS'ADA SA'ADA MUHAMMAD HASSAN ALLU.
- 30 20. FATIMA SA'ADA MUHAMMAD HASSAN ALLU.
21. AMNA SA'ADA MUHAMMAD HASSAN ALLU.
22. YUSRA ABDALLAH SALIH HASSAN ALLU.
23. BARCLAYS BANK (D.C. & O.)



15220

*Responde.*

AND

In the Privy Council.

ON APPEAL

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

BETWEEN

THE GOVERNMENT OF PALESTINE (Plaintiff) *Appellant*

— AND —

- 10 1. THE PALESTINE KUPAT AM BANK CO-OPERATIVE  
SOCIETY LIMITED.
2. AYISHA MUSTAFA DIRBAS.
3. LABIBA MUSTAFA DIRBAS.
4. ASSAD MUHAMMAD HASSAN ALLU.
5. ALLU AHMAD MUHAMMAD ALLU.
6. AHMAD MUHAMMAD HASSAN ALLU.
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18. RAUZA SAID MUHAMMAD HASSAN ALLU.
19. MAS'ADA SA'ADA MUHAMMAD HASSAN  
ALLU.
- 30 20. FATIMA SA'ADA MUHAMMAD HASSAN  
ALLU.
21. AMNA SA'ADA MUHAMMAD HASSAN ALLU.
22. YUSRA ABDALLAH SALIH HASSAN ALLU.  
BARCLAYS BANK (D.C. & O.) *Respondents.*

In the Privy Council.

**ON APPEAL**

FROM THE SUPREME COURT SITTING AS A COURT OF  
APPEAL, JERUSALEM.

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BETWEEN—

THE PALESTINE KUPAT AM BANK  
CO-OPERATIVE SOCIETY LIMITED  
*Appellants*

— AND —

THE GOVERNMENT OF PALESTINE  
and Others *Respondents.*

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**CASE FOR THE APPELLANTS**

**on the Appeal and for the Respondent on the Cross-Appeal.**

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RECORD.

1. This is an appeal by the Palestine Kupat Am Bank Co-operative Society Limited (hereinafter referred to as "the Bank") and a cross-appeal by the Government of Palestine (hereinafter referred to as "the Government") from a judgment of the Supreme Court, sitting as a Court of Appeal, Jerusalem, dated the 27th July, 1944, on the hearing of an appeal by the Government from a decision of the Land Settlement Officer, Haifa, dated the 15th March, 1943, dismissing a claim by the Government to part ownership of certain land at Tira in the sub-district of Haifa as unassigned state lands. The Supreme Court by its judgment adjudged to the Government a part of the land claimed. The other Respondents on the record are also interested in the said land but for reasons that afterwards appear take no active part in this appeal or in the cross-appeal.

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p. 121.  
p. 71.

2. The facts leading up to these proceedings are set out in this and the following four paragraphs:—

In the year 1882 the Turkish Government made a grant to four villagers of Khirbet Yunis, a hamlet situate near the village of Tira, of land which has been cultivated by them. They were Ahmed Muhammad Allu, Suleiman Dirbas, Hassan Allu and Mustafa Mahmud Dirbas. In the entry recorded in the Tira land book under No. 140 of Kanon Awal 1298, of which the kushan or title deed is a copy, the land was described as miri, the boundaries are set out and the area is given as 34 old dunums—that is about 32 new or metric 10 dunums. No other registration ever existed in the lands of Khirbet Yunis. In 1929 the lands of Khirbet Yunis were surveyed by the Government of Palestine and found to contain an area of some 3,500 dunums, marked as Block 28, and were registered as such for tax purposes in the Tax Registers. In the same year the land, with the exception of two small parcels not material to this appeal, was proclaimed Forest Reserve No. 195.

pp. 4, 150.

3. About the year 1926 one Edmond Levy began buying up shares from the heirs of the holders of the 1882 Kushan and eventually acquired an interest in the land covered by that registration of approximately 63%, the remaining 37% belonging to the persons appearing on the Record as Respondents 2 to 22 inclusive. 20 Levy intended to have a Town-Planning Scheme approved and to sell plots to prospective settlers, to secure whose interests he transferred in 1934-1936 his registered title to the Bank, of which both he and they were members. This transaction became eventually recorded in the Register of Deeds at the Haifa Land Registry under entry 3006 dated the 20th June, 1938.

p. 4.

4. In 1937 an application was made by the Bank to the Registrar of Lands, Haifa, for correction of area, the application being accompanied by a plan showing the lands within the boundaries named in the registered title of a total area of some 3,500 dunums. The application was duly investigated and in the course of the proceedings full enquiry was made by the Acting Director of Land Registration. The plan was checked by a Government Surveyor and found to be correct. The boundaries as described were verified by enquiry and a report made as to the nature of the land. The File was sent to the Forest Department and to the Government Agricultural Officer. Certain small areas were excluded on the recommendations of the authorities concerned. After all these checks and enquiries the Bank was registered as the owner of shares in an area of 3,296 dunums 30 and 192 square metres and paid a sum of LP 426.520 mils described as "arrears of bedl el misl",—whereupon a fresh kushan showing the new area was issued. The class of land is again stated to be miri, 40

p. 137.

p. 76, l. 20.

pp. 138-158.

p. 4.

Respondents 2 to 22, who are entitled to the remaining shares in the land, were not parties to the proceedings for correction of area, and remained registered by separate registration as part owners in 32 new dunums.

5. After the registration of the corrected area the Bank promoted a Town-Planning Scheme which was published in the Gazette as a provisional scheme No. 34 in January, 1940, and was finally approved by the Haifa District Town Planning Commission on the 2nd December, 1941. p. 206.

10 6. On the 23rd November, 1941, the Bank submitted a Memorandum of Claim under the Land (Settlement of Title) Ordinance and on the 28th November, 1941, the Government also filed a Claim to the whole of the said land, except the original 34 dunums and certain other small parcels, as unassigned State Domain. p. 2. p. 5.

20 7 In the above circumstances the matter came before the Settlement Officer, Haifa, on the 30th November, 1942, who ruled on a preliminary point that the certified extract of registration of the Bank as grantees in respect of shares in 3,296 dunums raised a presumption in favour of the Bank of ownership and possession, and that consequently the Government, who disputed such ownership and possession, should be made Plaintiff in the dispute between the parties. p. 7, l. 16

8. At the hearing it was submitted on behalf of the Government: pp. 63-66.

30 (1) That the claim of the Bank must rest on the original grant and kushan of 1882, which was made under Article 103 of the Ottoman Land Code, for 34 old dunums of what was at that time "mewat" land (that is uncultivated and unassigned land capable nevertheless of being brought into cultivation) and must be confined to the area actually stated in the grant.

(2) That Article 47 of the Ottoman Land Code (providing in effect that on a transfer of miri land defined by boundaries and area the whole of the land included within those boundaries passed regardless of any discrepancy between the true and stated areas) had no application to the present case.

(3) That in any case the boundaries named in the 1882 kushan were not correctly shown on the plans submitted by the Bank in the proceedings for correction of area, but contained only 625 dunums.

40 (4) That the correction of the area to 3,296 dunums was obtained by the misrepresentation of the Bank, who submitted a plan showing incorrect boundaries.

(5) That the whole scope and purpose of the proceedings for correction of area was misconceived by the Bank and by the Acting Director of Land Registration, and that such proceedings could be employed (if at all) only to correct an area incorrectly shown in an original registration and could not in any way operate as a fresh grant of State Lands, which could be granted by the High Commissioner alone.

9. It was submitted on behalf of the Bank:—

pp. 66-70.

(1) That Article 47 of the Ottoman Land Code applied, and that the grant in 1882 carried all the land within the named boundaries and was not confined to 34 old dunums. 10

(2) That the procedure of correction of area was a recognised part of the land law of Palestine.

(3) That the boundaries shown on the plan submitted by the Bank in the proceedings for correction of area were the true boundaries named in the 1882 grant and therefore truly delimited the land then granted.

(4) That there was no misrepresentation by the Bank in the proceedings for correction of area.

(5) That the Government was estopped by its conduct in registering a plan and an entry showing the Bank as owners of shares in 3,296 dunums, taking arrears of bedl el misl, and issuing a new kushan for that area, which conduct resulted in the Bank incurring expenditure and entering into divers obligations. 20

(6) That if it be alleged that the land registered in 1938 exceeded the original grant of 1882, then the consent of the Government to register the plan and to issue a kushan coupled with the payment of bedl el misl ought to be interpreted as an agreement by the Government to treat the grant of 1882 as extending to the entire registered area and as an admission to the same effect. 30

pp. 8-63.

pp. 21, 193.

10. A great deal of evidence was led before the Settlement Officer both on behalf of the Bank and on behalf of the Government, most of it directed to identifying the boundaries named in the old kushan. In particular, on behalf of the Government a report and plan was tendered by a Mr. Loxton of the Survey Department, the Chairman of a Commission appointed by the Government in 1942 to determine on the ground the boundaries specified in the 1882 kushan and to report on the nature of the land contained within those boundaries. The said report and plan were to the effect that the original boundaries enclosed an area of 625 dunums only. Objection 40

was taken by the Bank to the admissibility of Mr Loxton's evidence as it was mainly hearsay, and to the said report and plan, but they were nevertheless admitted.

11. The Settlement Officer gave his decision on the 15th March, 1943. He held that the Government's allegation of misrepresentation in connection with the proceedings for correction of area failed, but decided every other material question of fact against the Bank. He also held, as a matter of law, that Article 47 of the Ottoman Land Code did not apply, and that accordingly the subject matter of the original grant must be confined to the 34 old dunums mentioned in the 1882 kushan. He held, however, that, there being no fraud either alleged or proved and no misrepresentation, the Government was bound by its conduct and actions. He therefore confirmed the Bank's title to their registered shares in the 3,296 dunums shown in the new kushan and the registered plan and dismissed the Government's claim to the Bank's shares therein.

In dealing with the mass of conflicting evidence as to boundaries the Settlement Officer said:—

20 "The Settlement Officer considers the evidence of both parties concerning their jurn (one of the named boundaries) is partisan, biased, or specially selected and the witnesses have freely drawn upon their imaginations. The only evidence that can be accepted is that of the Settlement Officer's own eyes."

He nevertheless accepted the Government's contention with regard to the site of the jurn. He further said:—

30 "The findings made in paragraph 8 of this decision (of which a part is quoted above) confirm the claim that other localities were included in the plan (that is the plan submitted in the proceedings for correction of area) and that the boundaries were incorrectly shown. The southern and eastern boundaries were made correct by a Government surveyor who excluded the slope of the Wady Falah."

It is submitted that reading the decision of the Settlement Officer as a whole in regard to the facts, he was in effect merely following Mr. Loxton's plan and the report of his Commission, which the Bank has throughout contended were inadmissible.

12. The Government appealed from the decision of the Settlement Officer. Respondents 2 to 22 also appealed and their appeal has been kept alive pending a decision in this Case. The appeal of the Government was heard by Rose and Edwards JJ., who delivered judgment on the 27th July, 1944. The Government's Advocate at the hearing expressly admitted that the area within the original

kushan was larger than the amount stated therein, being 625 dunums, but, nevertheless, argued that Article 47 of the Land Code did not apply. Mr. Justice Edwards held in favour of the Bank that Article 47 of the Ottoman Land Code applied. He reviewed the Settlement Officer's finding in regard to the boundaries of the 1882 kushan and continued as follows:—

p. 124, l. 30.

“In view of my finding that Article 47 of the Ottoman Land Code applies, the sole question is whether the Bank are entitled to any more than was contained within the boundaries of the original kushan.

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“At this stage I would say that Mr. Loxton, Assistant Superintendent of Surveys, Government of Palestine, gave evidence that he had been instructed by the Chief Secretary of Palestine to make certain enquiries. Objection was taken before the Settlement Officer by one of the advocates for the Respondents to Mr. Loxton's evidence as to the report and plan made by him. The Land Settlement Officer overruled this objection, and I see no reason to question the correctness of his ruling.

“Mr. Loxton had before him the original Turkish kushan, and based his conclusions on answers elicited from persons whom he interrogated and from an inspection of the land and a comparison with the kushan. The area found to be within the kushan was 625 dunums. The Land Settlement Officer seems to have accepted Mr. Loxton's evidence, and I see no reason why he should not have done so. There is therefore clear evidence which must be accepted, that the land within the kushan was 625 dunums and no more.”

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p. 125, l. 10.

13. Mr. Justice Edwards held that the process of correction of the area was well established in Palestine and must be recognised by the Courts, but that the object of the process was merely to correct, in the light of modern methods of survey the area found to be within the boundaries of the original kushan.

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pp.125, 126,

p. 127, l. 44.

14. As to the claim of estoppel Mr. Justice Edwards held that estoppel could not give a title; only the High Commissioner could make a grant of land and no such grant had been proved. In the result, he came to the conclusion that the Government's appeal should be allowed, save as to an area of 625 dunums which the Government did not dispute were within the boundaries of the original kushan.

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p. 128.

Mr. Justice Rose delivered a short judgment concurring with the conclusion reached by Mr. Justice Edwards.



15. From the judgment of the Supreme Court the Bank appeals and the Government cross-appeals against the finding that the Bank is entitled to shares in 625 dunums.

16. As to the appeal and cross-appeal the Bank submits:—

(1) That the Supreme Court was right in holding that the process of correction of area is sanctioned by authority and must be recognised by the Court.

(2) That Article 47 of the Ottoman Land Code applies to all transfers of grants of land.

10 (3) That since the Bank's title is derived through a conveyance on a sale of miri land Article 47 of the Ottoman Land Code applies and the Bank is entitled to all land within the boundaries named in the 1882 kushan.

(4) That in any event Article 47 merely exemplifies the procedure that would ordinarily and should properly be adopted in examining the boundaries of a kushan and applying them to the land.

20 (5) That since the Government issued a fresh kushan for 3,296 dunums against payment of what it called "arrears of bedl el misl" and received such payment it cannot now deny the original grant of land of that area.

(6) That since the Government had in the proceedings for correction of area the opportunity to make any enquiries it saw fit and did make what it considered satisfactory enquiries and as a result thereof registered the Bank as part owners of 3,296 dunums and issued a fresh kushan for that amount it has admitted the Bank's title to that area and cannot now call it in question.

30 (7) That *prima facie* the boundaries are as shown in the fresh kushan and in the registered plan and there was not sufficient evidence upon which a Court could cancel such registration.

(8) That the evidence relied on by the Courts below (apart from the Settlement Officer's "own eyes") to cancel such registration is Mr. Loxton's report and plan both of which are based on hearsay and are inadmissible against the Bank.

40 (9) That there is no evidence to contradict the statement in the register that the land is miri land or to support the Government's claim that the land is mewat land and unassigned state domain.

(10) That the Court's decision on the question of estoppel was wrong.

17. The Bank submits that the judgment of the Supreme Court, sitting as a Court of Appeal, Jerusalem, dated the 27th July, 1944, should be set aside and the decision of the Settlement Officer restored; alternatively, that the judgment of the Supreme Court should be varied by substituting 3,296 dunums and 192 square metres for 625 dunums as the area in which the Bank is entitled to its registered shares; and that in any event the Government's cross-appeal should be dismissed for the following among other

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#### REASONS.

1. BECAUSE the Settlement Officer was right in holding that the Respondent was bound by its conduct in correcting the area to 3,296 dunums and 192 square metres and issuing a fresh kushan for that area.
2. BECAUSE the demand for arrears of bedl el misl by the Respondent and payment thereof by the Appellant are consistent only with the intention to treat the Turkish grant as extending to the full area claimed or at any rate to confirm that the full area claimed is the Appellant's.
3. BECAUSE Article 47 of the Ottoman Land Code applies.
4. BECAUSE the evidence on which the Settlement Officer acted and which the Supreme Court accepted limiting the area within the boundaries named in the 1882 kushan to 625 dunums was inadmissible.
5. BECAUSE the area within the boundaries named in the 1882 kushan is in truth and in fact 3,296 dunums and 192 square metres and the Government was bound by its admission to this effect.
6. BECAUSE the whole of Khirbet Yunis was covered by the original registration.
7. BECAUSE the evidence adduced by the Respondent is insufficient to rebut the presumption arising from registration and the grant of a fresh kushan that the Appellant is entitled to the area stated in the register, the kushan and the plan attached thereto.
8. BECAUSE throughout the Appellant has acted *bona fide*.

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9. BECAUSE on the question of estoppel the decision of the Settlement Officer was right.
10. BECAUSE even if the Respondent were entitled to question the Appellant's title which it has admitted, it has failed to establish that any part of the land in dispute was mewat land.
11. BECAUSE the judgment of the Supreme Court, except in so far as it held that Article 47 of the Ottoman Land Code applied, and that the process of correction of area must be recognised by the Courts, is wrong.
12. BECAUSE on the cross-appeal the Respondent cannot depart from or deny the evidence led by it and its admission in Court that the area included in the original registration is 625 dunums.

PHINEAS QUASS.

No. 64 of 1945.

In the Privy Council.

**ON APPEAL**

FROM THE SUPREME COURT SITTING AS A  
COURT OF APPEAL, JERUSALEM.

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BETWEEN:—

**THE PALESTINE KUPAT AM BANK  
CO-OPERATIVE SOCIETY LIMITED**

— AND —

**THE GOVERNMENT OF PALESTINE  
and Others.**

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**CASE FOR THE APPELLANTS**  
on the Appeal and for the Respondent on  
the Cross-Appeal.

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STONEHAM & SONS,

108a, Cannon Street, E.C.4.

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