

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

THE GOVERNMENT OF PALESTINE and Others - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

STONEHAM & SONS,
108A CANNON STREET,
LONDON, E.C.4,
for Appellants.

BURCHELLS,
5 OLD QUEEN STREET,
WESTMINSTER, S.W.1,
for Respondents.

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

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. DHIB ABDEL QADIR HASSAN ALLU.
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.
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.)

UNIVERSITY OF LONDON
W.C.1.
12 NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

1956
1028

Respondents.

RECORD OF PROCEEDINGS.

PART I.

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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

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- 10 1. THE GOVERNMENT OF PALESTINE.
 2. AYISHA MUSTAFA DIRBAS.
 3. LABIBA MUSTAFA DIRBAS.
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 5. ALLU AHMAD MUHAMMAD 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.
 23. BARCLAYS BANK (D.C. & O.)

Respondents.

RECORD OF PROCEEDINGS.

Before the
Settlement
Officer,
Haifa.

PART I.

No. 1.

MEMORANDUM OF CLAIM.

Land (Settlement of Title) Ordinance.

No. 1.
Memoran-
dum of
Claim,
23rd
November
1941.

PART A. (For official use only).

Sub-District : HAIFA

No. of claim : 4

Village : ET-TIRA

Reg. block : Name KHIRBET YOUNIS
Fiscal Block No. 28.

Provisional parcel No. 1.

PART B. (To be made out by claimant).

10

1. Name of person in whose favour right to registration is claimed.	Full address of same.	Interest or share claimed.
The Palestine Kupat Am Bank Cooperative Society Ltd.	Haifa (See Case No. 2/Tira) (See letter of R of attached to claim parcel.) (Sgd.):	$\frac{11294}{17280}$ L's dated 21.4.42 No. 7 for same

20

2. Category of land : Miri.

3. Nature of right claimed : Proprietorship.

4. How acquired :—

Part or share	Date	From whom	Manner of acquisition.
$\frac{11294}{17280}$	25.6.938		Registered in his name and possession.

5. Registration in land registry :

Deed No.	Date	Name and interest of person registered.
3091	25.6.938	The Palestine Kupat Am Bank Cooperative Society Ltd.

30

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

*Before the
Settlement
Officer,
Haifa.*

7. Description of parcel : Land : Partly cultivated and partly Cultivable.

Boundaries : (According to the Extract produced and plan attached).

No. 1.
Memorandum of
Claim,
23rd
November
1941,
continued.

8. Area claimed : 3296.197 S.Q. vide plan produced.

9. 10..... 11.

12. Supporting documents :— 1. Extract of Registration.
2. Plan.

13.

10 14. I, N. Ratzkovsky, manager of Kupat Am Bank Ltd. of Haifa, hereby take oath and swear that the particulars stated by me/us in the memorandum of claim are true and correct and that all information affecting the validity of my/our claim is truly set forth therein.

(Sgd.)

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

(Sgd.)

Date : 23.11.41.

Haifa Area.

PRELIMINARY INVESTIGATION.

20

(To be completed by Assistant Settlement Officer.)

1. Observations regarding claim as submitted :
 1. Contain Trig points No. 149.v, 150.v, 151.v, & 153.v. & 166.v. Trig points No. 148.v, 320.z, 371.s, 160.v, 161.vz, 162.v, 154.v, are on the Common boundaries.
 2. Claimant agreed to the amendment of the western boundary as indicated in the General Diagram of the village.



Before the
Settlement
Officer,
Haifa.

No. 2.
Extract
from
Land
Register.

No. 2.

EXTRACT from Land Register.

GOVERNMENT OF PALESTINE
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

Transferred from No. 140
of Kanon Awal 1298
Petition No. 767/26
1425/38
3016/37

Folio No. 65

Tcwin or Village : Tireh

Volume No. 2

Situation or Quarter : Ard Khibet Yunis

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantee	Shares	Consideration or value	Remarks
140	Kanon Awal 1298	Miri	—	N. Rous el Shamas & Ashloul el Khazrakeh S. Kitf el Jabel E. do. W. Juron el Nissoureh el Nazzazeh	34.	Registration on payment of Bedl el Misl.	Ahmad Abu Mohd. Alweh Sulciman Dirbas Hassan Alweh & Mustafa Mohmoud Dirbas	1/4 1/4 1/4 1/4		See deed 1174 Vol. 2 f. 71 See deed 1174 vol. 2 f. 72 See deed 497 vol. 2 f. 83 See deed 1172 below
Vol. 13 fol. 101.										
3006	20.6.38	do.	Plain	do.	31.256 ^{m²}	Agglomeration of Shares.	The Palestine Kupat Am Bank Cooperative Society Ltd.	1083724 1658880		See deed 3091/38 below
3091	25.6.38	do.	do.	N. Rous el Shamas & Ashloul el Khuzurka (Tireh lands) S. Makab el Maa Plot Di and Ai (closed Forest) E. Shallalch lands W. Jurn el Nassura and el Nassazeh (Tireh lands)	3296.197	Correction of Area & boundaries on payment of Bedl el Misl as per auth. R.4695-4661 dated 22.6.38	do.	do.	LP.426.590	Bedal Misl No transfer in respect of this property should be concluded before referring to D.L.R. R.4695-7450 of 17.7.42 kept in file 420/41.

No. 3.

MEMORANDUM OF CLAIM by Respondent.
Land (Settlement of Title) Ordinance.

*Before the
Settlement
Officer,
Haifa.*

State Domain

PART A. (For official use only)

D/Hai/213 F.R. 195

Sub-District : HAIFA

No. of claim : 8

Village : Tira

No. 3.
Memoran-
dum of
claim by
Respondent
28th
November
1941.

PART B. (To be made out by claimant).

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

10	The High Commissioner for the time being in trust for the Government of Palestine	Jerusalem (See case No. 2/Tira)	In whole.
----	---	------------------------------------	-----------

2. Category of land.....

3. Nature of right claimed : Proprietorship.

4. How acquired : Unassigned State Lands.

20 5. Registration in land registry :.....

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

7. Description of parcel : Land : Forest reserve

Boundaries : (as per attached plan No. F/70).

8. 9. 10. 11. 12.

13. Additional statement or details if any : Declared as Tira Forest Reserve No. 195 by proclamation of the High Commissioner dated 2/7/29 published in Official Gazette No. 239 dated 16/7/29.

30 14. I, M. G. Alhassid, Land Officer on behalf of the Government of Palestine, hereby take oath and swear that the particulars stated by me in the memorandum of claim are true and correct and that all information affecting the validity of my/our claim is truly set forth therein.

(Sgd.) M. G. ALHASSID
Attorney General's Representative at Land Settlement.

Date : 28th November, 1941.

Before the
Settlement
Officer,
Haifa.

No. 4.

PROCEEDINGS before the Settlement Officer.

Case No. 2/Tira

No. 4.
Proceedings
before the
Settlement
Officer,
30th
November
1942.

BEFORE THE SETTLEMENT OFFICER,
HAIFA SETTLEMENT AREA.

Cl. No.	Parcel No.	Plaintiff.	Share.
8	XXVIII/1	The Government of Palestine	In whole
Defendants.			
7	XXVIII/1	1. 'Ayisha Mustafa Dirbas	1080
		2. Labiba Mustafa Dirbas	1080 10
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		19. Fatima do. do. do. do.	37
		20. Amna do. do. do. do.	37
		21. Yusra Abdalla Salih Hasan 'Allu	540
			5986 30
			17280
4	XXVIII/1	22. The Palestine Kupat Am Bank Cooperative Society Ltd.	11294
			17280

Third Party :—

Barclays Bank (D.C. & O.) Nazareth
(Judgment Creditor against Defen-
dants 9, 11 & 13.)

Haifa, November 30, 1942.

Present :—Mr. Hogan, representing the Government.

Abcarius Bey representing the Kupat Am Bank Co-Op.

Mr. Koussa, representing defendants 1-6, 8-16, 18-21.

40

Mr. HOGAN : We are cited as Plaintiffs. If no re-citation, then burden of proof on defendants, since we are residuary owners. Secondly, defendants must show there is a grant from Government. We cannot prove a negative claim. It is for defendants to prove the grant.

ABCARIUS BEY : We obtained the land on payment of value. The new Government 4-6 years ago relinquished their rights on payment of certain money—registration is in our names. Plaintiffs are trying to undo what they have done. We are in possession. My Kushan was given by Director of Lands. Until the contrary be proved, I am in full ownership.

*Before the
Settlement
Officer,
Haifa.*

10 Mr. KOUSSA : I refer to Rule 5 of the Land (Settlement of Title) Procedure Rules. We are registered owners in possession. Claim of plaintiff is that land is in the Forest Reserve—Section 29. Rights claimed or not. No differentiation. We hold a Turkish title deed. No question of a grant by this Government. Kushan issued under Tabu Law, 1858—*prima facie* we are in possession. Art. 14 Tabu Law.

No. 4.
Proceedings
before the
Settlement
Officer,
30th
November
1942,
continued.

Mr. HOGAN : No Kushan before the Court. No Kushan has been put in as yet. Furthermore, we are in possession.

ABCARIUS BEY : Section 16 of the Ordinance : claims : instruments : produced.

20 S. O. RULING : The defendants have submitted a memorandum of their claim supported by a certified extract of registration in accordance with Rule 4 of the Settlement of Title (Procedure) Rules, which *prima facie* is proof of ownership. The presumptions of possession are in favour of the registered owners. Possession in this instance is disputed. The Settlement Officer decides that Government shall be plaintiff.

30.11.42

(Sgd.) CECIL KENYON.

Mr. HOGAN : From the claim we may gather that Government claims the ownership of the whole of the land. We exclude parcel 16 of the plan. It may not be accurate in size. It was registered as 34 old dunams in 1298 A.H. We do not claim that land. In addition there is a small area, No. 15, not held by a Kushan, under cultivation for many years. This area should be excluded : it has been held by a man for about 60 years : area 5-7 dunums, one Abdul Rahman.

30 This history of this land is that in 1882 one Kushan only for 34 old dunums, no other registration. British occupation. Forest Department carried out careful survey in 1927. Forest surveyor will prove this. Purpose, delimitation for forest area. Proclaimed in Gazette 239, 16th July, 1929. In Forest Reserve 195. The forest reserve included a larger area than land in dispute to-day.

40 Various areas were excluded from the boundaries detailed as being under cultivation. Two of the areas are plots 15-16. Parcel 15 is the small area 5-6-7 dunums. It is plot 10.8 dunums that is held by Kushan. Abd er Rahman is not entitled to any part of the Kushan. Dar Dirbas and Dar Allu enjoyed rights under the Kushan. Though 10.8 dunums were under cultivation, the Kushan is for 34 dunums. Abd er Rahman's plot is shown as being in Khirbet Yunis. At one time it was thought the whole area was in Khirbet Yunis. There are other localities in the block in dispute, one of which is Farah es Quzla. The land was claimed, managed and protected by Forest Officer. Section 3 Forest Ordinance.

In the course of years certain persons cultivated small areas, spreading out from parcel 16 in the main. These persons were prosecuted on many

*Before the
Settlement
Officer,
Haifa.*

No. 4.
Proceedings
before the
Settlement
Officer,
30th
November
1942,
continued.

occasions with success until 1938. In the meantime other developments were afoot. Mr. and Mrs. Levy had acquired roughly 66% of the old kushan 1,298. They transferred their interest to the Kupat Am Bank and show the area as 34 dunums. In 1937 the Bank made an application to the Director of Lands to alter the area as shown on the Kushan from 34 dunums to 3,528 dunums and thereon claim 73 of the shares. As the result of enquiries made by the Director of Land Registrations the area shown in the Kushan was altered to 3,296 dunums on the grounds that that number and a little more that was excluded was included in the boundaries shown in the Kushan. The Director of Land Registration 10 at the same time collected some arrears of badl misl on the increased area. The original Kushan was issued under 103 of the Land Code: revival or development and on payment of badl misl which was paid on 34 dunums. We consider the correction: alteration was made in error for three reasons: (1) the plan submitted with the application which purported to show the boundaries showed them in the wrong place on the plan. The north-west and south-west points are in error. (2) They also claimed the whole area was cultivated: the amount of cultivation is utterly wrong: the whole area is between 100-150 dunums. (3) Finally, the whole transaction of correction of area was, we claim, misconceived by both parties. Original 20 grant was for revival of 34 dunums and no more. The correction of area was in no way in fact or intention a grant of any fresh rights. They relied entirely upon their original Kushan for the rights they claimed. The original Kushan was their root of title. It was never intended and they never asked for greater rights. They said there was a contradiction between the area and boundaries as shown in the Kushan and we ask for a correction to be made in accordance with our claim which we propose to prove with the evidence of witnesses.

*Defendants'
Evidence.*

No. 5.
Robert
Freyer
Jardine,
30th
November
1942.

No. 5.

DEFENDANTS' EVIDENCE.

30

1st witness for Defendants. Robert Freyer Jardine. On oath.

48. Water Commissioner and Deputy Director of Land Settlement Government of Palestine. (Heard by agreement of parties.)

I did act as Director of Land Registration on various dates. One particular date March-September, 1927. I remember there was a transaction concerning Khirbet Yunis. There was an application for the correction of the boundary or area of Khirbet Yunis. The application was dated 24.10.37. I was also Acting Director in 1936. The application was referred to me on the 30th of May, 1938. HLR.3016/37, folio 28. The matter was referred to me with the documents referred to in the letter. 40 The whole file is forwarded under cover of the letter, that was the procedure. The file was examined by the offices at H.Q. I speak from memory. I was consulted whether or not before the 8th of June, 1938. Letter of Fishman, folio 29. File 3016/37 produced. I gave the order for the correction of the registration: whether or not before the letter folio 29, I cannot say. I agreed to what was contained in folio 29. On the 22nd of June, 1938, I gave the order, folio 47. Witness reads letter. It was not the habit of the Land Registrar to report that he had carried out the instructions

other than in tabulated forms. 33/SM/37 folio 53 appears to be the plan and plan 3091/28. I presume the correction of area was carried out. I do not think I saw the Turkish Kushan. I saw an extract of registration. I was satisfied from the evidence produced that the Kushan was the sole one for Khirbet Yunis. The difference in area was for the surveyor to complete what lay between the defined boundaries. If a similar application had been made by the other co-owners I would have agreed.

*Before the
Settlement
Officer,
Haifa.*

*Defendants'
Evidence.*

No. 5.

10 *Xd. by Abcarius Bey* : I asked for the payment of badl misl. In this particular case it appeared the original grant was made for land in defined boundaries. I held that in accordance with 47 that the area did not matter, the important thing was the boundaries. The original grantee paid badl misl on the area first estimated. The practice here was to demand badl misl on the balance. As far as I know, and I held and do hold, that 47 lays down principles of land registry. I hold the area is still of no account, the correct procedure is to examine the boundaries of the Kushan and to apply them on the ground. (Letter dated 4 November, 1942, produced, Ex. "2." The reply to this letter is Ex. "3").

Robert
Freyer
Jardine,
30th
November
1942,
continued.

20 I have had experience of many corrections of areas. I think I may say I gave the transaction my personal and careful attention. I heard of no deceit or fraud. I thought there was nothing unusual about the transaction, it seemed rather clearer. My conception of my duty and the land registry is that the persons have the right to the land within the boundaries. It is obvious that the area as previously registered was incorrect. I was much influenced by the Tabu Cadastral Map that shows the locality as Khirbet Younis. I believe it is correct that the Registrar of Lands did not go to the land himself, owing to the disturbances, at the time. Folio 28 paragraph 10. The land registry has no authority to change registrations or boundaries, except changes in name, etc. The Director of Land Registration has no authority to grant land. In Turkish days
30 the land was described by boundaries. The Director of Land Registration orders his Registrars to go to inspect the land where he considers it to be necessary. If the Director is satisfied, there is no necessity to send the Registrar. I gave the Registrar no instructions to inspect the land. To-day there is nothing in the place of the Mejlis Idara. The Palestine Government unguaranteed the titles and provided the Land Settlement. I believe the Mejlis were the proper people to examine such transactions. In Palestine there is no special legislation and the practice has been to follow the procedure I followed and Exh. 4. I consider the transaction
40 to be an ordinary and less obscure than most transactions of this nature. I have not known of a similar case. I maintain that the area is of no account ; it is the boundaries that are important and still are until after land settlement when plans etc. are prepared.

Xd. by Mr. Hogan : I believe it is for the Settlement Officer to determine the boundaries and areas of the Kushan. I agree that the area of 1298 or 1938 are of no account, that is how I read the law. There is a course of procedure laid down in the Department of Land Registration. There is a manual of instructions. A petition is made to the Registrar by the applicant who usually has a plan showing the applicant's version of the registered land. The Land Registry surveyor is instructed to check the
50 plan, the purely survey requirements and also interpret the plan to the people. The duty of the Registrar is to investigate the case and report

*Before the
Settlement
Officer,
Haifa.*

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Evidence.*

*No. 5.
Robert
Freyer
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on all aspects of the transaction such as the boundaries, etc. As far as I remember the Registrar has to see that the plan is examined by the surveyor and consult the Mukhtar either personally or through the surveyor. I think the Registrar had to refer the transaction to the District Officer. The manual of instructions has no special instructions for correction of area. There were general instructions. The form of petition, the make up of the petition file. Then the type of plan and instructions for checking the plan. In a correction of area transaction there must be a plan prepared under the requirements of the Survey Ordinance. Page 15 Amended Instruction No. 4, Manual. Surveyor, Mukhtar, notables and 10 neighbours. Reference to the Revenue Office. Section 4 of Page 13 re-amended. Examination for some other registration in the land registry. The local forest officer may have been consulted. I think there was such an obligation to consult local forestry officers. Manual 24. Amended. I do not think there is any instruction that they are concerned with only closed forests. The Registrar would know about open and closed forests. No particular instructions on the point of forest areas. The Registrar is responsible for seeing that the forestry officers were consulted. He might do it himself or delegate it to some one else. If Government is the adjoining owner, under the Turkish Law the Mudir Tabu was the 20 responsible officer. The Director of Lands is responsible for public lands. At the time of the transaction the Land Registry section would have consulted the state domain section. The District Officer was the local agent at that time 1937-38. I believe Mr. Bennett would have signed the plan for the state domain section. If the state domain is not registered in the land registry, that is no proof of any grant existing: he would still consult the District Officer. I think the Director of Land Registration would use his discretion. The Director of Land Registration would consult the District Officer if he knew there was state domain. The Director of Land Registrations would himself take steps to protect 30 Government interests in the adjoining properties.

Badl Misl. I do not understand the legal basis for taking badl misl in this country. It was the procedure to ask for badl misl. Badl misl due in respect of the difference in area is a debt due to Government. That was the practice. It was not my intention, and I have no power to make a fresh grant. I am unable to say if the Bank or their predecessors paid tax. I do not remember ever interviewing the applicants or Mr. Edmond Levy. The applicants are a limited liability company. There is a law that limited liability companies cannot hold land without authority. I do not think I saw the Articles of Association of the Company. I think the 40 question should be raised by the Registrar and that the Registrar of Companies should be asked, but I would not like to say that this is so.

Forest Reserves. There was a mistake about the proclamation stating that Abd er Rahman land was registered No. 15. The land held under Kushan was 16. The Registrar would consider it sufficient if he saw the signatures of the Mukhtars on the plan. He does not necessarily have to see the Mukhtar. The Registrar can check the statements of the Mukhtar. Folio 16 contains signatures of elders and notables. I believe the District Officer has a record of notables. The Registrar may know who the Mukhtars and notables are. It is sufficient if the petitioner 50 brings the notables. He, the Registrar, is responsible, for checking the

signatures of the notables. I think it is the duty of the Registrar to verify the signatures but it would be impossible to verify every instance. Prima facie he accepts the signatures as valid : folio 34. The signatures appear the same. I do not remember any transactions of a similar nature in 1936-37-38. The Registrar would normally inspect the land, the transaction took over one year to complete. The transactions appear straightforward. I never inspected the land, nor did the Registrar, but I may have assumed the Registrar had considerable knowledge of lands in this district. The surveyor did visit the land. It may have been Jaouny.

10 The surveyor confirmed the boundaries, we have folio 16, and the Revenue Officer statement that the land was recorded in the name of the Kupat Am Bank, to support the statement. There is the evidence of the 1/20,000 scale plan. There is a note by the Agricultural Officer. From the report of the Agricultural Officer I got the impression that much of the land was cultivated, folio 21. The plan 1/20,000 shows all the land as Khirbet Yunis. The boundary of the Khirbet Yunis locality cannot be shown by me on the 1/20,000 scale plan. I accepted the 1/20,000 plan as evidence that Khirbet Yunis was in that position in the land. I made no enquiries as to how the Kupat Am Bank became registered in the revenue office.

- 20 I believe the person entitled to hold the Kushan is entitled to all the land within the boundaries of the Kushan irrespective of the area, and whether it is cultivated or not.

I cannot recollect who suggested the conclusion of the closed forest area. As far as I see the applicants accepted the instructions to exclude the closed forest area. Paragraph 8 of folio 27 is the only sign of consent. As the applicant had no objection I think I was right to exclude the closed forest area but not by my interpretation of Art. 17 of the Land Code. I thought that all closed forest areas were fenced. I did not think there is any better claim by the State to a closed forest area than an open area.

- 30 *N.Nd. by S.O.* : Folio 39 is the badl misl report : 8th June, 1936. The Committee met in the usual manner. The Mudir Mal and two experts.

- 40 *Re-Nd. by Mr. Koussa* : By adjoining owners we mean certainly owners who have land on the boundaries or it may mean persons who have a claim to be registered. If a plan shows the land to be bounded by Wadies it would be in order if the boundaries were physical features. I believe 3508 in the 1/20,000 scale map represents the area. I was impressed by the fact that the areas were close to each other. I was satisfied that the Registrar had made the necessary enquiries for the case in question.

Re-Exd. by Abcarious Bey : Folio 17 and 1/20,000 map identified the land. I did consider the grant had been already made by the Turkish Government. I consider we had no right to interfere with the grant.

Case adjourned until December 1, 1942, at Haifa, 9 a.m.

30.11.42.

(Sgd.) CECIL KENYON.

*Before the
Settlement
Officer,
Haifa.*

*Defendants'
Evidence.*

No. 5.
Robert
Freyer
Jardine,
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continued.

Before the
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Officer,
Haifa.

No. 6.

PLAINTIFFS' EVIDENCE.

Haifa, December 2, 1942.

Plaintiffs'
Evidence.

Mr. M. Hogan.

Abcarius Bey.

Mr. E. Koussa.

No. 6.
Gilbert
Noel Sale,
2nd
December
1942.

1st witness for Plaintiffs. Gilbert Noel Sale. On oath.

44. Conservator of Forests, Palestine Government.

I am the Conservator of Forests and before that I was in Mauritius and in Cyprus as Assistant Conservator of Forests. I came to Palestine in February 1936. I acquainted myself as rapidly as possible with the Reserved Forest Areas. I was interested in the Tira Forest Reserve because of the side and nature of the soil. The Proclamation of Tira Forest is in Gazette 239. The nature of the soil interested me because it is suitable for the growth of pines. The area was under the control of the forest guards and my officers. I filed frequent cases of trespass on land outside the Khirbet Yunis enclave of about 30 dunums. The land is definitely forest land except where the land is overgrazed. In 1937 a small portion was declared a closed forest area. February 1937. In the preceding year there was a forest fire and in order to give the forest a chance of revival the area was closed. I have no record of any protest. It would normally be opened again after the vegetation had grown up. No fence or anything of that nature was put around the area. I think that in all normal cases no action was to be taken in regard to forest reserves without consulting my department. I was informed that some of the land was claimed by certain persons outside the enclave. I have no definite details. I was informed of this in 1936 as far as I recollect, when surveyors asked for permission to survey: Skall & Steinberg for Mr. Edmund Levy. We were confident that the matter was in order. I asked the Commissioner of Lands and Surveys whether we should give permission and was informed that we should. At the time there was a report to me that the owners of Khirbet Yunis (30 dons.) claimed the land around the Khirbet. The Director of Land Registration said that cultivated plots should be surveyed. I do not recollect anything more of the matter until 194- when I was surprised to receive a letter from my officer in charge of the Northern Division that a large part of the forest reserve had been included in a Kushan. I should indeed have opposed any claim to the forest reserve had I known it at the time.

Xd. by Abcarius Bey: I was shown a proclamation that had been issued in 1927. I had no actual knowledge of its issue. I have noticed mistakes in the proclamation. The fire in June 1936 brought Khirbet Yunis to my particular notice. I do not recollect folio 16. I cannot say if the closed forest reserve is the area shown in red. I recognise the map attached to Government claim. The closed forest reserve was first touching the enclave of Khirbet Yunis. I have no reason to believe that the red area is not the closed area. I understand the closed area was not claimed when the rest of the area was claimed. No other area in Khirbet Yunis was declared a closed forest area. I gave directions to my officers and responded to the Chief Secretary that the land should

be declared closed. The declaration of the forest reserve is made after a close enquiry as to the extent of the cultivation. The next step is to ascertain if the land privately owned. I did not directly make enquiries. I examined the files. I do not remember if the files contained Kushans. I asked my officers to make enquiries and was satisfied with the evidence. In 1927 the Sub Inspector of Agriculture and Forests, 4th April, 1927— a letter was sent to the Mukhtar of Tira notifying them of the proposed forest reserve. Further letter to District Officer 6th July, 1927. I do not know if any other enquiries were made. I do not recollect the names of trespassers. I cannot say if the trespassers were acquitted on appeal. (Certified true copy of judgment produced, Exh. 5.) At no time did I examine the original Kushan of Kh. Yunis. I never passed over the land until this case arose. The boundaries were pointed out to me from a distance by different officers. I was not aware that any of the defendants were present on those occasions. Mr. E. Levy once took me to the boundary. I was present at the inspection yesterday but do not know the boundaries in detail. I could not indicate the whereabouts of Rous esh Shammas or other boundaries on the map.

I have the impression that certain persons were permitted to cultivate land within certain boundaries, this by the Turkish Government. I have not seen Exh. 2 before now. When I heard about the new registration I wrote to the Director of Land Registration who informed me that there was a new registration. My wants are to have the cultivators of Khirbet Yunis confined to the area that was demarcated in 1927. If I was convinced that the demarcation of the plot in 1927 was incorrect I should have no grievance if the land was found to be privately owned. Yesterday I saw a plot of cultivation. I should confine Khirbet Yunis to the area around the Khirbet. I should not say that Khirbet Yunis locality is other than the fiscal block. I cannot say where the boundaries may be of Khirbet Yunis lands. My claim is that the land has been a forest and should be a forest. The officers of the Department made the demarcation. Stones alone may not constitute a forest. I do not agree that the land is very sparsely covered with trees.

X.Xd. by Mr. Koussa : I have seen a larger scale plan on which Khirbet Yunis land is described by other names. I do not know where the plan is kept. I first heard of other locality names in 1936. I cannot give these names. I think the surveyors might have omitted other names in the Khirbet Yunis locality. It was a practice to refer land transactions to the Forest Department when reserves were affected. Folio 8. The Ranger referred to in the letter was the responsible officer. I have no knowledge that any objection was made by the forest ranger. Folio 9, 3rd February, 1938, is the reply. I received a request in writing for permission to survey the forest by Skull-Steinberg: 3rd August, 1936 (Exh. 6). On the 5th December, 1936, I referred the matter to the Commissioner of Lands and Surveys. These letters gave me knowledge that a part of the forest reserve was being claimed. I have seen a plan of the whole forest reserve. I know the position of Khirbet Shallala. The proclamation does not include Khirbet Shallala, but I cannot say if it includes any part of Khirbet Shallala lands, nor am I aware that there was a transaction for the correction of the Khirbet Shallala area. I have no plan in my file of the whole of the forest reserve. I cannot say if the

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*Plaintiffs'
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*No. 6.
Gilbert
Noel Sale,
2nd
December
1942,
continued.*

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 6.
Gilbert
Noel Sale,
2nd
December,
1942,
continued.

plan filed with Government claim is the plan of my office. Exh. 7 is a reply to an application addressed to the Department concerning claims to private land. I cannot say when I first saw the Exhibit. I was aware there was a town planning scheme. I objected to the scheme. It was some time in 1940. (The scheme was approved)—(Gazette 1165, 9.1.42.) I do consider the Report, folio 21, Exh. 1, is most misleading. I only enquired about mistakes in the Proclamation. I am familiar with the judgment. Exh. 5. Knew of it perhaps three months after its delivery.

X.Xd. by S.O.: The Forest Ranger was not the senior member of my staff in Haifa. The ranger was authorised to show on maps any 10 particulars asked for by other officers.

Re-Xd. by Mr. Hogan: I produce (Exh. 6) a reply to Skull-Steinberg. I produce Exh. "8" map 70A, showing additional locality named in Khirbet Yunis. There was a Report made in 1935 to a trespass made in Farsh el Quzli in Tira Forest Reserve. Certified true copies of Reports and judgments are produced—Exh. 9.

No. 7.
Abder
Rahman
Abu
Rashad,
2nd
December
1942.

No. 7.

2nd witness for Plaintiffs. Abder Rahman Abu Rashad. On oath.

Aged 70–80 years—cultivator—living at Tira. I have lived all my life at Et Tira. I have many lands in the plains and the rocky land, and 20 in Farsh el Quzle. My land is planted with olives, carobs, etc. I know Khirbet Yunis. I cultivated in my land in Farsh el Quzle about 1/4 hour's work (? walk). My land is south-west of the Khirbet. I showed the land yesterday to the people present. Cultivate the land 60–70 years. My land was cultivated before Khirbet Yunis land. In the lifetime of my father the plot was small. I extended it. No one ever claimed the land. My land is north of the Wady el Falah, about 1/2 hour from the Wady. My land is recorded in the tithe register in Farsh el Quzle locality. I know Jum en Nassura is north-east of my land : about 1/4 hour from my land. And about 250 metres from the Khirbet. I indicated the Journ to the 30 Settlement Officer. It is called Journ en Nassura because the eagles come to the water. I know Nazzaza, we walked over it yesterday, it lies north-east of my land. West of the land from a line from the Journ the land is forest. Bab Khirbet Sheba : east is Khirbet Yunis. Nazzaza is a seepage (? point). There is a wady going east from the Nazzaza is called Wady Khuzurqa. There is no other wady. There is an Ashloul, to the south there is Wady Nazzaza. I know Bayadat esh Shammas. It is east of Nazzaza : north-east. It is called Bayadat because the soil is light in colour. The wady leads upwards towards Bayadat esh Shammas. The Khuzurqa land is on the left hand side going from Nazzaza to H. esh Shamma. West 40 of Khuzurqa is Umm el Shehade and west of that is Fash el Wasel and Mintaq. I do not know Rous esh Shammas. I know Hafiz : he has a quarry towards the head in the west. There is no Journ en Nassura on this head : there is only one in the East. There is no other Nazzaza but the one I have mentioned. I do not read or write. Mr. Levy approached me to sign a document if I gave evidence in his favour, he would sign in my favour. I do not know when this happened. I have the document

(Exh. 10). I thumbprinted the document recently. Mr. Levy gave me LP.6 to sign the document. I never sold my land to anyone. I signed the document in Haifa.

*Before the
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X.Xd. by Abcarius Bey: The forest land is Government. About one week ago I became aware that my land was included in the Government land. My land is in Farsh el Quzle. I paid the tithe. I have a receipt, a general one. The land is recorded in my name in Farsh el Quzle locality. The Maqhb el Ma' is south of my land. The Jurm is north-east of my land: the Mayab el Ma' is south: they do not meet. Do not know of the closed forest area. The south-west boundary of Kitf el Jabal is Kitf Wady Falah. The wady is to the east. If the rainfall is heavy the water reaches the Kitf el Jabal. Other than the locality of Nazzaza along which we walked there is no other. There is no other wady Nazzaza but the one we saw yesterday going to Wady Khawaniq. I know Ashlul Khuzurqa. There is no place Rous esh Shammas. 'Issa Naji was present when I signed Exh. "10": he was a Mukhtar. I thumbprinted map. I thumbprinted a map, cannot say which is my thumbprint. I do not remember if other persons were present.

*Plaintiffs'
Evidence.*

No. 7.
Abder
Rahman
Abu
Rashad,
2nd
December
1942,
continued.

X.Xd. by Mr. Koussa: I know the lands of Tira are under settlement. Farsh el Qufa is in Tira lands. I have many lands in Et Tira and have recorded my claims. I was told by the recording clerk that the land between the Wady Khawariq and the Wady Falah were recorded in the name of Government. The recording clerk refused to accept my claim about one week ago. I do not know if the Allou family and Dirbas family submitted claim. I submitted my claim. Asked Mr. Alhassid, who said the land was recorded in the name of the High Commissioner. When I became aware that Levy had taken my land. A petition writer made the petition for me. The recording clerk said it was not his duty to go to the land. I submitted a claim to the land in Farsh el Quzle ten weeks ago. Someone in the Suq made the claim and I submitted it to the settlement office. I put in a white (blank) paper. I did not see Mr. Alhassid in the inspection and a few times before that near the Jurm en Nassura. He did not tell me anything. He did not take me to Issa Eff. Never saw Mr. Alhassid and Issa Eff. together in my company.

Khirbet Yunis boundaries: N.—Nazzaza Ashloul Khuzurqa; E.—Shallala; S.—Jurm en Nassura; W.—Kitf Khirbet Yunis and Bet Khirbet Shiba. There is a Kitf between the Jurm and Shallala. The south-eastern boundary of Khirbet Yunis is the Kitf. The Jurm is on the Kitf. Boundaries of Fash el Quzle: S.—Maqab el Ma'; N.—Up to the Khawar; E.—Jurm en Nassura; W.—Quarries of Hafiz. Never saw Jurm on the extreme west. On the south-west corner of Fash el Quzla there are caves called Nawatif. They are caves in the rocks. They are not destroyed. There are quarries near the caves: no one quarries to-day. Did not see Government surveyors in Khirbet Yunis. Saw no land tax committee on the land. Do not know anything about the tax. There are no cultivable lands at the south-west point of the land. I have no other land in Wady Falah.

X.Xd. by S.O.: Daher is my cousin. The land I claimed in Farsh el Quzle. I got the land from my father who died in Turkish days, 40-50 years ago. I cultivated the land without any interference. I do not

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No. 7.
Abder
Rahman
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continued.

No. 8.
John
Nelson
Stubbs,
28th
December
1942.

remember the settlement officer coming to the settlement office (sic). I submitted a claim to the Haifa office. I wrote the claim. Exh. 11. I submitted the claim last month. I do not know the circumstances in which I made the claim. There is no special name for the quarries. I received the land from my father and I renewed and extended the land.

Re-Xd. by Mr. Hogan : I cannot read or write a single word and I do not know what is in either Exh. 10 and 11. I do not remember if I thumbprinted a plan for Levy.

Case adjourned until 28th of December, 1942.

Haifa, December 28, 1942.

Present :—Mr. Hogan.

Mr. Koussa and by delegation for Abcarius Bey.

No. 8.

3rd witness for Plaintiffs. John Nelson Stubbs. On oath.

Aged 53. Director of Land Registration Palestine Government. Director of Land Registration since 1922. From time to time we make corrections in area. We do not intend to give any rights in addition to those already possessed. When we make corrections of area we sometimes collect badl misl. The Turks collected badl misl on the area of the grant. When a mistake in area was found the badl misl was collected on the difference in area. The money was due to the Government from whom the grantee obtained the grant. 10

X.Xd. by Mr. Koussa : When we correct the areas, we consider the correct areas to be within the boundaries shown in the plan of the kushan. Before the correction is authorised it is the practice for the Director of Land Registration to be satisfied that the boundaries are correctly shown in the plan. From my experience I should say that the Ottoman authorities were more concerned with boundaries than areas. Exh. 4 is an instruction in my department and is the one that is followed in my department.

X.Xd. by S.O. : If there was a clerical error in the registration we have power to correct under Art. 3 of the Law of Immovable Property 1331. If the error was one that went to the root of the title and affected other parties we have no power. Application for correction of error are made under Art. 47 of the Land Code not under the Land Transfer Ordinance. There is a lengthy procedure: a survey is necessary. As Director of Land Registration I am authorised to consent to certain dispositions in Palestine and obtain authority to do so from the Land Transfer Ordinance. I have recently had powers to make leases of State domains. But I have no specific authority from the High Commissioner to make grants. The Land Transfer Ordinance was made by and with the consent of the Advisory Counsel. My power to make leases is under the Public Lands Ordinance. 30 40

Re-Xd. by Mr. Hogan : It is possible that the Director of Land Registration might make a mistake in carrying out his enquiries. The Turks had no survey and all land was described by reference to boundaries: no universal system of measurement. The area was an approximation. The Turks had more regard to cultivation, because they had no survey. A claim by revival is not a sale or disposition under the Land Transfer Ordinance. It is under Art. 78.

No. 9.

4th witness for Plaintiffs. Haj Yusef Rashad. On oath.

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Settlement
Officer,
Haifa.

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Evidence.

No. 9.
Haj Yusef
Rashad,
28th
December
1942.

About 60 years—Tira—cultivator. I am a member of the V.S.C. of Et Tira and belong to the southern quarter. I have lands in the south of the village, both plains and mountains. I know Isa Naji. He was a Mukhtar in 1938. He was dismissed from office. He was Mukhtar for the southern quarter. The Mukhtar for the northern quarter was Muhammad Asqul. The other Mukhtar for the south was Hasan 'Amura. I can write and read Arabic. I cannot read a plan. I know Khirbet Yunis. On the west it is bounded by Jurm en Nassura and Nazzaza. There are many more lands from the Jurm downhill. The Jura is about 200–300 m. from the ruins of the old Khirbe. The land to the west of Jurm en Nassura is Farsh el Quzli from the south due west is Farsh el Bata. Abdul Rahman Ahmad Abu Rashad cultivates in Farsh el Quzli. The Jurn is north east of the land of Abdul Rahman, about 200 metres or more. I know Nuweitif, it is the place where water drifts into a cave, and it is in the north of Wady Dalah at the edge or foot of the hill. It is south of Farsh el Quzli. Farsh el Quzli does not reach the plain: it only extends to the water divide. Nuweitif is south of Abdul Rahman's land, a little to the south west. On the ridge on top of the Nuweitif there is quarrying by people of Tira. I know only Hafiz Nijm. There was never a Jurn en Nassura near the quarry of Hafiz. I know Nazzaza: about 300 metres or more north-west of the Khirbe: maybe as much as 400 metres. The Nazzaza is north of Jurm en Nassura. I showed the Court the place of Nazzaza: there are two Ashloul, they are called Ashloul of Nazzaza. From Nazzaza there is Wad el Khuzurka going to the north. It is the boundary between Khirbet Yunis and Khuzurka. If we walk up the Wad el Khuzurka we arrive at Bayadat Shammass. I know of no place known as Rous esh Shammass. I know Ras el Ali; it is east of Khuzurka. I know Umm esh Shuhada, north of Nazzaza. I know Farsh el Wastani is north-west of Umm esh Shihade. Going from Jurn en Nassura to Nazzaza there is on the west Farush Tell el Batha. Farush Tell el Bata is on the mountain and bounds Khirbet Yunis on the west. Farsh el Khuzli is south of Farush Tell el Bata. I know the cultivation at Khirbet Yunis. It was much more in the past. To-day it is much more, previously it was little. Ashloul Khuzurka is south of Khuzurka.

X.Xd. by Mr. Koussa: I was made a member of the V.S.C. of Tira at the beginning of the settlement. I never possessed any land at Farsh el Khuzli or Farush Tell el Bata. My property is in Wady Falah. We have also property in Umm Wusha. Abdul Rahman is a member of my family, not a near relative. No other member of the Rashad family ever cultivated other land in Farsh el Quzli or other Farush. When I go to my Wusha property I pass Khirbet Yunis, but I have no particular interest in Khirbet Yunis. I cannot say exactly how much land was cultivated, about 10–12 dunums. The families of Dirbas and Allou cultivated the land 3 or 4 from each family. I saw eight persons cultivating the land around the Khirba. Never saw the eight persons cultivating the land together. Sometimes saw 2–3 persons cultivating together. The land available 10–12 dunums. To-day there is over 150 dunums. I was a member of the rural property tax committee. I signed the necessary

*Before the
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Officer,
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*Plaintiffs'
Evidence.*

No. 9.
Haj Yusef
Rashad,
28th
December
1942,
continued.

schedules. We did not show the name of Abdul Rahman in the list for Khirbet Yunis. In the list we recorded each locality. We may have mentioned Farsh el Quzli. Whatever is in the list may be correct. If Abdul Rahman is shown in the list in Khirbet Yunis it is incorrect. If the list bears my signature the list is incorrect. There are quarries in Farsh el Quzli, on the south, and above Nuweitif. Hafiz works the quarries, only Hafiz from Tira works the quarries: he had hired labourers from Tira, do not know the names of the labourers. I saw him leaving the village with labourers. Know one called Abu Saleh. I had no interest in the quarries and paid Hafiz no visit. Hafiz is one of the villagers. We did not trespass on the land of Edmond Levy in Farsh Iraq. I and Hafiz with others were brought before the Magistrate. The accusation was false. I was fined perhaps two or three pounds. Do not know how much Hafiz was fined. Do not know if we appealed. Do not think so. Never appeared before the A.D.C. of Haifa. Was sent to the concentration camp for six months in 1936. All the elders were detained. I know Khirbet Shallale, it includes many localities, but is known as Khirbet Shallale. I know Khreibe: had no rights in those lands. Do not know if Hafiz has any rights in Khreiba. I took money, perhaps 20-25 pounds, from the P.L.D.C. for dropping my action on behalf of the village. The village had land in Khreiba, grazing rights and rights of passage on the mountains. I do not know what Rous esh Shammas means in relation to land, nor does anyone in the village. I know Abdulla Salman, the Mukhtar. The plan filed with Claim No. 3485 does not bear my signature. I first saw the quarries 10-15 years ago when they were opened. Often went to the place before the quarries were worked. The Nuweitif was used for goats and as I had goats I saw them. Never saw two big Jurns in the neighbourhood. I was not present in the mountains in 1926 when the survey was made. There was a survey of the plains only. By Kitf el Jabal I mean the Maqlak el Ma' is the same as the side or edge of the mountain. From the Haifa-Jaffa road, and Wady Ghamiq, we have Wady Sayah, next Wady Kufir Samir, then Wad el Risha, then Wad el Amir, Wad Abdulla, Wad et Tira, Wad Heriq Muammar, Wad Misreir, Wady Khunuq, Ahmad el Hilal, Wad Khunuq Dar esh Sheikh Khalil, Wad Khunuq el Heidiq, and then Wady Falah. I have not omitted any. There is no Wady Nazzaza. There is no Ashloul Khuzurka, they are in the mountains. I know Nazazza; the water goes down the Wady, called Wady Khawaniq, all along its course. The water of Ashloul Khuzurka goes to the Nazzaza, and then to Wady Khawariq. Abdulla Salman claims property in Khuzurka, never saw him cultivate or plough. He claims registration. Have not see the forest officers in connection with Khirbet Yunis. I did refer to them in connection with an encroachment. This happened when Edmond Levy encroached upon the land, about one year ago. I went to the land. All the village wanted to go. I went on my own motion to enquire about the encroachments: perhaps Hafiz was with me. I went on one occasion with the Forest department to the land and pointed out the land. Mr. Lahar may have been present, and his second officer. I indicated the site of the Jurn. It is about 10-15 cms. deep, about 1.1/2 m. long. No water in the summer. In the spring time I saw eagles on the Jurn. It is in no other jurn but this one. There is another jurn about 50-60 metres away from Jurn en Nassura, but not on the boundary. The second one is similar to the first one. It

has no name. It contains water in the spring. Never saw any eagles on the second jurn. I had no interest to pass along the jurns on my way to Umm Washa. We did not mention Baiyadat Shammas in the rural tax lists. It is a boundary. It is light soil, a small area, may be one dunum. Ras el Ali is higher than Bayadat esh Shammas, but the latter is visible. The correct name is Bayadat esh Shammas.

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Officer,
Haifa.*

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X.Xd. by S.O.: Have never seen anyone living in Khirbet Yunis. Have lived in Tira all my life. I saw a big hole on the south-west corner of the cultivated land; do not know what it is, or what it is called. I
10 was not a member of the V.S.C. that met the Settlement Officer on the bridge of Tira in 1938. Starting from the village to go to Umm Wusha I used to pass Khirbet Yunis. When I was a young man we grazed our cattle on the Khirbet Yunis lands.

No. 9.
Haj Yusef
Rashad,
28th
December,
1942,
continued.

Re-Xd. by Mr. Hogan: Many persons of Tira received money at the Khreibe land matter. I know Wady Khawaniq: it is to the west of Wady Khunuq Dar esh Sheikh Khalil. Wady Khawaniq begins from the road downstream. Coming up the Khawaniq to the east we reach the lands of Khawaniq and then to the mountains up to the Nazzaza. On the way to mountains we pass on the north Farsh el Wastani.

20

No. 10.

5th witness for Plaintiffs. Ahmad Suleiman el Dirbas. On oath.

No. 10.
Ahmad
Suleiman
el Dirbas,
28th
December
1942.

60 years—Tira—cultivator. I have lived in Tira all my life. I had land in Khirbet Yunis, have sold it. I have a piece in the plain land. I obtained my land in Khirbet Yunis by succession from my father. He cleared the land, cultivated it, and had it registered in his name. My father cleared the land himself: he had a partner, Mustafa Dirbas and Hassan Allou and Ahmad Allou. The four are registered in the Tabu. Some years the land was cultivated, sometimes it was left fallow. Cannot say what the area was: perhaps 50–100 dunums. During the Turkish
30 régime I sold the land to Edmond Levy. I sold according to the registration and tithe registers. We used to open as much land as we could. I used to cultivate 10–15–20–30 dunums: each of the others did so to the extent of their ability. There was more land under cultivation in the past. It may have been 2 or 3 times as much as to-day. For my land I do not remember how much I received: £50–60–100—mejiddis—Turkish gold pounds, French money and Turkish paper money. Also some money in English times. Money paid in instalments. The boundaries of Khirbet Yunis is north-east. Ras el 'Ali and Bayadat esh Shammas running to the west, Ashlul Khuzurka going down to Nazzaza. The west boundary
40 is wa'ar: south-west is Jurn en Nassura. The north-western corner is Khuzurka. There is also an Ashlul Khuzurka going to the west. Nazzaza is running water from the Ashlul, no water in summer time. Nazzaza is the course of the wady. There is a place called Nazzaza, the place where the water runs. There is both plain and rocky land west of a line from Jurn en Nassura to Nazzaza. I do not know the name of the land. The Jurn is perhaps 500–1000 metres from the Khirbe, it is far away. I know where Abdul Rahman cultivates, the land is west

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No. 10.
Ahmad
Suleiman
el Dirbas,
28th
December
1942,
continued.

of Khirbet Yunis and near Farsh el Quzli. I have heard about Journ en Nassura, there are many Journs. I do not know the Journ en Nassura said to be the boundary. I know Farsh el Quzli south-west of Khirbet Yunis. Abdul Rahman is in Farsh el Quzli. Farsh Tell el Bata is north of Farsh el Quzli. I know Nuweitif in the Wady Falah locality, it is on the top and south-west of Farsh el Quzli. I do not know the boundary between Khirbet Yunis and Farsh el Quzli. I never stood on Journ en Nassura. I only heard about it. It is within the locality of Khirbet Yunis. Abdul Rahman's land is within Khirbet Yunis on the west, and in Farsh el Quzli, between the two. 10
The same land is called by different names: Khirbet Yunis, Farsh el Quzli and Farush Tell el Bata. Do not know the boundaries of Farsh el Quzli. Do not know the boundaries of Farush Tell el Bata. I know Farsh el Wastani: it lies on the north: the southern boundary is Ashlul Nazzaza and Ashlul Khuzurka to the north. South of Ashlul Nazzaza is Khirbet Yunis, and Farush Tell el Bata. I know Khuzurka locality. The southern boundary is Khirbet Yunis. The boundary is Wa'ar. There is Ashlul Khuzurka between the two. I cultivated in the Khirba, but not in Farush Tell el Bata. The Farush is west of the Khirba. Farsh el Quzli is south of the Khirba. All these localities adjoin each other. 20
Farsh el Quzli is due south and runs westwards until it reaches the plains. I did work in the quarries west of Farsh el Quzli in Nuweitif. I did not see any Journ en Nassura in the quarry. I heard about it from people in the village. I never saw it or know anything of it. I do not know the western Journ. There is an eastern Journ, on the ridge, a round rock, shallow, also called Journ en Nassura. I stood on it during the inspection. This Journ is east of Abdul Rahman's land, north-east. I knew the Journ before we saw it the other day, and heard it called Journ en Nassura. It is not a Journ, only a rock containing water in winter. I have not seen any other Journ. 30

Xd. by Mr. Koussa: My father died over 45 years ago. And left four children, all males. They died, one only cultivated. He died when the others were young. Before I sold to E. Levy: about 5-6 persons of Dirbas family cultivated. Only two persons of Dirbas cultivated. Some years I cultivated alone. I am the only heir of Suleiman, Mustafa had heirs, 6 or 7 persons. I sold the land by boundaries, not by dunums. The last time I went to the land was on the inspection, prior to that not for the past 20 years. When I used to cultivate in the land they called the Journ by the name Journ en Nassura. The Journ is about 200 metres away from the ridge of the mountain at Wady Falah. Wady Falah is south of 40
Khirbet Yunis. If Khirbet Yunis is the ridge of the mountain it is Wady Falah, the Mablal el Ma. I cultivated in Khirbet Yunis many years. Do not remember if Khirbet Yunis has six localities. I do not read or write. By Hirbe I mean the buildings that were demolished, not the lands. Wady Falah, Wady Khawaniq, Wady Khanuq el Heidiq, the second Khawaniq, this starts from Wady Nazzaza. When going to Tira the Wady Khawaniq is on my right. Wady Nazzaza starts from Khirbet Yunis. It is called Nazzaza until it reaches the plain land and then it is called Khawaniq. There is no other ashlu after Nazzaza except Ashlul Khuzurka that also extends to the plain land. There is Wa'ar between the 50
Wadi Nazzaza and Khuzurka. There is a small plot of cultivated land

there. The land is in Khirbet Yunis. Rous esh Shammas is in the east. Rous esh Shammas and Ras el Ali are one and the same.

Re-Xd. by Mr. Hogan : I made Rous el Shammas and Ras el Ali the same. I know Bayadat esh Shammas and Ras el Ali. Ras or Rous are the same to me. There are many mountains and many peaks. Ras el Ali lies to the north. I know the Khuzurka lands. The ashulul Khuzurka is the boundary between Khirbet Yunis and Khuzurka. The land west of Khuzurka is Karsh el Mintaq and south is Farsh el Wastani. There is an ashulul between Mintaq and Wastani. There is wa'ar south of Ashlul going down to the plains. North of the wady is Farsh el Wastani, and north of that there is a wady, Farsh el Khuzurka. I hear there is one on the east, and one on the west. Wady Khawariq is Wady Khuzurka, in the plans.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 10.
Ahmad
Suleiman
el Dirbas,
28th
December
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continued.

Case adjourned until the 29th of December, 1942.

Haifa, 29th December, 1942. Present : Mr. Hogan, Mr. Koussa.

No. 11.

6th witness for Plaintiffs. John Willoughby Loxton. On oath.

Aged 29. Assistant Superintendent of Surveys. I was instructed by the Chief Secretary to make a certain enquiry. Ex. 12 is the letter appointing me as Chairman of the Commission. Mr. Lahar and Mr. Masson were the members.

No. 11.
John
Willoughby
Loxton,
29th
December
1942.

Mr. KOUSSA : I object to the evidence of Mr. Loxton.

WITNESS, *continuing* : We visited the Khirbet Yunis locality of Tira village and there we met villagers of Tira who had been asked to attend and made enquiries of them. We asked them to indicate to us various localities named by us which we did not know where (they) were. We is Mr. Masson and myself. We went around the land and saw these places. On the way we met people who were cultivating in that area. After making these enquiries we came to certain conclusions and made a report to the Chief Secretary. The report was unanimous. We attached to the report a plan. The plan was made by the Commission. The plan records accurately the boundaries and localities as far as we could ascertain them. I submit the report and the plan. Exh. 13 and 14. Copies submitted by agreement.

Mr. KOUSSA : I object to the submission of the report and plan.

S.O. RULLING : The report and plan may be submitted in evidence for what they are worth.

WITNESS, *continuing* : I do not know if Government rights were involved. I heard there was a forest reserve concerned. The enquiry was not made secretly : anyone could come along.

X.Xd. by Mr. Koussa : I had a talk with Mr. Lahar about the matter before I visited the land. He did not tell me that he had had talks with the first three witnesses. He did not tell me that he knew the first three witnesses. I did not ask the first four witnesses if they had been to the office of Mr. Lahar. I have been in Palestine six years. If I saw a kushan

Before the
Settlement
Officer,
Haifa.

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Evidence.

No. 11.
John
Willoughby
Loxton,
29th
December
1942,
continued.

described as follows: Western boundary, Jurn en Massura and Nazzaza, I should say that the western boundary was a line between these two points and extended to west and north and south boundaries. We were shown a Jurn en Nassura on the ground and Kitf el Jabal. The distance between the two was about 200–400 metres. We looked to see if there were other jurns on the land: we found none. We asked the witnesses and they said there was no other Jurn en Nassura. I did not ask for any other. The jurn may possibly hold 30 c.m. of water when full. Jurn means a trough or bow. The jurn we saw was a bowl, hollowed out of the rock. I had a copy of the title deed, I have no copy with me. We were asked to consider the original Turkish kushan. Before I visited the land I did not know the localities. One of the boundaries was Ashlul el Khuzurqa and Rous esh Shammas. I asked the witnesses to indicate Rous esh Shammas. The witnesses said there was no such place. All the four witnesses said there were no Rous esh Shammas. If Ashlul el Khuzurka was where we show Wadi en Nazzaza then the western boundary would be shown incorrectly on our map. We walked all around the boundaries. There was a quarry in the south-west corner. I saw no jurns in the south-west corner. I did not see two big troughs in the south-west corner. I knew there had been a correction of area in the Kushan. Though not the terms of our commission, I had the impression that we were enquiring into a correction. So far as I knew, the witnesses did not know of any correction. The area found by us to be within the kushan is 625 dunums. Our conclusions were based on the evidence of the witnesses and the kushan. We saw other persons on the ground and asked questions. Without evidence I could not identify all the boundaries. The evidence supported the description of the boundary. 10

X.Vd. by S.O.: I took the literal translation of the boundary and enquired as to the boundary. I was satisfied that the first three witnesses had no interest in the land. I enquired whether the first and second witness had any interest. I can say as a surveyor that the plan correctly shows the position of the places named in the report and in particular parcel 15 is correctly shown. I did not notice a large hold on the south-west corner of the cultivated land of Khirbet Yunis. The red names were added by us and are based on the land registry plan. 30

Re-Xd. by Mr. Hogan: The names in red are not the true positions of all the points. I did not think about the Kupat Am Bank. I was anxious to get disinterested evidence.

No. 12.
Hafiz
Nijim,
29th
December
1942.

No. 12.

7th witness for Plaintiffs. Hafiz Nijim. On oath.

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Aged 45—Et-Tira—cultivator—previously stone cutter. I am a Member of the Village Settlement Committee: have lived in Tira all my life. I have land in the west and south of the village in the plains. I worked in the quarries in Farsh el Quzli. I worked in the quarries from 1925–38 with labourers on my account. Since 1936 no one worked there. The strike and disturbances were on and no one erected buildings. I had a lease from Government. In the quarries there is no place called Jurn en Nassura or any jurns. There is Jurn en Nassura near Khirbet Yunis

to the south-west. The jurn is about 600–1000 metres north-east of the quarries. I know Nazzaza. It is west of Khirbet Yunis, slightly to the north, about 300–400 metres from the Khirbe proper. East of a line Jurn Nassura and Nazzaza is Tell el Bata. I know Ashloul Khuzurka, it lies to the north of Ashlul Nazzaza and goes down to Wad el Khawariq. North of the jurns is Ras el Ali and Khuzurqa. Khuzurka is separated from Khirbet Yunis by an ashlul. Wad el Khuzurka and Baiyada Shammas. I know of no place called Rous esh Shammas. I know Baiyadat esh Shammas, the dividing line between Khirbet Yunis and Khirbet Shallale.

10 The cultivation around the Khirbet is more to-day than before. The jurn is 250–300 metres from the Khirbe, the south-west direction. I know Nuweitif is below the quarries and is in Wady Falah.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 12.
Hafiz
Nijim,
29th
December
1942,
continued.

Ad. by Mr. Koussa : The Wady Falah is south of the quarries in Farsh el Quzli. Ex. 15 is my lease. The inhabitants of the village proposed me as a member of the Village Settlement Committee. I do not know if I was a member of the Committee when the Dirbas and Allous. submitted a claim. There is no Chairman of the Committee. I was made a member at the beginning of settlement. We did not go out to Khirbet Yunis for the purpose of land settlement. I have never been. After

20 land settlement I went many times to the land. The first inspection made by me was with a Government Commission from Jerusalem. I remember Haj Yusef and Ahmad Isa, myself and many others. We went from Khirbet Shiba up the mountains. A member of the forest department called and told us that Government wanted to define the land of Khirbet Yunis from the rocky land. He did not call people by names: only elders of the village went: not the Mukhtars. Abdul Rahman was present on his land in Farsh el Quzli and when he saw us he came to us. The Committee of Inspection did not go to the village. I do not remember any persons except those I have mentioned. I am 45 years. Know all

30 the villagers, but do not remember any name. Never saw Lahav before the Commission went on the ground. I do not remember seeing the survey in 1927. I was far away. The surveyors used to come every few years to the boundaries of the village. I do not know if any members of Tira accompanied the survey in 1927. I did not hear Ahmad Mahmud or Isa say that he had been with the surveyors on the land. Many members of the Allou family were on the land: they must have heard of the inspection. We walked along the boundaries. Dhiab, the brother of Deeb, pointed out Jurn en Nassura. All the people present went together to the places named. The Commission did not take evidence, but made

40 notes. In an action with Ibr. Sahyoun in Farsh el Iraq I was fined L.P.2.— which I paid: did not appear. Not sentenced in any other action. I was not sent away by the District Commissioner. I was sent to Acre Detention Camp. My grandmother had rights in Khreibe. I received £20 for them. Yusef Abu Rashid may have had his own rights. I still have a share in the carobs in Khreibe. I know the Sahalat lands: it belonged to the village and was sold to the Jews. Neither I nor Yusef Rashad encroached upon the land. I did not receive LP.140: the village did so. I know Abdulla Salman; he had land in Khuzurka and submitted a claim at land settlement. I signed on the plan, do not know the contents. After I had signed

50 the plan some work was done on it. The Wady lines were added. I saw Yusef el Rashid this morning. No one spoke to me about the plan.

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 12.
Hafiz
Nijim,
29th
December
1942,
continued.

Wadies from Falah northwards, Khuruq el Heidiq, Khuruq Dar esh Sheikh Khalil, Khunuq Abu Ahmad Hilal, Wad Misour. No Wady Nazzaza. Nazzaza runs about 20 m. to the Jurn and then stops: then it is the Khunuq. Ashlul Khuzurka is from Nazzaza upwards. Saw no jurns at the south-west of Farsh el Quzli. No caves on the top. Where we stood on the south-west corner there were high rocks which we cut by explosives in the years 1925-27. Do not remember when we blasted in that area, certainly before 1938. Cannot state the year we worked in that particular spot. I did not work in the quarries since 1936. No one worked in the quarries. I have the licence and no one else could work. There was no jurn or cave on the top of the rocks. I possess no land in Khirbet Yunis: nor have I ever done so. My land is 6 to 10 kms. away from Khirbet Yunis. I am not a hunter. I have a licence: before the disturbances no game in Khirbet Yunis. My grandfather knew the jurn; my father did so; and so do I. In spring time 20-30 eagles gather around the jurn. My grandfather died 27 years ago. Never went to Khirbet Yunis with him. My father died 2-3 after the occupation. Never went to Khirbet Yunis with them. When the elders meet they talk about things and so I heard about the jurn. I first heard about the correction of the area when the Government Commission came. The villagers most likely knew about the commission: do not know if the Mukhtar knew. We received no written communication. A forest officer called at Tira to a café and said that a commission wanted to inspect Khirbet Yunis land. The man was in uniform and on horseback. He did not ask for the Mukhtars. 10

X.Xd. by S.O.: I remember we saw a notice in the office that Bir Badawiya had been recorded in the name of the High Commissioner. We wrote a letter about it. Bir Badawiya, Masabbir Baber and Khirbet Yunis. I did not read the notice itself, and I cannot read; it was read to me. I know Edmond Levy. I heard that he bought Khirbet Yunis a long time ago. It was read to me that Edmond Levy was recorded as a claimant; no one told me that the area was many thousands of dunams. I do not know who made the plan for Abdallah. 30

No. 13.
Musa
Bahai,
29th
December
1942.

No. 13.

8th witness for Plaintiffs. Musa Bahai. On oath.

52 years. Inspector of Lands. Government of Palestine. I was Registrar of Lands in 1937-38. I have been in the Land Registry Department since 1922. People apply for the correction of the areas in their Kushans. Nearly always there is a plan filed. The plans are checked, no formal procedure: a customary procedure. The correction may be one that arises out of another transaction. If it is an application for correction the plan, a mukhtar certificate, the Kushan, etc., are submitted. If these are in order the plan is sent to the surveyor to check upon the ground. The surveyor checks the plan, everything, to see if the plan is correct. He checks the plan on behalf of the survey. I do not think the names are important: he has to check the plan to see that it correctly represents the ground and that the areas are correct. We give him no instructions to check the names of places, points, etc. He is a technical man. There is a Report to be made, L.R.27. He does not always have to give particulars of the area cultivated. The surveyor has to fill in the form folio 6 40

of Ex. 1. It is his duty to do so. After checking the plan the surveyor returns it to the Registrar who compares the Report with the registration to see if everything is in order. If the difference in area is 10% of the registered area the Registrar can correct the registration without reference. Departmental instructions. In other instances he must report to the Director. If there is a change of more than 10% we ask the applicant to submit proof that the additional area is within his boundaries. The proof may be by Mukhtar's certificate. We are not asked to refer it to any other department. It is not our custom to refer to other departments, but we sometimes consult the Agricultural Department to ascertain the nature of the land. It is left to our discretion. We do not consult the Forest Department, we have no instructions to do so. Cannot say how many times we consult the Forest Department. Do not remember if we consult them many times. I have not consulted the Forest Department: do not remember of any instance where I did so. The surveyors may do so: they may be obliged to do so. I do not know. I do not remember ever seeing letter Exh. 16. I do not remember ever writing to the Department of Forests in connection with a correction of area transaction. The Agricultural Department gives us information concerning the nature of the land when we asked them. I have found nothing in our Manual on this matter. Sometimes we visit the land, sometimes not, it depends upon the transaction. We normally go to see the land even when the area is being corrected. I do not recollect any transaction where the area has been corrected from 34 dunams to over 3,000 dunams. The Kupat Am Bank transaction was referred to Mr. Atlas, the Land Registry surveyor. The Report L.R.27 is fairly good, but not very satisfactory, since the area of cultivation is not given. I drew no conclusion from the Report as to the amount of cultivated land. We received information from the Agricultural Office. I consider the Report satisfactory. I cannot say whether the word "closed" was on the Report at the time I dealt with the transaction. If it had been there I should probably have mentioned it in my Report. I do not think it is the duty of the Land Registry Surveyor to make recommendations as to what land should be excluded or not. The matter was referred to the Agricultural Inspector to ascertain the nature of the land. I do not know who split the land up into parts A, B, C, etc., etc. I think the Report of the Agricultural Officer is a fair report: it is made by an expert, and has to be accepted as such. I think A.2 is cultivated, that is my conclusion from the Report. About plots B and C, I concluded that the lands are cultivable but cultivated in parts. I cannot say what area is under cultivation. It is the duty of Agricultural Officer to give us the area under cultivation. I did not see the persons who are alleged to have signed folio 16. I know the signature of the Mukhtar and he is responsible for the others. We have a list of notables. It is the duty of the Registrar to check the signature and seals of the Mukhtar. Not those of the notables. I did not inspect the land. There were disturbances at the time, it was dangerous for me to go. Normally I should have gone. I do not know if it was dangerous for the others to go. I think it was unsafe for any one to go. Folio 28, Exh. 1, para. 8. No mention of "closed" forest area. There is a discrepancy between folios 9 and 28. Exh. 17 are certified extracts of registration. Some of the names in folio 16 of Exh. 1 are familiar. I do not know the signatures.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 13.
Musa
Bahai,
29th
December
1942,
continued.

Before the
Settlement
Officer,
Haifa.

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Evidence.

No. 13.
Musa
Bahai,
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December
1942,
continued.

Xd. by Mr. Koussa : When the correction of area exceeds 10% we collect evidence and pass the file to the Director of Land Registration for instructions. When you have an explicit and elaborate plan it may not be necessary to visit the land. In the case of Kitf el Jabal it may be necessary as there may be more than one. Mr. Jaouny was the surveyor in the Khirbet Yunis case. I cannot say if Mr. Atlas had to go himself. Several cases where Mr. Atlas sent a deputy to check plans. Do not remember who brought the certificate Exh. 1/16. Mr. Bernblum and E. Levy followed the transaction in the Land Registry. If we are satisfied with the boundaries, we are not concerned with the nature of the land. I do not recollect any instruction that no forest area should be included in a private plan. 10

No. 14.
Eliahu
Joseph
Atlas,
29th
December
1942.

No. 14.

9th witness for Plaintiffs. Eliahu Joseph Atlas. On oath.

Aged 43. Land Registry surveyor, Tel-Aviv. I was Land Registry surveyor Haifa 1937-38. When applications for the correction of areas were submitted I was concerned with the plan. I checked the plan, everything shown on the map, the points and the boundaries. We did not check the known names and customary names of localities. We collected them from the applicant. We accept the names given by the owners : we do not check them in any other way. If there is an adjoining owner, we consult them if we find them on the ground. Generally it is required that neighbours or Mukhtars should be on the ground. We have to get them if we can. We give the names of owners on the plan and the report. The Registrar obtains signatures of neighbours, not my duty. It is not my duty to enquire who owns cultivated land inside the plan : only land outside on the boundaries. It is not our duty to give the area of cultivated land in dunams. We say partly, or in whole, as may be the case, unless instructed by the Registrar. We never say in dunams what part is cultivated, that is our custom. It is no part of my duty to make recommendations as to what part of the land should be included or excluded. If we know definitely that a Government Department is involved we take steps to consult the departments. Examples are the Railways, Public Works for roads, and the Director of Land Settlement for registered State Domain. I relied to a great extent upon my memory. For the Forest Department, its procedure varied from year to year. Until 1935 we consulted the surveyor of the forest department and passed plans to the forest department. After 1935 the procedure was changed and it became the duty of the land registrar. In the years 1937-38 it was the duty of the Registrar to do so. As to the Kupat Am Bank transaction, Mr. Jaouni was a surveyor, Grade " O ", in the Land Registry. He had been doing this work for 4-5 years. He was asked to check the plans in the usual way. I gave him no particular instructions. Form 27 was routine. I inserted under B the note about Forest Reserves. Cannot recollect if the alterations to lettering were made before I added the Schedule. Folio 8 Exhibit 1 was written by me. In 1937-38 I did not know the difference between a closed forest area and a forest area. I considered a closed forest area was something definite. To-day I know a closed forest area is different from a forest reserve. I heard there was a 20 30 40

closed forest reserve in this locality of Khirbet Yunis. Cannot say how I came to know there was a closed forest. I thought that a forest area and a closed forest were the same. I sent a print showing the whole area and the whole of the forest could have been shown. It was not my duty to make these enquiries. I did not know that the whole of the land was a forest reserve. I sent a print to the forest department and they could have shown it on the plan. I confined my request to the closed area in accordance with the Gazette. Cannot say why I did not ask for all the forest reserve. I did not supply the plan behind f. 30 Exh. 1.

10 After seeing folio 30 I see that I did supply the plan. The plan bears the words "forest reserve." The rubber stamp was added afterwards. It was routine for the Registrar of Lands to enquire about the forest.

Ad. by Mr. Koussa : Form L.R. 27 is satisfactory. The schedule on page 3 was inserted before I made my remarks. Folio 8 was written on 28.1.38 not 37.

Ad. by S.O. : I never visited the land myself. The forest ranger was the officer with whom I made official communications, and I accepted the replies of the ranger as being the replies of the Department.

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Haifa.*

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*No. 14.
Eliahu
Joseph
Atlas,
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continued.

No. 15.

20 **10th witness for Plaintiffs. Ahmed Mahmud el 'Isa. On oath.**

Aged 40—Tira—Cultivator—Member of the Village Settlement Committee. I have lived all my life in Tira. My lands are in the plains and mountains, in the south of Tira. I know Khirbet Yunis. I have land near north-east of the Khirba. I know Farsh el Quzli, west of Khirbet Yunis. I know Farsh Tabl al Bata, also west of Khirbet Yunis. I know Jurn el Nassura, on the western boundary of Khirbet Yunis, about 280 metres from the Khirba. Farsh el Quzli is west of the Jurn. Abdul Rahman cultivates there. Nazzaza is north of Jurn en Nassura. Nazzaza is about 300–400 metres from the Khirba. East of Nazzaza the Ashlul is called Wady Khuzurka. We call the wady east of Nazzaza Wady Khuzurka because it is large. It branches westwards, one is called Ashlul Nazzaza. The wady has both names, Wady el Ashlul. I know of no other Ashlul Khuzurka. I cannot read or write. I may understand maps. (Witness indicates position of Tira, Khirbet Yunis and Jurn en Nassura, the latter in the position claimed by Government: also Tell el Batta, also Nazzaza, also Wady or Ashlul Khuzurka and Bayadat esh Shammas, on the plan submitted with Government claim: also Nuweitif). Nuweitif is a big mountain containing a cave in which water drops. I know the quarries of Hafiz. Nuweitif are down, the quarries are up.

30 Perhaps 100 metres above. My land is parcel 10, and also land to the east. The cultivation around the Khirba is more to-day than in the past.

Ad. by Mr. Koussa : I remember the Jerusalem Committee. I was on the ground with Haj Yusef, Hafiz en Nijim and others. I do not remember the names of the other persons with us. All from Tira. We went from the village, met a forest employee, who told us that a commission from Jerusalem was coming to inspect the lands of Khirbet Yunis. We are the only three to leave the village. Other persons joined us along

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Ahmed
Mahmud
el 'Isa,
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continued.

the road. I remember encountering Abdul Rahman on Ard el Batta. This happened after meeting the commission. There may have been with us Muhammad es Sayid. I think Jaber was the Forest employee who asked us to go out to the land. I do not remember where I met Jaber in Tira. I did not meet him in Haifa. Other people were present when I was asked. Jabra may have come to the Settlement office or in the café nearby. The café is always crowded, not one or two persons. We understand about these lands. We are responsible for the boundaries. There are three Mukhtars in Tira: he may have been sick. I did tell the commission I was a member of the V.S.C. and the survey in 1928. 10
I was on the commuted tithe committee in 1928. The Forest Department seized the rocky land as forest. They excluded the cultivated patches, which were marked. They put up sign-board. I first saw the plan 1/10,000 in the settlement office about one year ago. This map shows the forest land and cultivated land. The forest land is all the land excluding the patches shown in brown. The words "Khirbet Yunis" are incorrectly shown on the plan. I went over all the boundaries of the forest with the forest department to show the Tira boundary. In 1927 the forest people did not know the localities. I went to Farsh el Quzli in 1927 and mentioned the name. I mentioned Farsh el Batta. I do not remember mentioning 20
the Farsh el Wastani. (Witness indicates position of Wady Khuzurqa and Wady Khawariq as claimed by Government.) Wady Khuzurqa in the mountains, Wady Khawariq in the plains. Do not know Rous Esh Shammas. In the Shallali lands there is Shammas. On the western boundary of Khirbet Yunis there is Baiyadat and north of that Ras el Al. I heard of Urvat esh Shammas, it is in Shallala. It is lower than Baiyadat which is the higher. The southern boundary of Khirbet Yunis is Maqab el Ma'. The ridge of the mountain is the Kitf el Jabal. This overlooks the Wady Falah in parts. I know the quarries. I know the Kitf el Gharbi. I first went to the point four or five years ago. Never saw any jurns. 30
I was not present during the inspection. My family never owned land in Farsh el Quzli, Batta or Wastani. I am not a hunter. My way is along Khirbet Yunis, my father was a Bedu, and had a tent there in these lands. Last pitched our tent about 20 years ago. There is another jurn about 100 metres to the north of Jurn en Nassura which is the larger of the two. I remember seeing water in the second jurn on one occasion in winter time. The water remains in Jurn en Nassura until the month of May. The depth is about 60-70 cms. If asked to go to Nazzaza, I should go to Ashlul en Nazzaza. The Ashlul starts from the south-east until it reaches the Wady Khuzurka and then goes westwards to the 40
Khawariq. From the Nazzaza the Wady or Ashlul is called Wady Khuzurka until the Khanuq, then on to the plain. The Ashlul Nazzaza joins the Wady near Khirbet Yunis, near the ruins it starts from up. The extreme end of the Ashlul is about 150 metres from the ruins. The Ashlul does not start from Baiyadar ash Shammas. The Nazzaza abd Ashlul is the same thing. The water sups into the Ashlul. The Ashlul is about 200-300 metres long. Wady el Khuzurka starts near the Baiyadat esh Shammas: it goes down into the Nazzaza. I know Abdalla Salman, do not know if he has any land in Khuzurka. I now remember he has a small parcel, No. 14. 50

Xd. by S.O.: Bab el Ajal in Atlit is just off the plain. The wireless station is about opposite Wady Falah. I remember the schedule of claims

being posted in November 41, for Bir Badawiya, Massabbis Baber, and Khirbet Yunis. I do not know how much was recorded in the name of Nassim (E. Levy). We submitted a complaint to the S.O. I do not remember anything about blocks 28 and 29. I do not read or write. Jabra came to the village with news about the commission, it may have been the day before we went to Khirbet Yunis. We understood it to be orders from Government. If there are disputes on the boundaries we sometimes go. I did not know there was a dispute.

10 *Re-Xd. by Mr. Hogan* : Witness marks the point of Nazzaza on the plan and the Ashlul Nazzaza. The south and middle wadies Ashlul Nazzaza. The northern one is Khuzurka.

Case adjourned until December 30, 1942, at Haifa.

Haifa, December 30, 1942. Present : Mr. Hogan. Mr. Koussa.

*Before the
Settlement
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No. 15.

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el 'Isa,
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No. 16.

11th witness for Plaintiffs. Ibrahim Ratib Jaouny.

20 29 years—Land Registry surveyor. I joined the Government service in 1930 as a surveyor. At that time I had no qualifications. In 1936 I was attached to the Land Registry in Haifa. I was Grade "O." I had acquired experience, but had no certificate, except the S. of P. authorisation as a surveyor issued to me in 1932 or so. In 1937 I was instructed to check the plan of Khirbet Yunis. Mr. Atlas told me to go out and check the plan : he gave me a sunprint of 33/SM/37. I had no special instructions. After checking the sunprint I made corrections etc. in green ink on the original plan, except the table of areas. The sunprint should be put in the file. It is not in the file. The sunprint was a copy of the original plan. The sunprint showed the land divided into plots. The surveyor executing the survey divided the land into plots. I had never been on the land before I checked the map. I went to the office, received my instruments and one labourer. Government and one labourer from the private surveyor. We went by taxi, the three of us, to the land. We met Mr. Levy and three men of Tira, one was a Mukhtar. I did not know the three men. I went in the taxi with the men to Wadi Falah. This happened on 14.12.37. I was not frightened to go out to the land. I went on many occasions. Mr. Levy went with me as far as the asphalt road. I took my steel chain, aloney (?) level etc. and measured the distances between the marks. The sunprint bore the names around the boundaries. If I found them correct they would be passed by me, otherwise I would have crossed them out. I do not remember the name of the Mukhtar. I see from L.R.27 the Mukhtar was Muhammad Asqut. I went to check the marking, points, on the plan, the measurement, the Nos. of the points, and the names. I also wanted to put the information concerning the amount of cultivation. I had no intention to measure the amount of cultivation. I had no intention to fill up the Report L.R.27 concerning cultivation. I did not know what the transaction was. I did not know the transaction was a correction of area. I did not have the file. I checked the survey. I asked the Mukhtar who told me the names of the boundaries. I had no other source of information. I accepted the Mukhtar's statements. I spent about 7-8 days on the ground. I went on inspection with the

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continued.*

Court about one month ago. There are many Ashlul in the land. I think there is one following the south boundary of B. and two or three in A.2 and along C.1. Rous esh Shammas. Rous means heads. Shammas is a young priest. I know there is a mountain at (angle) 160v and another on (angle) 162v. (Angle) 161v is not on a mountain. I remember seeing a building on the land near (angle) 161v in 1937. It is in the plain. The ruined house is about 100 m. north of (angle) 161v and 350 m. from (angle) 162v. The (angle) 162v is about 50 metres higher. It may be lower. I cannot say. I cannot remember whether (angle) 162v was on a hill or plain. I do not recollect if there is a wady along the northern boundary. 10 I do not recollect if there is a wady parallel to the Wady Falah. I do not recollect that the western boundary was along the top of the cliff. The point on the north-west comes in on top of the cliff, point 113. To me the word "Nazzaza" means small spring. The Mukhtar told me where Nazzaza was, and where Mauqi en Nazzaza was, which was down in the wady. The Wady Nazzaza is south of (angle) 154v which is above the wady. I actually walked to the Journ en Nassura. I saw a natural hole in a rock. The hole was about 1/2 to 1 metre and about 60 cms. The hole was round, and open to the sky. It is also about 3 metres from the southern and western edges of the cliff. There were two holes, the second 20 was about the same size: also open to the sky. The second hole was about 3 metres to the east. I think the eastern hole was lower than the western one. I do not recollect if the western hole was lower than the surrounding ground. The Mukhtar told me this is the locality of Journ en Nassura and showed me the holes. I saw no water in the holes. I was on the ground on 14.12.37. I think I went to the holes on the first day. The holes were a little away from point 133. From the wady we walked up the side of the hill; it is difficult to get up the hill. We went up to the holes from the wady in approximately the same way as we came down the other way from inspection. We came from the west to the 30 holes. We reached the point with difficulty. I saw the holes from the north side. We came back the same way to the car. I did not see a little house near the west boundary. I was on the land. I made a sketch of the cultivated land. The amount of cultivation is about the same as it was to-day, it is patch cultivation, about 200 dunums. I considered all A2 to be rocky. A2 did not differ much from E. I wrote the words "should be excluded" before I showed the Report to Mr. Atlas. It was not my job to make such a remark or note in the form.

Xd. by Mr. Koussa: We came down in 1937-38 in the same way as we came down from the inspection of last month. I am prepared to 40 swear that I visited the land and checked the plan. I made the table in form L.R.27. I copied the figures from the plan. The calculations were made in the office.

Xd. by S.O.: The plan submitted for checking contained all the black detail, including the subdivision of A and D. I added my exam. in green. The calculations were checked in the office. I put the names in red on the plan. I do not remember where exactly the holes were. I think in the place of the caves. I did not remember to tell you (the Settlement Officer) where the Journ was when I went off the inspection.

No. 17.

12th witness for Plaintiffs. Jacob Gottlieb. On oath.

*Before the
Settlement
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*Plaintiffs'
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No. 17.
Jacob
Gottlieb,
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Aged 40 years. Agricultural Inspector, Government of Palestine. In 1928 I was agricultural inspector in Haifa. On the 10th of April, 1938, I received a letter to inspect the land of Khirbet Yunis. At the time we were busy with assessing damage done by rioters. It was dangerous to visit the land at the time. Mr. Levy and another person visited my office. They asked when I could inspect. I asked for a few members of the Land Registry. At the beginning of May, I communicated with

10 Mr. Atlas and we appointed a day: 8th of May, 1938: to go with a surveyor and Assistant Land Registrar to visit the land. I was told it would be possible to make the inspection. A car came to my house in Ahuza between 7-8 a.m. In it was an Arab, Mr. Skall, the surveyor, and another man who proceeded to Shallala. I was told the surveyor and the land registrar would be on the land. On arriving at Shallala I found no one present. I had with me a plan that was attached to the letter of the land registrar. The plan was like folio 13 of Exh. 1. I waited an hour and then Mr. Skall suggested we might inspect the land. I did

20 not like the idea of returning a second time as it was a dangerous area, so we went to Khirbet Yunis on foot. Arrived on the land about 9 a.m. and reached the Khirbe between 9-10 a.m. We found an Arab on the land, said to be a worker for Mr. Levy. The Khirbe is on the top of a hill, or nearly so. I looked at the land and asked Skall where we were. Skall said we were in A1. I saw the closed forest, began looking for the marks: some we found. The closed forest was covered with trees. The surrounding area was not covered with trees, not so much. Cannot say if the closed area was the same as to-day. The closed area contains trees, pines and carobs. Cannot remember what I saw the other day. I did not find the extreme western point of the closed forest. I do not know

30 if we found the point the other day. There was a difference in the land east and west of the point. The land east of the point did not differ much from the land to the west. As we could not find the points we had a general look at the land, walked around near the Khirbe. I was nervous, anxious to get away. There was land sown and cultivated near the Khirbe 200-220 dunums. There was another small part to the west, on the slope, going away from us, 10-20 dunums. Saw no cultivation on the slope facing us. Saw no cultivation the other day. Did see cultivation the other day. It seems to me that the land we saw the other day has been opened recently. As far as I remember the area was smaller in 1938.

40 I did not see plot 15 in 1938. The small patch I saw was on or near the line from Jurn en Nassura and Nazzaza. Saw no cultivated land on the west or south-west of Khirbet Yunis. The cultivation had disappeared when we were on the land one month ago. The cultivation around the Jurn en Nassura was bigger when I saw it the other day. I saw a small patch west of the Jurn. We walked around the land near the Khirbe, as I thought it would be enough to see the land from that point. Seeing that the time was short and the land is large I asked Skall to show me the various boundaries of the parts. I made some notes, made a sketch. I could not make a proper survey of the land. About 1 o'clock we left the

50 land. As the result of this inspection I made a report. I did not regard the report I made as satisfactory. I expected to be asked to give an

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explanation. The area under cultivation is practically the same to-day as it was in 1938. My report of A2 is inaccurate. About 200-250 dunums only was cultivated. I never walked over B and C1. I saw them from afar. There was a small plot cultivated near Ras el 'Al. I do not remember a small wady near Ras el 'Al. The cultivation was south-west of Ras el 'Al. The cultivation was in the middle of B, I cannot remember where it was. I was told by Skall it was within the plan. I did not see the cultivation the other day. I cannot locate the place where the cultivation was, it was somewhere in the vicinity of the ruined house which was visited the other day. As to plot C1: I cannot say where the cultivation was. I saw a few patches, perhaps 5-10 dunums. From afar the land appeared open and so I thought there was cultivation. I should say there was no cultivation in C1. I do not think plots B and C1 are good agricultural land. I should say 25% can be made agricultural land. At present it is rough grazing land. I did not visit the land again. 10

Xd. by Mr. Koussa: I spoke to Mr. Atlas about visiting the land. I made arrangements for the surveyor to meet me at my house in Ahuza. I think Mr. Skall had a revolver or a shotgun. It was my duty to visit the land. The report is my composition. Neither Mr. Skall or anyone else assisted me. After going through the land on the 1st of December 1942, I came to the conclusion that the report was unsatisfactory. Mr. Hogan asked me about the report, this was before 1.12.42, on the 19th of November, 1942. I said we should go out on the land again. I expected the land registrar to refer the matter to me again. I did not use the word "thorough" in my report. Secondly a thorough inspection must be made in the presence of a land registry surveyor, an assistant land registrar and a forest ranger. I tried to do my duty and not to return to the land. I made no measurements. I did not ask the surveyor to do so. "A great part of the land was sown under cereals," that is a statement of what I have seen. I examined the soil near the Khirba. It is excellent agricultural land. At no time did I tell the Land Registrar not to act upon the report. I formed the opinion that the Land Registrar should not have acted upon the report until after I saw Mr. Hogan. I remember the land called Farsh Tell el Batta. I did not examine the land and do not know the area. I saw land called Farsh el Quzli: saw some cultivable land: cannot say it is good agricultural land as I have not examined it. Do not know the area. Trees are scarce. I believe there are some olives. Tell el Batta is clear of all trees. Farsh el Wastani was indicated to us, looking to the east, the Farsh is to my left. I think the land is cultivable. I do not remember the name Umm esh Shihade. The land around the ruined house is cultivable. It may be good land after clearing. Trees are scarce near the house. Never heard of Bat Khirbet Shiha. I did not examine or look at this land. I did not ring up Mr. Atlas or speak to him about the matter. I was busy after the inspection. Wrote the letter on the 15th of May, after returning from Jerusalem. I thought Mr. Atlas had let me down. 30 40

Xd. by S.O.: I had the alternative not to submit the report, but I did submit one in order to get rid of the matter and because I expected to be asked to go back again. The submission of the report was a mistake. I heard nothing more about Khirbet Yunis until Mr. Masson spoke to me this year. I did not know for what purpose the plan was prepared. 50

I had no idea to whom the property might belong. I knew Mr. E. Levy had some interest in the property, he may have had a share in the property. I had very little experience with maps prior to 1937.

Re-Xd. by Mr. Hogan: At the time I made the report I thought it was unsatisfactory and required explanation.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

No. 18.

13th witness for Plaintiffs. Sadr ed Din Ashur. On oath.

Aged 47. Mudir Mal—Haifa—Revenue Officer. I keep the tax registers, werko, rural property tax, tithe. I have the tithe records, werko and rural property tax registers with me. I have the Commuted Tithe Record for Farsh el Quzli : entry No. 1847. Occupier Abdul Rahman Abu Rashid, 192 mils, Exh. 19 is a certified true copy. I have also entry 1807 : tax 75 mils. Both entries for the year 1928. I have entry No. 1689—Tell el Batta, Exh. 20 is a certified true copy. This entry is in respect of carob trees. I have also entries for Khirbet Yunis in 1928, Exh. 21 is a certified true copy. I have a Khulasa record containing entries relating to Khirbet Yunis. Exh. 22 is a certified true copy of the entries. I have also the rural property tax ordinance records. There is an entry for 3313 dunums in the name of the Kupat Am Bank and partners. The T.D. List was made in July 1935, 17th of July. The land was first entered in the name of the Mukhtar. The entry was rubbed out. The second copy is with the Mukhtar. The name "Mukhtar of the village" first appeared. After drawing up the register, on the 9th of October, 1935, the Mukhtar put in an application—Certified Extract—Exh. 23. The R.P.T. Roll was posted on 12th February, 1935. The T.D.L. was posted on 17.7.35. It was on the 9th of October, 1935, that the Mukhtar complained. Exh. 24 is a certified copy to the T.D.L. I have no entries in Fiscal Block XXVII in the name of the Kupat Am Bank. The name of Block XXVII is Khuzurka and Meflih. The name of XXVIII is Khirbet Yunis. I was not the official valuer under the Ordinance. Rafiq Bey was the District Officer and he ordered the correction. I think he had authority under Section 35. It was considered a clerical error. There was no other application to amend the tax distribution list. The annual rural property tax was 600 mils, 75 dunums cultivated land, Category 13.

Xd. by Mr. Koussa: I have been Mudir Mal since 1922. The accepted custom in describing boundaries in Turkish days is to start from the south, east, north, west. There was no area given in the records. The tithe was based on the average of four years, the seed sown. The average was not calculated on the total area owned by the person. Abdul Rahman has no record in Khirbet Yunis in the commuted tithes records. I have the register of Tira No. 71/26. There is a record for Abdul Rahman in Khirbet Yunis, 5 dunums, tax 40 mils. Exh. 25 is a certified true copy. The tax for the Kupat Am Bank was paid by E. Levy until 1941. The total area of Block XXVIII is 3508 dunums. The R.P.T. Rolls bear no names. The rolls were posted in the village. The property of the village is mentioned in the rolls, no names. After the rolls, the T.D.L. is made up. The T.D. Committee were Hassan Ammura, Isa Naji and others : do not know how many members. Of the area 3508 an area of 3313 was

No. 17.
Jacob
Gottlieb
30th
December
1942,
continued.

No. 18
Sadr ed
Din Ashur,
30th
December
1942.

Before the
Settlement
Officer,
Haifa.

shown in the name of the Mukhtar. If there was a block of forest land it should have been in the name of Government. The schedule is approved by the District Officer. The name of Block XXVIII is shown as Khirbet Yunis and no other name appears on the tax plan.

Plaintiffs'
Evidence.

No. 18.
Sadr ed
Din Ashur,
30th
December
1942,
continued.

Xd. by S.O. : I have rural property tax distribution list for all villages in Haifa. I have seen many entries in the name of the High Commissioner for rocky land of category 16 : Isfiya, Daliyat al Carmel, etc. The application for correction of the name is not an objection, it is a mistake.

Re-Xd. by Mr. Hogan : I do not know if the tax distribution list in the village was amended. The tax distribution list is for the purpose of compiling a list of tax payers. The High Commission is shown when the Government is the owner of the land. I do not remember if the High Commissioner is shown in the tax payers register as the owner of the land. Abdul Rahman's No. in 20 is Block XXVIII. I do not know if the entry is the same as Farsh el Quzli. I do not know Farsh el Quzli.

No. 19.
Mahmud
Daoud
Dirbas,
30th
December
1942.

No. 19.

14th witness for Plaintiffs. Mahmud Daoud Dirbas. On oath.

Aged 53-55 years—Tira—Cultivator. I have lived in Tira since my birth. My land is in the plains in the south of the village. I have no land in Khirbet Yunis. My family have land in Khirbet Yunis, Ahmad Suleiman Dirbas has land. He is a member of the family. I heard he sold the land to Nissim. I have often been to Khirbet Yunis. I have cattle and go grazing and woodcutting. The boundaries of Khirbet Yunis are Baiyadat Shammas, east Journ el Nazzaza, west Ashlul Khuzurka, south Journ en Nassura. The Journ en Nassura is about 300-350 m. from the Khirbet. West of Journ en Nassura is waste land, Farush Tell el Batta, Farsh el Wastani, Farsh el Quzli, Abdul Rahman cultivates in Farsh el Quzli. The journ is north-east of the cultivation. Nazzaza is about 250-300 from the Khirbet. It is east of Farsh el Wastani. There is an ashlu going to the east from Nazzaza. The ashlu names are Nazzaza and Khuzurka. Going east up the Ashlul Khuzurka we reach Baiyadat Shammas on the north of the ashlu Khuzurka is the locality of Khuzurka, and south is the Khirbet Yunis. West of the Khuzurka land is Farush Wastani. North of Farush el Wastani is Farsh ez Zagha and Farsh Iraq el Barghit. I know of no place called Rous esh Shammas. I know Farsh el Mintaq : it is west of Wastani, north-west of it. There is a wady going into Farsh el Mintaq, called Wady Bir el Fadl. There is no wady west of Farsh el Mintaq. I know of no other Ashlul Khuzurka except the one I have mentioned. I know of Nuweitif in Wady Falah. South of Farsh el Quzli. At that point there is no Journ en Nassura. There is no Nazzaza except the one I have mentioned.

Xd. by Mr. Koussa : I have no cattle to-day, I ceased to have them. I still have a few goats. I ceased going out with them. I still go out with them. Only to-day did I know I was a witness : the Mukhtars sent me. Haj Yusef told me to come. Ten or fifteen persons came here, I volunteered to give evidence. I only met Mr. Alhassid, he took from me a statement. He had a plan. I saw it. He asked me about the

- localities. He did not indicate to me the places on the map. I know Sahalat lands: they fall to the north of the village. I do not know the boundaries. The lands belong to Tira. The lands are nearer to Tira than Khirbet Yunis. I was brought up in Khirbet Yunis, in Tira village. I was brought up in that locality, woodcutting and grazing in Tell el Batta and Wastani. The land of Khirbet Yunis belonged to my family, that is how I know the boundaries. Never saw the kushans. I do not know Rous esh Shammas. There is a Ras north of Baiyadat ash Shammas. It is called Ras Al 'Ali. Ahmad Suleiman Dirbas owns land in Misilya
- 10 locality. I do not know the boundaries of Misilya. Misilya is nearer Khirbet Yunis. It is in the plains. I have no land in Misilya. My land in the plain is about 1/4 to 3/4 hours walk from Misilya. I do not know the rural tax lists were published in the village. I pay the taxes perhaps LP.2.—I know Journ en Nassura. I know the Kitf el Jabal on the south. Journ en Nassura is on the ridge: it is on the Kitf. It is in the Kitf. One kitf only. I saw no quarries in Khirbet Yunis. I saw quarries in Farsh el Quzli. Hafiz Nijim had a licence from Government. Last saw him 3 or 4 or 5 years ago working there. There are caves in Wady Falah, they are not the Nuwitif: the Nuweitif are caves up high, but below the Kitf.
- 20 My cattle were not kept in the village: kept in the caves in Wady Falah and I lived in the caves. Used to take my cattle up from the east, south and west. I did graze my cattle 15–16 years ago. Then I was on the land, but recently I only go when my shepherd is sick. I saw Hafiz Nijim to-day, was sitting with him and with Yusef el Rashid. Never said a word about the case to them. Sat outside the office all the time. Had no single word with them about the case. My statement was taken by Mr. Alhassid in the next room. Either Yusef Rashad or Hafiz Nijim told him I was an expert. We were alone.

- Xd. by S.O.:* I have lived in Tira village since my birth. I have
- 30 been going to Khirbet Yunis since I was a boy. The land cultivated by my family was about 10–12 dunums, around the Khirba, and afterwards it was enlarged. The land was opened. West waste, South waste, E. Kitf el Jabal, also waste, N. Khuzurka, also waste. In the waste land, no one lived there. No bedu lived there. I know Ahmad Mahmud al Issa. He is a cultivator. He is a Tira man: lives in the village. I have known him since childhood. I knew his mother and father, they lived in Tira. I do not know when he was born. He was an owner of cattle. I remember Ahmad's father lived in Khuzurka in a tent. I consider him a cultivator, so is Ahmad. He lived in a tent, during the
- 40 lifetime of his father. The Journ is about 1 to 1.1/4 m. long. It is not conspicuous, it is hidden in the trees. I do not know of any others. My cattle used to drink water from the Journ, I did also. 5 or 6 heads would cover the Journ. In winter time it held water. I often saw eagles, two or three at the end of the winter. At other times they go to Shallala land.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

*No. 19.
Mahmud
Daoud
Dirbas,
30th
December
1942,
continued.*

Before the
Settlement
Officer,
Haifa.

15th witness for Plaintiffs. Hassan Abed 'Ammura. On oath.

Plaintiffs'
Evidence.

No. 20.
Hassan
Abed
'Ammura,
30th
December
1942.

55—Tira—Cultivator—Mukhtar. I was Mukhtar from 1928 to 1938 : about 11 years. I was Mukhtar for the south. My land is in the south. I know Khirbet Yunis : often went there, even when I was a boy. Had cattle and used to stay in Khirbet Yunis, Khuzurka and other places. I know the Khirbe. I know Journ Nassura. It is south-west of Khirbet Yunis : about 250–300 m. West of the Journ is Farsh el Quzli. I know of no other Journ. Abdul Rahman Abu Rashad cultivates in Farsh el Quzli. The cultivation is east of the Journ. I know Nazzaza : it is 10 north-west of Khirbet Yunis : about 300–400 metres. The Nazzaza is a place where water sups from the rocks. It is in the meeting place of Ashlul and Wady Khuzurka and there is a journ there. The Nazzaza is about . If we go west along the wady we have to go about 1000 m. or so to reach the plain. If we walk up to the east from Nazzaza, we reach Shallala land. Baiyadat ash Shammas. The ashlul up to Baiyadat esh Shammas is called Ashlul el Khuzurka. I know a place called Nuweitif, it is in the south of Khirbet Yunis. North-east of the Nuweitif, it is in the south of Khirbet Yunis. North-east of the Nuweitif is the land of Khirbet Yunis. On the east is Wady Falah. Khirbet Yunis 20 is immediately north where as Farsh el Quzli is west of Khirbet Yunis. It is north of Nuweitif. Khirbet Yunis is to the east, the other to the west. I know Farsh Tell el Batta, it is west of Khirbet Yunis. It is in the hills.

Xd. by Mr. Koussa : Tell el Batta belongs to the forest grazing land for the village. So does Wastani. Khirbet Yunis belongs to Dirbas and Allou. I was a member of the tax distribution list. Khirbet Yunis was mentioned in the list. I do not know what the area was. But certain shares were recorded in the names of Dirbas and Allou. There is not 3000 dunums, not even 1000 dunums. I may have signed the tax list. 30 There were about 10–15 members of the committee. Haj Yusef may have been one. Hafiz Nijim was not, so far as I remember. The 'utol was recorded in the name of the Mukhtar. I last went to Khirbet Yunis this year and many times before. I took my animals to the land. I know the Settlement Office and a café opposite. I do not remember any forest officer visiting the café. I heard there was a Government commission to visit the land, I heard this afterwards. I heard that Hafiz, Yusef Rashad Abdul Rahman went with the Commission. I do not know if Muhammad Mahmud al Isa was with them. None of these persons was a Mukhtar. They are elders of Tira. I knew some time ago that a 40 hearing was to take place. I did not see any Government Officer about this case. To-day is the first time I came to this office. I came the day before yesterday, my turn did not come. I was questioned to-day by Mr. Alhassid in this office. Neither Yusef or Hafiz asked me to come and give evidence. Abdul Rahman cultivates in Quzli. We showed Abdul Rahman as a cultivator in Farsh el Quzli. I am quite certain that his name appears, but cannot say if in Khirbet Yunis or Farsh el Quzli. I have land in the plain. Bir Badawiya, and other places. I know Misilya : it is nearer to Tira than Khirbet Yunis. I know the boundaries of Misilya : S.—Qaraniq ; N.—Wady 50

Hariq Muhammad, E.—Mountain, W.—Road, the metalled one. I have seen the Kushan of Khirbet Yunis, the Dirbas Kushan of 36 dunums. I saw the boundaries written therein. I did not Rous esh Shammas in the Kushan. There is a Baiyadat esh Shammas and it is mentioned in the Kushan. The Kushan also mentions Maqlab el Ma'. Jurn en Nassura and Ashlul Khuzurka. I saw Maqlab el Ma'. I know Jurn en Nassura very well. It is round : contains water at the end of the year : and eagles come there at the end of the year. It is deep, and is in the rock. It is about one metre wide, even wider. It is about knee deep. In relation to the Kitf el Jabal or Maqlab al Ma' it is about 300 metres away. There are trees around it, to persons who know it, it is quite clear. The trees are a few metres away, on east, west and north. The trees are wild or shrubs, some large, some small. I know the quarries in Farsh el Quzli. I know the south-western corner. The quarries were started about 10–12 years ago. I often went to the place before the quarries commenced. Used to take my cattle on the land. There were rocks and trees. No caves or trees. Have not been there recently. Four or five years since I was there. Never saw any round object there in the corner. Have been recently to Wady Falah : four days ago. Saw the cliffs and quarries. Did not notice any caves or rocks or blasting on the corner of the cliff. The ashlul that join Nazzaza are called Ashlul Nazzaza. They meet near the jurn on the west, before the jurn. They run together, westwards, that part of the ashlul is called Wady Khawairiq, not Wady Nazzaza : they also call it Khanuq el Heidiq. I know of no place called Wady Nazzaza. I know Abdalla Salman. He has no land north of Khirbat Yunis. The land is called Khuzurka and is grazing land.

Xd. by S.O. : I know Khirbet Shiba and the lands of Khirbet Shiba. Boundaries : N.—Wady, lying between Shiba and Qaraniq ; S.—Mawaris of Wady Dalah, E.—footpath, W.—metalled road to Saffa. East is a footpath, along the bottom of the hill. East of the footpath there is land and a cave called Mgh. Khirbet Shiba. The name of the land east of the footpath is Khawaniq up to the Jabal. On the mountains is Farsh el Quzli to the south and Farsh Tell el Batta to the north. I do not know of a place called Bat Khirbet Shiba.

Re-Xd. by Mr. Hogan : I did not sign the petition to the Government asking for the Kupat Am Bank to be entered as owners of Khirbet Yunis. There are caves in Wady Falah.

Case adjourned until the 21st of January, 1943, at Haifa.

(Sgd.) CECIL KENYON.

40 Haifa, 21st January, 1943.

Present : Mr. Hogan. Mr. Koussa.

No. 21.

16th witness for Plaintiffs. Benzion Yanai. On oath.

41 years of age. Forest Inspector. Government of Palestine. I have been in the forest department since 1925 and know Forest Reserve 195 and the portion that includes Khirbet Yunis. I carried out an inspection at the time of the proclamation. I took part in the demarcation in 1927.

Before the
Settlement
Officer,
Haifa.

Plaintiffs'
Evidence.

No. 20.

Hassan
Abed
'Ammura,
30th
December
1942,
continued.

No. 21.
Benzion
Yanai,
21st
January
1943.

Before the
Settlement
Officer,
Haifa.
—
Plaintiffs'
Evidence.
—
No. 21.
Benzion
Yanai,
21st
January
1943,
continued.

I found cultivation in Khirbet Yunis, a few dunums, about 10 to 12 dunums. The claimants to that cultivation were Tira villagers of the Allou family. They produced to me a Kushan. Do not remember the area shown in the Kushan. The patch of cultivation was excluded from the forest reserve, in their names. I found no cultivation to the west of Khirbet Yunis. A number of plots in Tira forest reserve were excluded : the nearest plot was south-west of Khirbet Yunis, about 5 dunums, shown on the map as No. 15. Other persons claimed that plot. Do not remember the exact name, it may have been Abd er Rahman. Do not remember if a Kushan was produced to me. I remember seeing parcel 14, about 10 12 dunums. Cannot remember the names of the claimants. The areas in the proclamation as 14, 15 and 16 are the plots referred to by me. The Kushan was submitted in respect of plot 16 and the remark in the proclamation should refer to that plot. There was no other cultivation but that shown on the plan.

Xd. by Mr. Koussa : I made a report on my demarcation which is filed in the Jerusalem Headquarters Office. I remember the contents of the Report. I read the Kushan shown to me by the Allou family. It was in Arabic. I read Arabic. I was a surveyor at the time. The officer who was dealing with claims and documents was the sub-inspector of 20 agriculture and forests. I read the Kushan itself. I know the boundaries shown in the Kushan. I myself did not apply the Kushan to the ground. The Sub-Inspector Mr. Weizmann did so. Mr. Khawwam was present. People of Tira apart from the Allou family were present, do not remember the names. The forest guards did not belong to Tira village. Mr. Khawwam does not come from Tira village. I did not visit the land before 1927. Mr. Weizmann walked over the boundaries. Cannot remember from where we started in our inspection of the land. We walked over the boundaries of the area as claimed by the people at the time, both cultivated and 30 uncultivated land. Cannot say how many people appeared at the time. The claimants claimed much more land than that actually cultivated. They claimed about 1,000 to 1,500 dunums. When the claim was made Mr. Weizmann had the Kushan. I cannot say on what part of the Kitf el Jabal we walked, that is, on the boundary shown us by the claimants, nor can I show on the plan any of the boundaries on which we walked. The meaning of Rous is tops or heads. Applied to land it means tops. I did not ask the Allou where the Rous esh Shammas were. I do not remember having asked the whereabouts of Jurn en Nassura. I have a copy of the map prepared by me. Wady Nazzaza is shown on the map ; it runs from east to west (Exh. 18 is a copy). The wady has three small branches. 40 I surveyed the wadies. I did not ask any person the name of the wadies ; the three branches. Nothing was pointed out to me. I do not know that the remark about the Kushan applies to parcel 15. There is no doubt it refers to parcel 16. As far as I remember I have not seen the Report since 1927. There is no name near 15. I have been on all points shown on the map : also the south-west corner. There were rocks, bushes, carobs. There is nothing special in that place. I saw no jurns in the place. I saw caves, about 60 to 300 metres from the corner. The caves are higher than the point 442. The point 113 on plan 33/SM/37 is near 440 on my map. I saw bushes, trees, near 440 : do not remember seeing 50 any jurns. I was present during the recent inspection and remember

seeing the place that appears to have been quarried. I do not remember ever having seen any jurns. I must have been in the Wady Nazzaza, as I made the survey; do not remember seeing any jurns in 1927. Knew I was to be a witness in this case: did not ask for my report to refresh my memory.

Ad. by S.O.: I was issued with blank field sheets bearing trig. points and made an independent survey of Tira. The forest was surveyed prior to the detail. I surveyed the wady on my plan, and the surveyors showed the wadies on their plan. I did not actually write the words "Khirbet Yunis." The Survey Department made the new plan incorporating my demarcation.

Before the Settlement Officer, Haifa.

Plaintiffs' Evidence.

No. 21.
Benzion Yanai,
21st
January
1943,
continued.

No. 22.

15th Witness. Hassan Abed 'Ammura. Recalled. Reminded on oath.

The schedule in front of me is a copy of the 1935 record. It is the copy for Khirbet Yunis. Kept in the village of Tira, and it kept in my house as I am Mukhtar. Exhibit 26.

No. 22.
Hassan Abed 'Anamura, recalled,
21st
January
1943.

No. 23.

17th witness for Plaintiffs. Yehoshua Kuchersky. On oath.

48 years. Forest Ranger. I have been in charge of Tira forest reserve since 1934 and lodged a large number of prosecutions in Court. I make the prosecutions on reports made by forest guards. In a case 459/41, Magistrate's Court, Haifa, Ibrahim Abdel Madi Sallum, I lodged the prosecution on the report of Muhammad Irjeileh. The offence is alleged to have occurred in Farsh el Batta. Exh. 29.

No. 23.
Yehoshua Kuchersky,
21st
January
1943.

Ad. by Mr. Koussa: The other accused was Ghaneim Mustafa Ghaneim. I also lodged the prosecution 236 36 Magistrate's Court, Haifa. Cannot trace the file in the Court. Farsh el Quzli is named as the locality in the charge. Exh. 30.

Ad. by Mr. Koussa: Ahmad Halime is the accused. He was convicted: fined 250 mils. Both charges quarrying without licence.

No. 24.

18th witness for Plaintiffs. Muhammad Injeileh. On oath.

31 years. Forest guard. I have been in charge of Tira forest reserve from 15.9.39 to 1.4.41. I made the report to Exh. 29. The locality was Farsh el Batta. Cannot identify the land on a map. The land east of Farsh el Batta is called Wad Nazzazah. Wady Nazzaza. The boundaries: W.—Plain land; S.—Wady Falah; E.—land of Shallala and Khirbet Yunis: N.—all forest land. Do not know locality name.

No. 24.
Muhammad Injeileh,
21st
January
1943.

Ad. by Mr. Koussa: The charge was felling 100 carob and saris trees; protected trees; and the accused had no licence.

Before the
Settlement
Officer,
Haifa.

No. 25.

19th witness for Plaintiffs. Abd el Qader Russasi. On oath.

Plaintiffs'
Evidence.

No. 25.

Abd el
Qader
Russasi,
21st
January
1943.

35 years—Surveyor—Forest Department. In 1940 I went to Khirbet Yunis : 15.4.40 : and surveyed the existing cultivation. It was shown in red on my plan. The area was 145 dunums. That was all the cultivation I found in the Khirbet Yunis locality.

Xd. by Mr. Koussa : My plan is part of the general forest map. I confined my inspection and survey to the land around the ruined house. Exh. 31.

No. 26.

10

20th witness for Plaintiffs. Suleman Ahmad Rusheid. On oath.

No. 26.
Suleman
Ahmad
Rusheid,
21st
January
1943.

Aged 35. Forester. I was in charge of the Tira forest reserve 1926–1933. I know the area of the forest that covers Khirbet Yunis, not exactly, but I have been there. I know the localities west of Khirbet Yunis : Farsh el Batta and Farsh el Quzli. I controlled the area as a forest. No one objected to my doing so. The approximate area was about 3–10 dunums. In Farsh el Quzli was a cultivated plot 12 dunums, Abd er Rahman cultivated.

Xd. by Mr. Koussa : The forests were known as the forests reserves. Khirbet Yunis was a separate thing : a reserve. I know the area as a forest reserve. There are the names Farsh el Batta and Farsh el Quzli. There is also Wady Falah. Do not know any other localities in that vicinity. I am not of Tira village. We used to issue licences to Tira inhabitants for wood cutting. The names were learnt by me from our records of locality names. There is Bir Fadl locality north of Khirbet Yunis. There is a well called Bir Fadl : do not remember a wady of that name. Do not know Wady Nazzaza. There are many wadies near Farsh el Batta : do not know the names. Farsh el Kharrub is north of Farsh el Batta : so called because of the carob trees. Do not remember if there is a wady between Farsh el Batta and Farsh el Quzli. Used to pay 40–45 visits every year to the area. Do not know Wady Khuzurka, nor do I know Ard el Khuzurka. I do not know the Khuzurka. I know all the land in forest reserve. I know the Khirbet Yunis. Do not know the name of the nearest mountain to the Khirba on the north. Never heard of Rous esh Shammass or Bayadat esh Shammass. Walked over Farsh el Quzli many times. South-west lies Wady Falah and Ein Haud. On the Kitf el Jabal there were high pine trees and thickly planted forests. I saw no eagles. I did not see any one working there, except the cultivator. Wood cutting was done by persons with licences. I saw them. There was a quarry to the extreme west of the forest, near the public highway. I think the locality is called Wady Falah. The quarry was high up on the cliffs. First saw quarrying during my term of office. The quarry was on the top and partly on the slopes. Went to the quarry on many occasions. When I first went there the quarrying was being done. The quarrying was on both sides of the edge ; above and below. Do not remember ever seeing any jurns. Never saw Farsh el Batta ploughed. There is some saris, sparse, in patches. I made no comparison with the

land in Farsh el Quzli and Farsh el Batta. I paid no attention to any white soil. I know the people cultivating in Khirbet Yunis. Deeb Allou was the man I remember. Never saw Dirbas family. Never had any discussions with Deeb Allou. I saw five members around the cultivated land. Did not see a jurn near Allou's cultivation.

*Before the
Settlement
Officer,
Haifa.*

*Plaintiffs'
Evidence.*

Xd. by S.O. : I have been to the land 40–45 times a year during the years 1928–33. I lived on Carmel and went on horseback. I do not remember seeing any very large hole in the ground near the south-west corner of the cultivated land. I never saw any disused quarry near the
10 Khirba. I never heard of a place called Jurn en Nassura. Never saw many people in the lands of Khirbet Yunis. There were abandoned, desolate places. Only shepherds in that neighbourhood. I know of no reason why people should cross the land.

No. 26.
Suleman
Ahmad
Rusheid,
21st
January
1943,
continued.

Re-Xd. by Mr. Hogan : Deeb Allou never brought to my notice any claim to land greater than the area under cultivation. I never sought for a place called Jurn en Nassura.

Mr. HOGAN : I produce two sets of judgments formerly Exh. 9 as Exh. 27 and 28. I also produce P.E.F. Map 1878, Exh. 32. This closes my case.

20

No. 27.

DEFENDANTS' EVIDENCE.

2nd witness for Defendants. Husni Jarrah. On oath.

*Defendants'
Evidence.*

30

Assistant Land Registrar, Haifa, 39 years. I have file 619/26. Correction of area transaction : original area $1\frac{1}{2}$ keil, equal to about 6 dunums : corrected to 288 dunums : 69.50 pics. Correction made 1926. Land is situated in Tira. The correction was approved by Mr. Koukhan for the Director. Correction approved 12.9.26. No inspection report on the file. The Agricultural Officer inspected the land. Report dated 13.8.26. Land said to be rocky and uncultivable in part. Shown in blue
40 on the plan. The land was included in the correction. The land was granted on payment of badl misl. Exh. 33. I have file 510/37—transaction—correction of area and boundaries of Shallala village. Applicants, Kupat Am Bank Cooperative Society Ltd. and Joseph Loewy. The Bank has a general authority to hold immovable property. The registered area was 1000 old dunums. The corrected area is 6289 dunums 809 sq. metres. The correction was approved by Mr. Fishman, 20.11.37. There is no report that the land registrar inspected the land : no report by the agricultural officer. There are reports by the land surveyor dated prior to the approval. L.R.27 dated 1.5.37, describes the land as rocky, with spruce trees. The area was granted to the applicants : nothing in the file to show that badl misl was paid. The original registration is filed ; the registration is not the original one.

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Xd. by Mr. Hogan : File 619/26 : Application for registration of succession, 10.7.26 : no application for correction of area. Area corrected on succession. On the 16.9.26 the land was sold to Mrs. Camille Levy, four days after approval. The Agricultural Officer refers to land shown

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'Isa
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in blue and also says the whole land does not fall within the proposed forest reserve. File 510/37 : I did not see the general authority authorising the Kupat Am Bank to hold land. Have never seen a copy. It was not my duty to check up on this point and I never made enquiries. In January checked the plan.

Xd. by S.O. : The 1% keils was registered as being " 10 years, new registration " : nothing on the file to show there was any discussion about the increase in area. On file 510/37 there is a report, Exh. X, in Turkish referring to an inspection made by a Turkish Commission in 1391.

No. 28.

10

3rd witness for Defendants. 'Isa Tanus Fasheh. On oath.

Aged 26. Land Settlement clerk. I was in Tira when Khirbet Yunis was declared a settlement area. Fauzi Eff. received the claims. I know Abd er Rahman Abd er Rashad. Exh. 11 was presented to me. I do not remember the exact date : it was about 7-8 weeks ago. Mr. Alhassid produced the claim. Mr. Yanai was present. The claimant was present. The claim was presented in my office at Tira. I did not fill it in. It is customary for the clerks to fill in the claim. The claim was submitted out of time. I did not ask the claimant why he was late, and I did not submit the claim. Mr. Alhassid asked me why I refused the claim and I explained that the schedule of claims had already been posted and the claim must be referred to the Settlement Officer. Mr. Alhassid asked applicant to submit a claim to the Settlement Officer, Haifa. I prepared Exh. attached to claim 3485. At the request of the claimant, Abdullah Salman, I went to the land myself. I made the plan but not for signature. I made him a plan of the land he had claimed. After two days he brought it back. All the Arabic is written by the Mukhtar. The English is written by me. I copied the plan from my croquis. The triangles are trig points. I have seen Ashlul Khuzurka and its position on the plan is correct as far as I can judge. The Mukhtar said the Wady was Ashlul Khuzurka. I do not think Abdalla Salman is a member of the V.S.C. I know Yusef Rashad and Hafiz Nijim, they are not appointed as member of the V.S.C. : they acted as voluntary helpers. I think these two persons are geared by the inhabitants of Tira.

Xd. by Mr. Hogan : I am sure Mr. Alhassid handed in the claim, and Mr. Yanai and Abd er Rahman was present. Do not remember the date or day, but it was about 2.30 p.m. in the afternoon. On the plan I made for the Mukhtar I put the headings : the (triangle) points, the Wady and names in English. He had already submitted a claim, and I gave him a plan. I did not find the (triangle) points shown on plan. The Mukhtar told me his south boundary was Khirbet Yunis. He claimed a straight line along the northern boundary ; the land is more or less flat land : a plateau. The Mukhtar told me the triangulation point was his boundary. It was the easiest way of describing the boundary. I looked for 162' v but could not find it. (Triangle) 161 is about the same level as (triangle) 162. (Triangle) 160 is much higher. (Triangle) 165 is

about the same level as 160 and 161. I put in the curve, south of Wady Bir Fadl. The Mukhtar added the name. 9th December, 1942. Plan brought in on 9.12.42.

Ad. by Mr. Koussa: The curve represents a small wady. The wady was named to me as Ashlul Khuzurka. I am certain of it. The wady does not concern the land very much. I copied the wady from the diagram.

Case adjourned until January 22, 1943.

Haifa, 22nd January 1943. Present:—Mr. Hogan. Mr. Koussa. No. 29.

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Evidence.*

No. 28.

'Isa
Taunas
Fasheh,
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continued.

10

No. 29.

4th witness for Defendants. Yusef el Jabar. On oath.

No. 29.
Yusef el
Jabar,
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Aged 60. Tira. Landowner. I live in Acre and have done so since the disturbances. I was Mukhtar of Tira during the Turkish régime; three years in Turkish days and two years after the Occupation. I know Khirbet Yunis. First knew the land when I was a lad. Went out to Bir Fadl on a picnic; vegetables were brought from Khirbet Yunis. The owners of the land Allou and Dirbas were the cultivators. We took the produce. The tomatoes and onions grew in Farsh el Batta. This happened 40 years ago. There were many disputes between the Allou and Dirbas families over the cultivation of Khirbet Yunis. I was concerned in the disputes. I interfere to make peace as I was Mukhtar. Another person named Abdul Mahmud intervened. He is dead. He went to the ground with me. We were met on the ground by the families of Allou and Dirbas. In 1919, just after the War, Dirbas family wanted to cultivate Farsh el Batta which was good cultivable land. Dirbas did so also, and so the dispute arose. This was the only dispute. Farsh el Batta is of the Khirbet Yunis land. We made peace on the understanding that both families would cultivate in partnership for one year and thereafter each family should cultivate for two years alternately. There are other localities besides Farsh el Batta. Names are Farsh el Wastani, north-east of Farsh el Batta. The next is Umm Shihada, it is below Farsh el Wastani to the west. Then there is the Khirbe, then Nazzaza, then Khuzurka. Khuzurka fall north-east of Farsh el Batta. South of Farsh el Batta is a wady called Wady Heidiq and south of that is Farsh el Quzli. Farsh el Quzli belongs to Khirbet Yunis. Nazzaza is a locality, north-west of Khirbet Yunis, or Kitf Wady Khuzurka. Wady Khuzurka falls to the north of a hillock. I know Wady Nazzaza: it is between Farsh el Batta and locality of Nazzaza. It starts from the Khirba proper and goes westwards to the land of the village. It reaches the plain land called Wady Khawaniq. Wady Khuzurka falls to the North of Khirbet Yunis. It starts from the land of Khirbet Yunis and runs downwards to the plain lands of Tira. After reaching the plain land it is called Wady Qaraniq. I know a place called Rous esh Shammas. Two hills; one higher than the other. They fall to the north of Khirbet Yunis, on the northern boundary. I know the boundaries of Khirbet Yunis. N.—Rous esh Shammas and Ashlul Khuzurka; E.—Kitf el Jabal: by Kitf el Jabal

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I mean the end of the mountain : the Maklab al Ma going down to Wady Falah. The southern boundary is also Kitf el Jabal, Maklab al Ma' going down to Wady Falah. The western boundary is Jurn en Nassura and Nazzaza. There are boundary marks on the western boundary. Jurn en Nassura is the place of two jurns lying to the west in the southern corner. They are about $1\frac{1}{2}$ metres deep and about the same width and circular in shape. I saw them with my own eyes. When I was there no quarrymen or quarries. I heard that about 4-5 years ago there was some quarrying started. All the localities mentioned by me belonged to Khirbet Yunis, the property of Allou and Dirbas. The land is covered with saris, ballam, sindyana. These trees have been there since the Creation. I saw cultivation in Fash el Batta, Umm esh Shihade, Farsh el Wastani, around the Khirbe, and some in Khuzurka. No one could cultivate in Farsh el Quzli, it was covered with rocks. I know Abd er Rahman Abu Rashid. He has a piece of land on the southern side of Khirbet Yunis : 30-40 metres from the boundary, in the Farsh el Quzli : the eastern part of Farsh el Quzli is cultivated slightly ; the western part is uncultivated. There is no way to cultivate it. I know Hafiz en Nijim and Yusef er Rashid. Both of Tira. Their characters are known to all persons. They became important since the disturbances. God supports them. People of Tira are afraid of them : is it not enough that eight persons have been killed. Selim el Amsha poor fellow, was murdered. He cultivated Umm Shihade. He built a hut with money given him by E. Levy. 10

Ad. by Mr. Hogan : I visited the land twice when I was a boy : about 40 years ago. Since then I went to the land as Mukhtar on two occasions (I went to the land two months ago) with Hamade Bakir, a broker for Edmond Levy and Muhammad Ismain Sheheib. We went to see the boundaries. This happened in 1927. I have not been on the land since 1927. Certain I have not been on the land since then. Our picnic was 40 years ago : we had about a half rotl or so of tomatoes : 11 o'clock. We reached the land from Tira to Bir Fadl and from Bir Fadl to Khirbet Yunis. From Zalaqa, southwards, along the road for pedestrians and animals. We slaughtered a sheep, the boys collected firewood, and we went to Khirbet Yunis. It is a custom to go to the bir for water. Did not know the boundaries of Khirbet Yunis at that time. There are a few trees near Bir Fadl to the south of the wady. The bir is in the wady itself, we were a few metres from the bir to the south of it. Immediately south of the bir the locality is called Arbat Bir Fadl, waste land, south, and a little to the south-east. South-west of Bir Fadl is mountainous land : do not know the name of the locality. North-west of the bir is Arbab, but do not know the name. From the bir we took the road running south-west to the Khirba ; no proper road. We reached the Khirba about 11 o'clock. The guard gave us some tomatoes and onions and we returned to Bir Fadl and then we returned to Tira. Reached home about sunset. There were five or six of us. Often went on picnics ; can remember many occasions : went on picnic like that one once a year. It was an annual affair. Do not remember where we went the following year. The Khirbet Yunis picnic was my first. Thereafter we went to Siyah. There is good water there. We had a sick man and were told that the fat of the eagle was a good remedy. We went to Jurn en Nassura and shot an eagle. Hamada el Hafiz went with me, he is now dead. Hamada had the gun. I did not know how to shoot. On leaving Tira 30 40 50

we went with the intention to get an eagle. We went to Jurn en Nassura, that is the first time I knew it. This happened 38 years ago, or so. Cannot remember the time of the year, not winter, most probably the spring. We took the road of Ein Abu Hadid to Khuzurka and then to Khirbet Yunis. It was not the easiest road: there were shorter roads, but we went looking for game and took the longer road. We left Tira at sunrise, saw no eagles at Khirbet Yunis, found them only at the jurn. We passed to the west of the Khirba. We passed the lands of Khirbet Yunis. We passed the Khirba itself 40-50 metres away. The

10 Jurn en Nassura is not visible from the Khirba. We went west from the Khirba, along the Kitf el Jabal. We went west from the Khirba, along the Kitf el Jabal. When we neared the jurn we saw and shot an eagle. Saw eagles flying around the jurn. The jurns themselves are not visible, the land is visible. Hamade shot it with his first shot. We were 25 paces away. About 50 metres away. It was my mother who was sick. The eagle was a fat one. We stripped the eagle and took it home. We walked back the same road and did some more shooting. We went especially to the jurn and saw it and washed in the water. We were about 50 metres from the jurn when we saw them on the eastern side.

20 When I came near the jurn I saw them and I reached them from the east. There were about two hand spans of water in the jurns. The jurns are both on the Kitf. One on the western and one on the southern. Cannot recollect the jurn we washed in. We played with the water in both. Never shot an eagle myself, never shot a bird, nor have I carried a gun. Did not know the boundaries of Khirbet Yunis. I do not remember seeing Abder Rahman on my second visit, but there was cultivation in Karsh el Quzli. Saw Abder Rahman in 1919. Saw no cultivation by Naim en Nassar and Abdalla Salman, south of Bif Fadl. Do not remember seeing any cultivation. The Khirbe was uninhabited 38 years ago. There

30 was little cultivation around the Khirba, nor more than 100 dunums. I ceased to be Mukhtar because there were new elections. There were five Mukhtars and the Turkish Mukhtars were not to be re-elected. My land is in the south, in the plains, and one piece in the Wa'ar. Ruba Nassar. Between Wad Bir Fadl and Wad Ein Abu Heidiq. The land is not registered in the Tabu. No registration of Wa'ar land except Khirbet Yunis.

My third visit was in the beginning of 1919, beginning of winter; perhaps early January. The leading disputants were Abd el Qader Allu and Allu Ahmad Allu: of the Dirbas, Muhammad Abdel Fattah Dirbas

40 and Nimer Hassan Dirbas. No one else was interested in the land at the time. Only the owners. Mr. Levy had no interest. I and Abd el Mahmud went out with the owners to the land. The four men mentioned represented the family, spent about four hours on the land. We went to the land itself to see the boundaries and localities and to know what the dispute was about. Each party wanted to cultivate Farsh el Batta locality. The people were near to us, and we wanted to make peace between them. Did not see their Kushan before we went out. They owned the land in common, it is still masha'. They owned Farsh Tell el Batta in the same manner as Khirbet Yunis because it is part of Khirbet

50 Yunis. The Farsh was to be within their Kushans. They both agreed to that. The rights between the families were equal rights. The parties were greedy, each wanted to have the fertile land and to leave the other.

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Officer,
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*Defendants'
Evidence.*

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continued.*

I did not see Tell el Batta cultivated before. On the ground we made peace between them, spoke to each party and reached a settlement. We reached the land from Ein Abu Hadid by the road. We made peace on the land. This was after we had been shown the boundaries of the localities. I was told that Rous esh Shammas was on the north. I was in the Khirbe itself at the time. They told me one was Ras el 'Al, the other was lower, and the Ashlul Khuzurka. The lower mountain top was about due west of Ras el 'Al. Cannot say how far apart the two heads are, have taken the oath and I cannot say as I do not know. The land is lower between the two heads. Cannot say how long it would take to walk between the two heads. I heard of Rous esh Shammas before that time, and saw them before that morning. Did not know they were a boundary. We were told that the western boundary was Nazzaza; a hillock was pointed out to us in the north-west, to the west of Rous esh Shammas. It is Nazzaza itself. Nazzaza is the locality; north of Wady Nazzaza. The hillock is higher than the adjoining land. I do not think it is as high as a Ras el 'Al or the other Ras (head). The dabbe (hillock) is the kitf, and the locality of Nazzaza goes to the kitf. I am sure there is a dabbe (hillock). They told me that the western boundary went to the Jurn en Nassura and it was pointed out to us from the Khirba. We could not see the jurns from the Khirba; we could see the western heads on which the jurns existed. The western lands are open. They told us the boundary on the south was Kitf el Jabal and the same on the east. I do not remember the northern end of the eastern boundary of Khirbet Yunis. The eastern boundary does not extend northwards from the Kitf el Jabal. Locality of Nazzaza is within Khirbet Yunis. The locality has not defined eastern boundary, it is all Yunis land. Umm Shihada is the locality east of Nazzaza locality. There is a Wady Nazzaza. Know of no place called En Nazzaza. No ashlul between the Khirbe and Rous esh Shammas. In 1919 the father of Abdalla Salman claimed land in Khuzurka, not Umm esh Shihade. Abdalla and Naim were small boys. I did not see the father of Abdulla cultivating. The land was fit for cultivation: ready for ploughing: probably some one had cleared the land. I heard that the grandfather had cleared the land, there was a difference between him and the Allu family. The land was between the two heads. The land west of the clearing was higher. Part of Khuzurka locality falls in Khirbet Yunis. And part outside now being claimed by Abdulla Salman. There is no physical feature between Khuzurka locality. There is no specific boundary to Khuzurka locality on the west. Did not see the Kushan on this occasion.

On the fourth occasion Hamade Bakir was buying certain shares from the Dirbas family and Edmond Levy asked the Mukhtars and elders to go out to the land. I went out with Abd el Mahmud. I was not a Mukhtar at the time. I saw the Kushan. Edmond Levy was at the Khirbe and read out the boundaries. I showed him the southern boundary, the kitf, we walked to it, and told him that the eastern boundary was the same. We did not walk along the eastern boundary. We walked along the southern boundary. There are holes near the Khirbe, one to the east and one to the west, people said they are from Crusaders' times: they are full of soil. There is a big hole to the west of the Khirbe, perhaps a little to the south-west. It may still be two or three spans in depth.

The top is wide, but I cannot say how wide it was. Last saw the hole in 1927. Mr. Levy said he wanted to see the western boundary, the Jurn en Nassura, along the Maklab el Ma'. Then we went back to find out way east of Farsh el Quzli. We crossed the Wady el Hudeiq and showed Mr. Levy the Farsh el Batta. Abd er Rahman's land was included in the Kushan. Abd er Rahman was not present: he did not ask us to go out: we did not ask him, he has no business. He is cultivating. If he has any right he has. Never asked him whereabouts of Jurn en Nassura. After showing Mr. Levy Tell el Batta we reached Wady Nazzaza, and

10 after that the locality of Nazzaza. The Wady Nazzaza is the Ashlul Nazzaza. There is no Ashlul. The Wady Nazzaza comes down from the land of Khirbet Yunis. It is called Wady Nazzaza from of old times. Know of no reason why it is so called. We went on the locality of Nazzaza with Mr. Levy. The land is higher, we went up to the dabbeh, then we told Mr. Levy here is Ashlul Khuzurka, there is Rous esh Shammass, and finished our work. We went down to Abu Hadid and so home: did not return to the Khirbe. It took about 3/4 to one hour to walk from the Khirbe to the jurn. We reached the jurn and sat on it. We reached the land from the east. The jurns were open to the sky, we sat on the

20 land between the two jurns. Do not know how far we were from the southern jurn. There was some water, yellow, unfit for drinking. This occurred in June or July. There was but little water. It is impossible to reach the southern jurn from the western side. It is dangerous to stand on the western side, it is near the edge, less than half a metre away. Do not know how far the southern jurn is from the south edge of the cliff: it is very near. If one wanted to wash in the jurn one should reach it from the east, from the north it is difficult, rocks, etc. Could not touch the water by reaching out only if the jurn was full. Nor could one do so in respect of the western jurn, unless it was full to the brim. This visit

30 ended my connection with Khirbet Yunis and I have never visited the land since. Do not remember having discussed the boundaries of Khirbet Yunis since then. A long time ago Mr. Levy may have charged me to sign a map and I may have done so. I should most certainly have talked about the boundaries before I signed the map. I may have signed the plan 7, 10, 12 years ago as a notable. I witnessed the thumbprint of Ali Mansur Abd el Kader, a neighbour of Edmond Levy, on a plan. The boundaries were mentioned by Ali Mansur Abd el Qader, but I went in and out of the office. I heard the boundaries being described. Do not know the boundaries mentioned, except that they referred to Khirbet

40 Yunis. This happened 3-4 months ago. Ali Mansur claims in Arbat Farsh el Batta and I went to see there was no encroachment and to identify Ali Mansur. Ali Mansur could not write. Ali told me there was a dispute between them. There were rumours that E. Levy had annexed all the land up to the metalled road, and Ali Mansur was apprehensive. Dib Allan came to me and complained that Government was taking his land and asked me to give evidence. I did not discuss the matter with him. I know the matter even better than he does. I do not know the boundaries of Farsh el Mantaq. It falls between the wadies. Wady Khuzurka, Wady Misliyah on the north; plain land on the west: on

50 the east I do not know. Do know Farsh el Mifih. Do not know its boundaries. I know the boundaries in Mr. Levy's kushan are the same as Khirbet Yunis. He read them out and they were correct. I know

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Nuweitif, south of Jurn en Nassura. Caves in which water drips. They are called Nuweitif: eagles build their nests there. The western boundary of Khirbet Yunis is Kitf al Jabal. Baiyadat esh Shammas is under Ras el Ali, to the west of it. The soil is light.

*Defendants'
Evidence.*

No. 29.
Yusef el
Jabar,
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continued.

No. 30.
'Isa Abd
el Naji,
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1943.

No. 30.

5th witness for Defendants. 'Isa Abd el Naji. On oath.

Aged 62. Tira. Cultivator. I was a Mukhtar of Tira for about 14 years: 1922-26, 28-38. I know Khirbet Yunis: have done so for 40 years. The land belongs to the Allu and Dirbas families. Boundaries: N.—Ashlul el Khuzurka and Rous esh Shammas; E.—Maqlab el Ma'; 10
S.—Maqlab el Ma'; W.—Jurn en Massura and Nazzaza. The western boundary runs along the edge of the mountain. Khirbet Yunis consists of several localities. Farsh el Quzli, Farsh el Batta, Mauqa Nazzaza Khuzurka. Are there any more? Khirbet Yunis, Umm esh Shihade. Farsh el Wastani, east of Mauqi Nazzaza. All these lands belong to Khirbet Yunis, the property of Dirbas and 'Allu. I know the lands belong to them because they are in their name. My land falls to the north of Khuzurka. I know Rous esh Shammas, two heads, one high and one low. Ashlul Khuzurka starts from the Rous esh Shammas and runs westwards to the plain lands. In the plain land the Ashlul is called 20
Wady Qaraniq. I know Wady Nazzaza. It starts from the lands of Khirbet Yunis and goes down westwards along the boundary of Mauqi Nazzaza until it reaches the plain and flows into the Khawaniq. Between Wady Nazzaza and Ashlul Wady Khuzurka lies Umm esh Shihada. Farsh el Wastani and Mauqi Nazzaza, Farsh el Batta falls south of Wady Nazzaza. The soil of the Farsh is cultivable. In Farsh el Wastani part is cultivable, the other part is covered with trees. Wady Heidiq is south of Farsh el Batta. The Wady Heidiq starts from the lands of Khirbet Yunis and flows downwards to the lands of Khirbet Shiba. South of Wady Heidiq lies Farsh el Quzli. The south-west boundary of Farsh el 30
Quzli is Jurn en Nassura. The Jurn en Nassura is an old locality, so called 30-40 years ago. It forms a boundary of Khirbet Yunis. I saw two jurns. Jurn en Nassura and another. Jurn en Nassura is 1¼ m. wide, it contains water in winter. The second jurn is smaller near the Maklab (Kitf) el Ma' of Wady Falah. One lies south of Wady Falah. Saw the jurns on many occasions. In winter there is water, in summer no water. Down, in Wady Falah, there are caves. Mughr Wady Falah or Nuweitif. Farsh el Quzli is of the Wa'ar class, rocky, like any other Farsh. Abd er Rahman cultivated in the eastern part. I know the Khirba itself, no place known as Jurn en Nassura nearby. I signed the 40
plan in file No. 3016/37 and it bears my seal. The plan is the plan of Khirbet Yunis. Folio 34 does not bear my signature. The Mukhtar who signed was murdered by the rebels. Folio 16 bears my seal and signature. The certificate is correct. I know Ahmad Bakir Hussein: he is alive; he is a notable and he signed. Nimer is a notable and he signed. Hassan Shibl, a notable, or Mukhtar, he signed. All signed in my presence. I ceased to be Mukhtar owing to pressure by the rebels. Khader Abdel Fattah was appointed after me. I know Yusef er Rashad and Hafiz en

Nijm. Inhabitants of Tira are afraid of them. They were the messengers of the rebels. There are quarries to the west of the Jurn, to the west, north and east. The quarries were opened 4-5 years ago.

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Settlement
Officer,
Haifa.*

Case adjourned until 23rd January, 1943, at 9 a.m.

22.1.43.

(Sgd.) CECIL KENYON.

*Defendants'
Evidence.*

Haifa, 23rd January, 1943. Present : Mr. Hogan.
Mr. Koussa.

No. 30.
'Isa Abd
el Naji,
22nd
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1943,
continued.

5th witness for Defendants. 'Isa Abd el Naji. Reminded on oath.

Xd. by Mr. Hogan : Yesterday I made a short statement that others
10 interfered with land settlement. I was dismissed from my post as Mukhtar
because of the rebels. I was suspended from my office for six months.
I am not a Mukhtar to-day and have not been since 1937. Did not give
false information. The rebels wanted to demolish the main bridge on the
Jaffa-Haifa Road. We wanted to inform the police and the two persons
whom I mentioned yesterday informed the rebels. The authorities and
police came to the place pointed out by me, found no rebels, and I was
suspended with Hassan Amoura. I can read and write Arabic. I do not
understand plans. I signed many plans during my term of office. All
the plans were correct and there was no objection. I signed Exh. 16 and
20 signature No. 5 is that of Taufiq 'Asqul. He signed the document in my
presence, in the café in Jureineh Square in Haifa. I so remember him
doing so, but not the date when it was done. The other witnesses were all
present in the café. Mahmud el Ghaben brought the plan and all signed.
By possession I mean owning land. The possession need not necessarily
live on the land, he should plough and cultivate as much as he can, leaving
part fallow, part may be uncultivated. A man who neither cultivates
nor lives on land nor has a Kushan is in possession if Government does not
object. The land is his if he puts his hands on the land. I know Khirbet
Yunis and my land is north of it in Block XXVII in Khallat esh Sheikh,
30 from the Khuzurka boundary 200 m. from the north. The localities are
Khuzurka, Khallet esh Sheikh and Asbat Nassar. My land does not
actually extend into Khuzurka. I have no Kushan. I pay werko : do
not remember how long I have been doing so, since the Turkish days.
I often went to Khirbet Yunis, probably 20 years ago, knew it 40 years ago :
visited it 40 years ago. We used to go on strolls in the Wa'ar : we had lands
there and used to go about there. Had no land in the Khirbet Yunis.
We used to go on outings, used to go out with our cattle in the Wa'ar.
Used to go about the land. I first went to Khirbet Yunis alone. 20 years
40 between my visits. Went alone the second time. Do not know how many
times I have been on the land. Never went to Khirbet Yunis with cattle.
We used to go to many localities. Shallala was one, Khirbet Yunis
another. No particular reason for me to go. Last went about seven
months ago, with the Execution Officer. He went to attach the property
of the Allus for Barclays Bank at Nazareth. Before that visit I went once.
I came from the west to Jurn en Nassura. I was looking for a stray horse.
Have known the boundaries of Khirbet Yunis for 40 years. The Dirbas
and Allu families told me. I saw the boundaries 40 years ago, they are

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visible. The owners showed the boundaries to me. The owners told me of the boundaries in the village, was not on the land. This may have been 25 years ago. Was given this information in case anyone encroached upon his land. We discussed land matters in the village. I know the land around the Khirbe. It is called Khirbet Yunis. West of Khirbet Yunis is Farsh el Batta. The boundary between the two is not defined, they are joined together and one is inseparable from the other. I know the locality of Khuzurka as well as I know my own land. The northern boundary is Ashlul Khuzurka and Abdalla Salman and Rous esh Shammas. The eastern boundary extends as far as Rous esh Shammas and the Kitf el Jabal and Khirbet Yunis. The south boundary is Khirbet Yunis locality, no dividing line, the boundary is inseparable: mixed up: Umm esh Shihada and Farsh el Wastani are on the west. Farsh el Wastani—N. Ashlul Khuzurka, S.—Wady Nazzaza, S.E.—Umm Shehada; E.—Khuzurka, W.—Nazzaza locality. The land of Abdalla Salman is east of Umm Shehada. Abdalla's land is part of Khuzurka. I think Edmond Levy gave it to him. Nazzaza localities boundaries: N.—Ashlul Khuzurka, S.—Ashlul Nazzaza, W.—Kitf el Jabal; E.—Farsh el Wastani. The locality is a hillock. There is no dividing line between the two. Have known such a locality for many years, from the times of our ancestors. Nazzaza means supage place, there is one in Wady Nazzaza, at the head of the wady, the water does not stay throughout the summer. I do not understand the plan in file 3016/37. I know the plan is of Khirbet Yunis. I was told that by the owner of the land. I signed the map because the owners said it was of their land. I cannot indicate Manji Nazzaza or Jurn en Nassura on the plan. I know Jurn en Nassura on the ground, when I looked for my horse about 7–8 years ago, and last time 7 months ago. Do not remember having gone there before I looked for my straying horse. Saw two jurns at the time. The road from the plain passes north of the jurns, the road from the mountains, one must walk forward to see the jurns, I was alone and went as far as the jurns. There was water in them, it was springtime. I knew there was water in them, they are jurns. Did not see them before. Washed myself in one of them, the western one, which is 4 to 5–6 paces away from the other. The jurns are very near the edge, half metre or so from the edge on the south and west. The jurns are on the corner of the mountain. I sat on the eastern side, facing the west, and stretched out my hands to wash them. The jurn was open to the sky. Its water was clean, and good, the bottom was clear and clean. The water was not far below the top, but the jurn was not full. Stayed there 5 or 6 minutes. When I took the Execution Officer to the land the jurns were broken, but still visible. Do not know who broke the jurns, the bottom and the side. Paid no attention to which part was broken. No grass in the jurns. 7 months ago entered the jurn from the Haifa-Jaffa road side. Took the Execution Officer from Jurn en Nazzaza to Nazzaza locality. We approached the jurn from the north. We found Mr. Levy in Nassura locality. I do not know anything about a large hole in the ground near the ruins. There is a well in the Khirba itself. Do not remember ever seeing a hole. Other than the Nazzaza there is no water. There are two holes in Wady Nazzaza that contain water. Have never seen any water in holes in the rocks apart from Nazzaza. Have been to the land four times: 40 years, 20 years, 7–8 years, 7 months ago. I know Rous esh Shammas, both heads. The eastern one is called Ras el

- Ali, was called Ras el Shammas, or Rous el 'Ali. I am not supposed to call it Ras el 'Ali. I know it as Rash esh Shammas. The second hill is to the west, slightly north-west. Do not know if point (triangle) 161v is the second hill. The second hill is over 200 metres from the first. Do now know how far apart the hills may be. The second hill is higher than Nazzaza locality, Farsh el Wastani, but do not know how high it is. The hills are west of Wady Bir Fadl. Do not know if the hills are north or south of the Wady Bir Fadl. The hill is north of Ashlul Khuzurka. I think so. Wady Bir Fadl is north of Ashlul Khuzurka. The second hill is north of the land of Abdalla Salman. Abdallah's land is recent, 2 to 4 years only. The grandfather of Abdalla claimed land in Khirbet Yunis: he had a dispute with Dirbas and Allu. The War of 1914 intervened, he died and Abdalla claims the land. The hill is south of Wady Bir Fadl, and it is higher than Abdalla's land by how much I cannot say. All the lands of Khuzurka have the same level. Do know the boundaries of Farsh el Mantaq: N.—Wady Misliyah, S.—Wady Khuzurka, E.—Issa, my land, W.—Maklab el Ma'. The son of Abdel Qader Allu is my nephew. I know Abd er Rahman Abu Rashad: he cultivated a patch of land in Farsh el Quzli for 24–35 years. His land is inside the boundaries of Khirbet Yunis. In accordance with the boundaries the property belongs to the owners. It is correct to say that as much of the land as the owners can plough and sow is sown (Exh. 16). The amount cultivated may be 100 to 400 dunums. 20 years the owners cultivated extensive lands: maybe 400 dunums. Over 400 to 600 dunums used to be cultivated. In Turkish days all the land was cultivated with the exception of the forests, cannot say the amount Farsh el Batta and Farsh el Quzli was cultivated. At the time of the certificate (16) about 200–250 dunums were cultivated. Abd er Rahman may have been cultivating on his own accord or he may have been given the land. Abd er Rahman was in possession of his parcel.
- 30 At the time of giving the certificate (16) I knew there was a forest reserve and that the villagers had objected. I recommended the issue of forest licences. The landowners objected to Government before the Kupat Am Bank came. I do not know if the Kupat Am Bank were ever shown as owners in the werko records. Never searched the werko records. The mazbata is correct. The Kupat Am Bank were registered in the werko registers. According to the mazbata. At the time of the R.P.T. part of the land belonged to the Allu family and Mr. Levy. I assisted in the distribution of the tax. The exhibit 26 is not in my handwriting. The majority of the lands were not recorded in the name of any reputed owner, were recorded in the name of the Mukhtar until the owners came.
- 40

Ad. by S.O.: I did not dictate (17), it was brought to me completed. I knew all the facts stated in the mazbata. I know dozens of localities in Tira, all of them. I have not defined the boundaries of all the localities on the ground. I do not know all the boundaries on the ground. My knowledge of the localities is what I have learnt during my residence. When my horse strayed, we were in the village. The horse strayed, we looked for it in the plains and in the rocks. Then I found it in the olives near the trees. Rous esh Shammas is well known in Tira; everyone must know of it. I signed the original tax distribution list.

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No. 31.

6th witness for Defendants. Edmond Levy. On oath.

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No. 31.
Edmond
Levy,
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Aged 49. Haifa. Landowner. I was born in Haifa and have lands in Tira. I bought land in Khirbet Yunis, in 1926, from the heirs of Allu and heirs of Dirbas. Saw the land before I bought it, and saw the Kushan. The Kushan was for 34 dunums. The persons from whom I bought were in musha'. I was taken to the land by Yusef Taher, Abd el Mahmud, Hamada Baker. I went to the land myself before I actually purchased. The land was mountainous. I saw some cultivation in different places. I saw the ruined houses. The cultivation was around the Khirbet and north and west of it. The cultivation was 20 to 30 metres from the ruins, and on the west the same. I had a copy of the title deed with me: it was in Arabic. The boundaries were N.—Rous esh Shammas and Ashlul Khuzurka, S.—Kitf el Jabal, E.—Kitf el Jabal, W.—Jurn en Nassura and Nazzaza. The boundaries were pointed out to me. Abd el Mahmud, Hamada Baker and Yusef el Taher pointed out the boundaries. I was standing in the ruins of the Khirba when the northern boundary was pointed out to me. From the place I could see Rous esh Shammas. The tops of the two high mountains were indicated to me as being the Rous: they seemed to be side by side one on the east, one on the west. They were north of the Khirba. The Ashlul Khuzurka started from the second hill southwards and then westwards. I could see there was a wady. The eastern boundary was Kitf el Jabal or Maklab el Ma. I did not go to this boundary. I was taken to the southern boundary which is the same wady. The distance from the place from which I saw Rous esh Shammas to the Kitf was about 200–250 metres. These persons also pointed out to me Jurn en Nassura. From the Kitf el Jabal in the south we went westwards along the Maklab el Ma' until we reached Jurn en Nassura. On my way I saw the cultivated patch of Abd er Rahman on my right hand side. Did not see the man myself. The persons told me that the plot belonged to him. The area was about 4–5 dunums. Then we saw rocky land until we reached Jurn en Nassura.

Case adjourned until the 12th and 13th of February, 1943, at Crown Counsel's Office, Jerusalem.

23/1/43.

(Sgd.) CECIL KENYON.

Witnesses to be heard in Haifa, not in Jerusalem, as another witness is required by defendant.

(Sgd.) CECIL KENYON.

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Edmond
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Haifa, February 12, 1943.

Present: Mr. Hogan.

Mr. Koussa.

6th witness for Defendants. Edmond Levy—continuing.

The jurns are situated at the south-western corner of the Maqlab el Ma'. There were two jurns. One was exactly at the corner of the south and west, and the second was on the southern Maqlab el Ma'. 10 metres

- away from the first. The two were of the same diameter, $1\frac{1}{2}$ metres, and the depth was 1.40 to 1.60 metres. I saw no water in them. From the jurns we went in a straight line to the north, crossed the Wady Nazzaza and reached the Nazzaza. The Nazzaza is a locality on the western boundary of the land. It looks like a hillock and is known as Nazzaza. I was told by Hamada Bakir, Yusef el Tahir, and Abd. el Mahmud that this was the name. The three persons who accompanied me then left me and went in another direction to Tira. I was left with my watchman Mahmud el Ghaben to verify the Ras esh Shammas and other points on the northern boundary.
- 10 After that I went to the eastern boundary to verify if the Maqlab el Ma' was the eastern boundary: Kitf el Jabal, or not. I went up the hill called Rous esh Shammas. The Rous esh Shammas was to the north-east of the ruined Khirbe and to the north-west of the Khirbe, two heads, namely 162v and 160v, survey triangulation points. I went to point 160v. It is on the top of the hill. I did not see the point myself at that time, there were no plans. From the point or place of the point, I looked westwards and saw Wady Khuzurka running from the east to the west. I saw there was a wady there, it was visible from the point. It was my practice to carry a compass to verify directions. I did so and found the
- 20 three points ran on the north. Both of the Ras and Ashlul Khuzurka were in a straight line along the north. I engaged engineer Skall to make a plan, as an agent for Steinberg. The plan of Skall shows the northern boundary from 160v to 162v, then along the Ashlul Khuzurka to the western boundary, that is, the Nazzaza, because the title deed refers to Rous esh Shammas with the Ashlul el Khuzurka. The boundary on the plan is not a straight line from 160v to 162v, because I found a certain persons was on a piece of land of Khirbet Yunis. He had been there a long time and I was compelled to deviate the boundary. This visit was made before I began to purchase shares in the land, about two months.
- 30 This visit took place at the beginning of July 1926. After the visit I began to buy shares in the land. From the Dirbas and Allu families, and also from Hamada Bakir, who had previously purchased by private deeds from the two families. I bought first by irrevocable powers of attorney which were eventually carried out in the land registry. By the end of 1926 I had bought about 40% of the shares. When I first started to obtain irrevocable powers of attorney, I appointed Mahmud Ghaben as my watchman. He used to watch all the land within the boundaries to prevent encroachment. He went out in the ploughing seasons. He was together with us on my first visit with the three other people and went
- 40 around with us. After 1926 I bought further shares in 1927, I think so. The first land transaction was made in September 1926. Each following year I bought shares as they were offered to me. I even purchased a few shares a year or so ago. At the end of 1926 I ploughed some of the land with the intention of sowing tobacco, ploughed about 40 to 45 dunums, near the east of Farsh el Batta and also west of point 151v. The spot where all of us stood during our inspection, about 30 metres lower than the plateau. I sowed tobacco in Bir Badawiya, but not in Khirbet Yunis. I went back on my project. In 1938 I ploughed about 100 dunums. I mean in 1928. This was in Farsh el Khirbe near Khirbet Yunis. In
- 50 1928-39 and the beginning of 1940 I appointed Selim el 'Amche, known as Mansur, to plough. He was in Umm esh Shihade and died there. All the shares I bought were transferred to the Kupat Am Bank Cooperative

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Society Ltd. in 1934, 35 and perhaps 1936. The persons who purchased from me desired to have the transaction through the Bank as a security for subsequent partition with the Arabs. I entered into contract with the purchasers and transferred the land to the Bank as security for the fulfilment of these contracts. At the time of the transfer to the Bank I and the prospective purchasers were members of the Cooperative Society. I have a true copy of the Rules of the Society, a certified copy. Article 3 (A) (B), Exhibit 34. I also produce a certificate that I am a member of the Cooperative Society, Exh. 35. At the time of my contracts of sale the Bank was a Cooperative Society. I prepared a parcellation scheme for the land. It was approved by the Haifa District Town Planning Commission. I produce the original plan, Exh. 36, with the conditions attached. I paid the werko and rural property tax due on the land. I produce a certificate to this effect, Exh. 37. Before Mr. Skall made the plan I went with him to Mr. Lahar of the Forest Service. This was in July 1936 approximately. I went because Mr. Skall applied for permission to carry out the survey as the plan bore the words Forest Reserve. Skall's application was in writing and Lahar asked that I should call at his office and bring the title deeds. I met Mr. Lahar in the presence of Skall. I took with me the Kushan and Skall took the 1/10,000 scale plan of Tira, the Government Forest plan. The title deed I took was an extract from the Turkish register. I showed him on the plans the boundaries. I was claiming in accordance with the Kushan and I told him I wanted to effect a correction of the area and to pass the plan to the Land Registry. He said he had taken a note of the application and would give a reply direct to Skall.

On our inspection with the Settlement Officer I saw traces of the jurns, the eastern water of one of the jurns was still visible. On four or five occasions since 1926 I have seen the jurns intact. The last time I saw them intact was in 1930. I first heard they were broken in the same week when the Masson Commission went to the land (Jerusalem Commission). When Skall made the survey I sent the watchman. Before he applied for permission I sent my watchman and the elders of the village to show him the boundaries.

No. 32.

7th witness for Defendants. Oswald Skall. On oath.

No. 32.
Oswald
Skall,
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Aged 38. Municipal Engineer of Safad. I am a civil engineer, graduated in Vienna. I was managing the Haifa office of Steinberg, licensed surveyor. I know Edmond Levy. He employed us several times to make surveys. We surveyed for him Khirbet Yunis in the year 1936. We went to the land. I went to the land with several neighbours or notables. At least 4 or 5 persons from Tira village. One was Mahmud el Ghaben, the watchman of Edmond Levy. There were Mukhtars or notables. One was the father of my chief labourer, Mahmud Aqil 'Eitano. There was another man Hassan Shible, or a name like that. The first time I went I took with me a printed plan of the Survey Department, the 1/10,000 plan. I had the title deed with me, the Turkish Kushan. I visited the land to see its nature, as we have different charges for land of varying difficulties. I examined the limits and boundaries by inspection and the help of plans. The boundaries were seen by me and shown to me by the men with me. We went by the road along the coast, as the

Haifa-Tel-Aviv Road was not then built. We went to Bir Badawiya, and from the house near the cistern we got horses and rode over the boundaries of the land. The first boundary we went to was in Wady Falah. I have been over the boundaries so often that I cannot say the route on my first visit. We went along the slopes of Wady Falah. There is a track near the cliff on the western side, north of the southern corner. We went on this track, a very difficult path. On the top of the cliffs is a flat piece of land and I was shown the first boundary, the Jurn en Nassura. The Jurn en Nassura were two holes in the rocks, the land is completely rocky. The first was situated exactly in the corner of the cliffs. The hole was about one metre in diameter, and at least one metre perhaps $1\frac{1}{2}$ metres in depth. The other hole was to the west north-west, very similar to the first. The holes were close to each other, 10-15 metres apart. I was then shown the cliffs as the western boundary of the land. We went along the Wady Falah to the east until we reached the turn. I believe I was told the wady boundary Shallale was the eastern boundary. Then we went over the plateau, and then the two hills called Rous esh Shammas was shown to me, and then we went down to the western end of the land : there is a small plateau, hill, called Nazzaza, and in this western corner, including the hill, there was a wady, called Wady Khuzurka. I saw the wady. I went back to the car, by descending the wady to the plain, and rode over to Bir Badawiya. I then prepared my programme, arranged for the co-ordinates of the points to be sent to me by the Surveys. And wrote to the Forest Dept., Exh. 6. I received a reply, Exh. 38. I subsequently received a further letter dated the 11th of September, 1936, Exh. 39. I went to see Mr. Lahar with Mr. Levy. I took the plan and the Kushan must have been with either me or with Mr. Levy. As far as I remember I asked for details of the rock marks shown on the 1/10,000 plan. They gave me material concerning their points which we could not use. I asked for permission to survey the land. I indicated the boundaries of the land I wanted to survey to Mr. Lahar. I do not think I told Mr. Lahar that I wanted to correct the area.

Ad. by Mr. Hogan : My job was purely technical. Cannot say exactly when I was first employed, but not more than 10 days before I wrote to the Forest Department. I first visited the land in between these 10 days. Went to the land altogether at least 30 times spread over more than half a year. I was always accompanied by other people, Steinberg and the labourers. Always accompanied by people from the village as labourers. I was accompanied by other people from the village to show me the boundaries. Muhammad Aqil's father was present. For the purpose of pointing out the boundaries I did not take any person especially for the work, our temporary labourers knew the boundaries as they were people of the village. The labourers did not point out the boundaries to me. My knowledge of the boundaries is derived from Muhammad Aqil and Hassan, and the extract of registration. I used the survey plan for my preliminary work : did not use the rock marks of the forest. I used my own rock marks. I did not compare my marks with the forest marks. The forest marks were not proper survey marks : they were inaccurate. To my best knowledge I did not use the forest marks. The western boundary is partly on the top of the cliff and part is half way down the cliff, the southern part is below the top. It was the most convenient line to survey. It coincided with the boundary as pointed out to me.

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I was told the western boundary ran along the cliff. The cliff was the western boundary of the land, the cliff is approximately a little inside the line shown in my plan. Surveyors take the more convenient points along the cliff. I do not remember why I chose the point 113 in its present position. Do not remember any special reason except that it was the boundary. Its position of the point was shown as being on the boundary. Cannot say how far the point is from the Jurn en Nassura. I went last week to refresh my memory. I looked for boundary points, but could not find them. Point 113 was not found by me, I looked for it below the cliff. It might have been 50 metres from the jurn. I do not know who put in the red ink on the plan. Red ink is reserved for official purposes. Do not recollect if I put in the position of the jurn. If I did, it was in pencil. Do not know if they are correctly shown. The western boundary and the south-western boundary are correctly marked. I have not surveyed the Jurn en Nassura. The western boundary is the locality of Jurn en Nassura. The points are inter visible. I had no special reason not to put my point on the top of the cliff. I do not remember that point 113 is a survey rock mark. I do not remember that point 112 is the same as 439. I visited the jurn itself perhaps three times. I have no clear recollection of the second visit. On my first visit I went on horseback, may have dismounted going uphill. The position of the first jurn is in the corner of the cliff, one metre from the western face, less from the southern face of the cliff. The jurn was open to the sky. The land around the first jurn was approximately the same land: the second could not be seen from the first. The second jurn was about a metre or a little more from the southern face: and 10-15 metres from the western face. I looked into the jurn, it is interesting to look into it to see what was in it. I think I saw the jurn only at the last moment of my approach as there are rocks around it, they prevented me from seeing the jurn. Approached the jurn from the north-east. I saw no water in the jurn. The jurn was about 1 metre to 1½ in depth. There are signs of the jurn today, the remnants of the south-west corner, to the south a piece is missing, and to the west it is destroyed. The jurn is not intact, it is enlarged, there have been apparently excavations, or destruction. The south-western quarter remains. The eastern and northern face has not completely disappeared, there seems to have been some stone cut away. My impression is that the stone cutting is not very recent, but I am not an expert. To me the south-western face appears the original. I saw a bit of plaster. The surface seemed to be worked. The original jurn was round in shape. Cannot say what prevented me from seeing the second jurn from the first. The second jurn is destroyed to-day. Before it was a hole, to-day the rocks are quarried, and only the bottom of the jurn is visible. All the sides are destroyed. The bottom is rather oval in shape. The land around the eastern jurn is rock, that to the east is higher. The sides of the jurn are destroyed. My memory and the situation make me certain that the second jurn was where I saw it last week. I went to the jurn myself, last week, alone. I approached the jurn from the north-western side. I am now quite certain that the jurns were the ones I saw the first time. I looked for my boundary points and could not find them, so I cannot say if the jurns are inside or outside my plan.

Xd. by S.O.: I did not use the survey details of the rock marks, but I may have used the marks themselves. Points 113-114 must be

intervisible, as the distance is measured and not computed. I found trig. point 160v had no descriptions of the marks. I do not remember the position of the mark, or of 161v or 162v. I visited the land twice last week only to look around the land.

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6th witness—continuing—*Ad. by Mr. Hogan* : I first became interested in the land with a view to purchase in July 1926 when the land was offered to me by Hamde Bakir who had purchased by private deeds from the Allu family. I wanted to establish a farm similar to those I saw in Europe. That was my intention in the beginning. My intention was to bring
10 experts to manage the farm on my behalf. I changed my mind in the year 1934 when I decided to sell. A certain American, Stuchener, wanted to buy the land and the land was too far away for a farm. I decided to sell the land to the American Company. To dispose of the land and to put the money in my pocket. I entered into a contract, deposited the money in the Bank. Contract LP.5 a dunam after correction of area and partition. There is a dispute between us concerning the position between my partners and myself. There is still a contract between us. LP.5 a dunum for my shares, those I have to-day or which I may have. The
20 number of shares to which I may be found to own after the correction of the area. If I am able to obtain all the land then all will be sold by me at LP.5 a dunum. When I made the contract I had between 40% and 50%. A dispute has arisen between me and Stuchener and is still before arbitrators. Some of the shares were purchased by me and some by my wife. I am the party to the contract with Stuchener, the arbitrators are Eliash, Kaisermann and Rotenstreich. The contract must be with Eliash. Have a copy of the contract. Kaisermann may have one. Solomon my advocate may have one. I represented my wife throughout in this transaction. The contract is in my name. My wife and myself may be
30 considered as one person. I am the party to the contract. I sold and undertook to hand over such area as I received after partition. I received LP.1,500 on account and the contract has never been repudiated by me. Stuchener wanted to sell the land after partition and I was to receive 25% of the profits. For this reason I prepared the plan. This arrangement was part of the original contract. 25% of the profits over and above LP.5 a dunum. The expenses in connection with the correction were to be paid by me. The badl misl by Stuchener and partners. Expenses in connection with the partition to be charged to general account. These expenses also to be charged to Stuchener and Company. The expenses of the roads connecting the main Haifa-Tel-Aviv Road to be shared
40 equally. All the brokerage fees to be paid by Stuchener. There was an addendum to the contract whereby the western part of the land, 2,170 dunums, should be given to Stuchener & Co., and the eastern part should be allotted to me. I was to get 25% in the western land and to sell the whole of the eastern part myself.

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continued.

Mr. KOUSSA : I object to these questions as they are irrelevant.

S.O. : Questions allowed, as they appear to reveal the reason for the town planning scheme.

WITNESS *continuing* : In 1934 I decided to develop the land as a building estate, and I have an interest in the matter to this day. The
50 addendum was dated 1938, just before the correction of the area. I think

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1943,
continued.*

in May 1938. The expenses of parcellation were to be shared by us all. I actually paid and have to recover after the accounts are made up. To-day the land is worth an amount I am not willing to announce. I have been a member of the Kupat Am Cooperative Society Ltd. since 1934. I started commercial negotiations with the Bank and it is usual for the Bank to ask for membership. I do not remember if I obtained a loan on the land in dispute. They, the Bank, offered me membership, and I joined. I had no other purpose in joining the Bank except for commercial dealings. I have been working with the Bank since 1934 and we enjoy mutual confidence in each other, so I think. I do not think the Bank would make false claims or returns. So far as my business is concerned, the Bank seemed inclined to help the other party, that is, Stuchener & Co. The owners of the land to-day are Edmond Levy and his partners Allu and Dirbas, and I on behalf of the purchasers from me. The Bank are the owners of the land. I and Stuchener and partners are the owners. The Bank are to be registered as owners, they are trustees, fictitious owners, an owner as trustee for us. The Bank should be registered as owner at my request or with my consent. I agree to the claim No. 4. The Bank are the owners of the Kushan, and I, Stuchener and partners are the owners. I made no claim at land settlement. I sold the land to the Bank in the Land Registry. This was a condition of the purchasers. I described the transaction in the Land Registry as a sale. It was so, in the Land Registry. I did not receive the consideration, just disposed of the land to the Bank as I trusted them. The Bank did not pay me LP.1500, nor does the Bank owe me that money. I accepted to dispose of the land in their name for LP.1500 but did not receive the money. I could have mentioned the consideration. The Land Registry received a benefit in fees. I received LP.1500 from the purchasers. I consider the Bank is an agent for the purchasers. The Bank was acting as an agent for the purchasers and a trustee for collecting the money on my behalf. I received LP.1500 from the Bank acting on behalf of the purchasers. Received the money by a cheque drawn by the Bank on itself and opened an account in the Bank. I gave a mortgage on another piece of land as a security. I did not sell the land for LP.1500. I received LP.1,500 and gave an additional security over and above the transfer of Khirbet Yunis. The Bank still have something to do with the land until the arbitration proceedings are completed. The land is to be registered in the name of the Bank. The Bank does not own the land, only do with my consent. The Bank is not a mortgagee. The Bank became owner on the dates set out in the Land Registry extract, transfers took place at different dates. When I first started to acquire the land I wanted to obtain all the shares. I wanted the whole area to myself. I have paid for my shares and those of my wife between LP.1500-2000. Not all the sums I paid are set out in the Land Registry. The fees paid were on the amounts declared. We wanted to economise the payment of fees. The land was said to be bought for less in order not to reveal the price to others. The land was said to be worth less by mistake. I used to obtain powers of attorney and the figures in the powers of attorney were taken. I signed and purchased the land for a certain sum, the sum declared was incorrect. I did not think about the matter at the time. I signed the deeds of sale but did not pay attention to the sum. I paid the transfer fees. I admit it was my mistake. I have never thought

about the mistake until now. The amount declared is less than LP.200, actually LP.180. Have never, so far as I remember, told my advocate the amount I paid. I told him about the Bank transaction, not the fellahin purchases. (This to Abcarius Bey.) The Bank is under the obligation to appoint the advocate, both parties nominate, we appointed Abcarius Bey and I instructed him. I remember now that I used to know that the registration showed an incorrect consideration. In 1940 Abcarius Bey asked me the price paid for the land and I referred him to the Land Registry. 19th December, 1940. Never saw the letter from

10 Crown Counsel to Abcarius Bey and do not know the answer. (*S.O.* : Letter sent by Abcarius Bey to Crown Counsel "without prejudice" and not used in examination.) Abcarius Bey asked me how much the Bank paid for the transfer. I referred them to the Land Registry. I am not aware the Crown Counsel sought repeatedly for information as to the price paid to the fellahin or that he was referred to the Land Registry. I was only asked the price I received from the Bank. I am not certain he asked me the price I paid the fellahin. In 1926 the extract of the cultivation was not greater than 100-120 dunums in different localities. I purchased in August. In 1938 I do not know as I was not on the ground owing to

20 disturbances. In 1934 I was on the land, not on the land between 1934 and the correction of area. Do not know the extent of cultivation during those years. Knew from the fellahin that they were cultivating between 150-200 dunums. In 1938 I was afraid to visit the land. The fellahin used to come to me to ask for money to enable them to cultivate. I gave them money and they spent it elsewhere. They did not extend the cultivation between 1934 and 1938. I think this was the position to the end of 1938 and perhaps 1939. The area of the patch cultivation did not exceed 150-200-250 dunums. The cultivators used to move from place to place. I did not assess the area. I said that in 1928 I cultivated

30 about 100 dunums. I may be able to give the exact price paid to the fellahin, but do not think so. I have no bookkeeper, have no partner, and work alone. The powers of attorney are my receipts. The statement that I paid 1500-2000 pounds depends entirely upon my own word. I cannot say exactly the price I paid. I admit the margin is large, but some fellahin go back on their word and others would want more money ; they are Tira people. I was not on the land in 1936, but according to the fellahin 180-200-280 dunums were cultivated. He may have made errors in estimation. I with the purchasers instructed Mr. Bernblum to apply for the correction of the area. I do not know of any figures of

40 cultivation given to Mr. Bernblum. I sold land to Stuchener, Gottfried, Friedman and Cheterman, this before 1938, and after 1938 Mizrahi, 600 dunums for LP.4900 of which he paid a part. 600 dunums in masha' with the Bank. We have an undertaking to partition the land and to give him 600 dunums. He was to be the owner of a clear 600 dunums, wherever I found convenient. A partition for transfer was presented to the Land Registry. I saw the petition myself, probably after it had been drawn up. Do not remember the consideration, it may have been without consideration, such would have been untrue if it was said to be "without consideration." I do not remember. I do not know who informed Bernblum

50 of the area under cultivation. (Statement read from folio 27 of Exh. 1.) The statement is untrue, if he meant all the land was under cultivation. The second part of the statement concerning possession is correct. First

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Officer,
Haifa.*

*Defendants'
Evidence.*

*No. 32.
Oswald
Skall,
12th
February
1943,
continued.*

*Before the
Settlement
Officer,
Haifa.*

*Defendants'
Evidence.*

*No. 32.
Oswald
Skall,
12th
February
1943,
continued.*

saw the land in 1926 and had a plan made in 1934 for the purchasers. Did not have made an earlier plan, cannot remember an earlier plan. An official plan was not made, but I remember making sketches. Did not instruct a surveyor before 1934. Know Epstein and Vilensky, the surveyors. I went with Musallam, a surveyor, and he made me a sketch. I have lost the sketch. I did not instruct Epstein or Vilensky to make a plan. Musallam may have worked with Epstein or Vilensky. Musallam actually made the plan. Do not know if Vilensky went or not. I paid Musallam for the plan. Do not remember the year of Musallam's plan, before 1934, it may have been 1928. I do not think the plan showed 10 3300 dunums, it showed less than 1000 dunums. The plan showed Jurn en Nassura far from the Khirba. The plan was incorrect, the boundaries were incorrect. Musallam was an incompetent surveyor. I instructed Musallam, paid him for his work, received the plan. Did not take Musallam to the land. Do not remember going with him to the land. In the majority of cases he made for me incorrect plans. He is all right for small surveys : his wage was low. The plan was incorrect on the northern and western sides. He showed a western boundary near the cultivation of Abd er Rahman. Do not remember if Musallam's plan showed Ashlul Khuzurka near the place alleged by Government. The whole plan was incorrect. 20 The area showed about 2200 dunums. Certainly over 2000 dunums. I do not consider the plan of Musallam as a proper plan : this is why I did not mention it. I do not remember if the plan was signed. I do not think the plan was important. I have only interest in correction of area in Haifa district, about 3 or 4, more corrections of areas. 5, 6 or 7 or perhaps more. I deal a lot in land transactions, corrections of areas and transfers. I do not think correction of areas exceed 10. They are not all as big as the present transaction. The largest was 130 dunums or so. With the exception of the transaction of Wakim Shukeiri that may be 300 dunums. After many years after the correction I bought the Shallala 30 lands had nothing whatever to do with that correction of boundaries. I know Musabba Bahu in Tira, have acquired no land in that area, tried to do so, tried to buy all the land. Drew up the preliminary agreement, perhaps 1600-1800 dunums. The land is in a forest reserve. Part of it is registered in the Land Registry, 10-15-20 dunums. I could not arrive at an agreement with the vendors.

I first knew the land was in a forest reserve when the fellahin informed me. I believe in 1927. It was proclaimed in 1929. I made no protest, my partner did so, Allu family. Prior to 1937 I made no approach to Abd er Rahman. When I first went on the land I saw him on the land. 40 They told me he had been 10-15 years in possession. When the surveyor Skall went out to make the survey he had trouble with the man : he would not let him survey. The surveyor told me. Abd er Rahman came to me. I told him that his rights were reserved, his land was within my land, but we could come to terms. I came to an agreement that Abd er Rahman should leave the land for 10 pounds. I paid him LP.5.- on account and I do not think the surveyor had any trouble. No documents to prove this : only my word. Paid him LP.10.- in all. He did not leave the land. I allowed him to stay on the land.

Case adjourned until the 13th of February, 1943.

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(Sgd.) CECIL KENYON.

No. 33.

Edmond Levy (continued).

Before the
Settlement
Officer,
Haifa.

Haifa, 13th February, 1943. Present :—Mr. Hogan. Mr. Koussa.

- I am under no obligation to give Abd er Rahman any land. I think I bought my last share from the Dirbas family about the time of the survey. Last year I purchased 12½ from Ayisha and Labibe, daughters of Mustafa Dirbas. My purchase prior to that was in 1936, as shown in the extracts—approximately 1938. I made the agreement with Stuchener in July 1934. LP.5 a dunum amended to LP.6 in 1936. 1938.
- 10 I remember having given a plan with the 1934 contract. Musallam's plan : the plan of 1926, perhaps 1928. The only plan I had was Musallam's plan. I was not satisfied with Musallam's plan in 1934. I knew it was incorrect. A short time after he had given me the plan it was apparent that it was incorrect. A few months later, I attached this plan to the contract. No copy of the plan attached to the contract my advocate produced this morning. I did not go to the surveyors who made the plan. Exh. 40 is the contract. Area 2171 dunums. Contract contains a precaution (paragraph 5), in case the land was less than 500 dunums or more than 2171 dunums. The plan referred to in the contract was
- 20 Musallam's, it was signed by the Mukhtar. Hamada Bakir. He was the only Mukhtar to sign and three or four elders who signed. Do not remember the names of the persons who signed : my office boy obtained the signatures. It is not true that the Ashlul Khuzurka is not where Government claims it to be. I found the plan was incorrect ; the shape of the land was incorrect : it was longer than shown on the plan. Ashlul el Khuzurka must have been shown on the plan of Musallam on the two positions claimed by the parties. I cannot say which was shown on my Musallam plan. It cannot be where Government claims, otherwise there would have been no 2171 dunums. The Musallam plan must have shown
- 30 the Journ en Nassura, it was incorrect, because there was no Journ in the place. I did not check the plan on the ground but I knew the plan was incorrect because the shape of the land was different. I think the Journ was shown a little to the west of Abd er Rahman's land. It may have been in another place. I do not think it could have been half way up my western boundary because the area would not have been 2171 dunums. I do not remember any of the points in the plan of Musallam. My advocate submits the addendum of 1938. All the boundary names are mentioned in the plan of Musallam, but not the true boundaries. The whole area included in the Skall plan was a forest reserve. I agreed to the exclusion
- 40 of the closed forest area because 90% of the area was outside my boundary. Bernblum was carrying the transaction through and he told me. The land was slopy and outside the land. The plan of Skall included the land ; he had been shown the lower part of the Maqab el Ma'. Bernblum told me they wanted to exclude the area. I compared my plan with the topographical plan and finding it slopy and I wanted to avoid heavy expenses so agreed to exclude the land. Skall told me the plan in the south-east was not in conformity with the boundary and I told him to leave the plan as it was for it would be corrected in the Land Registry if they found it necessary. The true boundary runs parallel to the line
- 50 371-102 and some distance from it to the south until it joins the southern

Defendants'
Evidence.

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No. 33.
Edmond
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*Defendants
Evidence.*

*No. 33.
Edmond
Levy,
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1943,
continued.*

boundary. I was satisfied that Skall had been shown too much of the slope. Mr. Jaouny of the Land Registry, Mr. Atlas also, and the plan all satisfied me the land was slopy and I agreed to give up the land whether it was slopy or not. Having been convinced the major part was slopy, I gave up the area. I believe I know the boundaries well, and have done so since 1926. When we inspected the land with the Settlement Officer I thought 161v was on a hill, but that was incorrect. I sent men to put lime cairns on the marks, but they could not find them. Points 160v and 162v are on the mountains : on Rous esh Shammas. Point 160v is on the mount, point 162v is lower, but as the surrounding land is lower, point 162v 10 appears to be high. In my view, all the land except the wadies, is 80-90% fit for cultivation. I do not know if in 1938 the land was vested in the Kupat Am Bank Cooperative Society Ltd. I disposed of the land to the Cooperative Society in 1936. The Bank holds the land as owner but I have a financial connection with the Bank. I so consider it. The Cooperative Society and the Bank are to me the same. I transferred the land to the Cooperative Society in 1934 to 1936 by a number of transfers. The Society were the owners of 66% shares prior to the 31st December, 1937. I have not represented the Bank in connection with the land. I handed documents to the advocates, have given instructions to the advocates. 20 Do not know if the balance sheet of the Kupat Am Bank Cooperative Society is correct or incorrect. The land was bought in its name for others. I am not responsible for the keeping of the books of the Bank. The reason is that as the Bank purchased the land from me on behalf of others, it would not show the land in its books. Towards me the Bank was a trust. I did not discuss the point whether the Bank can be a trustee or not. In my opinion I consider the Bank was owner, if they are trusted for the others, that is their affair. In 1936 I paid to Allu family LP.60 in cash. I paid Naumi LP.60 and her sons and relatives got another LP.160. If Nimer took LP.80 his brother must have taken something more, perhaps 30 LP.50. It is the custom in Tira to pay the members of the family extra money. The brothers may have received LP.60. If one sells then comes along for the money. I do not remember the exact amount paid to any other vendor. I kept only the total amounts I spent, kept no written accounts. The powers of attorney were the receipts for money paid. The receipt in the power of attorney was only on the balance due on the purchase price, e.g. if I bought for LP.50 paid LP.30, the power of attorney would mention LP.20 in full discharge. Having admitted receipt of the money and abandoning all his rights, there was no point in mentioning all the payments. It was in 1937 that I bought out the rights of Abd er 40 Rahman. He had no interest after that day. I left him on the land, as many others, such as Ahmad Idris, Khadr Idris and others. They cultivate in my plain lands in Tira.

Re-Xd. by Mr. Koussa : The letter Exh. 42 is the arrangement between the Bank and myself. Mr. Musallam made the plan in 1926. I made no use of the plan before the contract of 1934. When I signed the contract for 1934 I gave the plan to these people who gave it to Sifrin to draw up the parcellation plan. Mr. Sifrin is the ex-Municipal Engineer of Haifa. He went on the land with Friedman, one of the purchasers. The purchaser went out, it is the same thing as if I went. Sifrin prepared the tentative 50 parcellation scheme. The sale to Mizrahi was made by me. The transaction was submitted to the Tabu by the Kupat Am. The transaction was

in respect of shares equivalent to 600 dunums to Mizrahi, and another set of shares equivalent to 200 dunums to Edmond Levy. The transaction received the consent of the Director of Land Registration. The transaction was said to be made without consideration because I am the vendor and the Bank did not want to say it had received the money and be responsible. Abcarius Bey asked me the amount for which I sold to the Bank : he did not ask me about the fellahin. The amounts shown in the Land Registry Kushans do not represent the actual value of the land. I did not make the Land Registry transaction myself. I instructed someone to do so for me, the powers of attorney were filled and the transactions went through. I have given Mr. Hogan authority to obtain the Musallam plan from Mr. Eliash. I meant to say I went to see Lahar in September, 1936, not July, 1936.

Before the Settlement Officer, Haifa.
Defendants' Evidence.
 No. 33.
 Edmond Levy,
 13th February 1943,
continued.

Case of all Defendants closed.

Case adjourned until Friday, the 19th of February, 1943, for final pleadings in Jerusalem, to commence at 9 a.m.

13.2.43.

(Sgd.) CECIL KENYON.

No. 34.

FINAL ADDRESSES for Defendants.

20 Jerusalem—February 19, 1943.

Present : Mr. Hogan.
 Abcarius Bey.
 Mr. Koussa.

No. 34.
 Final Addresses for Defendants, 19th February 1943.

Mr. HOGAN : Mr. Eliash has not a copy of the plan, he said he had not had a copy of the plan. Stuchener may have had one. Stuchener said the plan was withdrawn from him.

Mr. KOUSSA : The plan was given to Mr. Eliash, he showed to Mr. Alhaseed all the plans he had. It is incorrect to say that Mr. Edmond Levy withdrew the plan.

30 Mr. HOGAN : The case falls under three headings. The first is of fact. Where are the four boundaries named in the Kushan.

The second point is having established the boundaries, what area are the defendants entitled to have

The third is what effect is the registration of the correction of area in 1938.

40 The first question is that of boundaries. The eastern and southern boundaries do not present a great deal of difficulty. 3/4 of the closed area was relinquished as it was too far down the slopes. This is an acknowledgment that the 6 dunums are considerably higher up than those shown in folio 51 of Exh. 1. If we follow the contour around the Khirbe we reach the place said by us to be Journ en Nassura. Though the accuracy of the contour is questioned they are the same as shown on the little blue map of Mr. Levy. The Kitf el Jabal does not reach Ras el 'Ali.

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The Jurn en Nassura is placed by us 200–250 m. from the khirbe, to the west on a gallery slope. There is a depression or hole in the rock. This place has been identified by witnesses, with local knowledge. The nearest cultivators are the persons one would expect to know the position of the jurn. The position is a reasonable one. It has some relation to the cultivable area of the Khirbe. By mere chance I heard there was an earlier plan. The earlier plan showed the western boundary east of Abd er Rahmani land, not in the place shown in Exh. 53. The plan is said to have been signed by neighbours and by one of the persons who indicated the original boundaries. There were objections to questions on the nature and contents of the contract. Clause 5 of the contract envisages correction of area. Less than 500 dunums or more than 2000 dunums. Mr. E. Levy can estimate the area within 100 dunums and certainly 1000 dunums. He could not have thought the area said to have been walked around by him was less than 500 dunums. Mr. Levy acquired his interest or a substantial portion in 1926. No transaction for correction until 1938. Our jurn is about 250 m. from the Khirbe. The defendants say it is on the south-west corner of the cliff. If the boundary was at the south-west corner, why was Kitf el Jabal not used for the boundary. The jurn is a point, the kitf is a line. The Kushan was issued in 1882, and four years earlier the P.E.F. map was made. Jurn en Nassura is not shown in the map. The point is called Nuweitif. If that point was in the mind of the Turkish official, he would have used the name Nuweitif. Defendants rely on Jurn en Nassura as their western boundary. Point 113 is west of the cliff, considerably below the alleged position of the jurn. The surveyor Skall could give no explanation of why he did not fix his boundaries at the jurn. It is not difficult to see that there was no jurn there. The only reason for the boundary being put where it is on Exh. 1/53 is because Mr. Levy wanted to extend his boundaries. Having adopted 103 as his boundary he had to find a jurn so he decided to say that there were a couple of jurns on the top of the cliff, now destroyed. No one of the descriptions given by defendants' witnesses is consistent. Witnesses have remarkable similarity in their evidence concerning their visits. Jurns as alleged by defendants could not be approached from the north-east. The western jurn is not less than 2 by 3 metres from the untouched rock face. The place indicated by defendants is about 5 metres from the edge. No sign of a hole, at the back of the opening there is a little depression overhung by rocks, seems a grott. If there was a jurn, it would have been shown on the map, Exh. 1/53. The jurns are said to be the western boundary. In fact the alleged jurns are on the southern boundary.

The Kushan then states: En Nazzaza said to be a locality. Nazzaza means a supage place or scourage point. We saw a supage point in the wady, from which water sups out. Defence witness No. 4 confirms the position of the Nazzaza, record page 86. The Wady Nazzaza runs east to west and could not be a western boundary. There is a suggestion that the western boundary is Mauqi en Nazzaza lying to the north of the wady. This alleged locality has no dividing limit between the land on the east. The locality has also been included in the land of the defendants. Our Nazzaza bears some relation to the area of cultivation. Article 47 of the Land Code, where boundaries are being identified, the area is of no use. The plan of the contract left out large areas now claimed. We say Ashlul

Khuzurka runs from Nazzaza to Baiyadat esh Shammas. This the defence witness could not accept. The survey plan shows this Ashlul to be the boundary between Khuzurka and Khirbet Yunis. The defendants' boundary is away to the north in another locality. Bayadat esh Shammas is the only surviving name including Shammas. The remaining boundary on the northern side is said to be Rous esh Shammas. That boundary is difficult. Either the name is slightly inaccurate in the original Kushan or else the nomenclature has altered slightly in the course of years. It is quite probable that the point the original officials meant to indicate was at the end of the Ashlul. The position of point 161 v. is not on a hill, it is on the plain. Next we heard 162 v. was on a hill, then we found it to be on a plateau. What is said to be Rous esh Shammas are not heads at all. Only one hill top Ras el Ali. Defendants' witness says he was not meant to know them. Plan 1/53 is inaccurate in regard to names of localities even if the distances are correct. The red description was put in by Mr. Skall and was checked by Jaouny who had no means to check the names. All the evidence leads back to the Mukhtar, who gives the boundaries, declares the Kupat Am Bank was cultivating. The Mukhtar said that he did not understand plans. As to the correction of the rural property for records, only one copy has been altered, the village copy is unaltered. The Mukhtar is the man who walked around the boundaries at the time of Mr. Levy's purchase. He showed the land as being the property of the village. Section 46? of the Rural Property Tax Ordinance. Alteration unauthorised. No error.

The locality of the land has been shown to be in Khirbet Yunis, but defendants have included other localities. Khirbet Yunis may have been the best known, though Khuzurka is shown in old maps. Abd er Rahman is shown in the werko records as having land in Farsh el Quzli. The forest officers prosecuted persons in Farsh el Quzli and Farsh Tell el Batta. Ex. 29-30. Consideration paid for the land was L.182. It is said that LP.1500-2000 was paid. Mr. Levy did not approach Abd er Rahman until 1938. He did not do so before because he did not at that time think he had bought the land. I ask the boundaries to be fixed where we claim them.

Second point. Category of land. I submit it was Mewat land or jabal mubah—Tute 103. Vacant land—khali. Kushan given under Article 103. Article 103 accurately describes the nature of the land around the Khirba. The kushan refers to the land having been opened without permission, badl misl was exacted, land acquired by development. If the original owner acquired the land by breaking up and development, the area he broke up is what he acquired. It is quite possible that the official who went out to make the enquiry could find no nearer boundaries. It is quite clear that he had no intention to grant more than 34 dunums. The Forest survey shows only about 10 dunums probably because the Khirba was uninhabited and in ruin. The grant was made under 103 and attention is drawn to Art. 104. Haycrafts Khoury dissenting judgment. Grant under 103, actually under 78. Article 78 prescribes period of prescription, does not give any right to grant. Grant under one of the recognised means of acquiring title. Art. 8 of the Tabu Regulations No. 125 of 9.9.1328. Haq el Case. No. 23 of 29.4.1330 grounds for entry into possession. Art. 8 of the Tabu Law, distinction

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between sale and grant. I submit that Article 47 does not entitle the defendants to all the lands within the boundaries. Article 47 contemplates sales between private parties. It does not contemplate grants by the Sultan or the State. Rutenberg, Vol. 4, page 175. LA 15/28, paragraph 7. Distinction between sale and grant. Art. 8 of the Tabu Law and 47 Land Code. We know that the original area was 34 dunums, then it dwindled to 10, then it expanded to the area shown by the Loxton Commission. The area mentioned in kushans must have been intended to have some effect.

The third point is what is the result of the correction of area of 1938. 10
In effect we have the kushan, the Turkish kushan and the 1938 kushan. The Turkish kushan is the root of title. The Turkish documents have greater validity. The kushans to-day are unguaranteed. The kushans are copies of a register of documents, not a register of title. Under Turkish laws the register of deeds may have had the effect of registers of title. The boundaries as established by the original boundaries are not changed by the Director of Land Registration or by Mr. Skall or by Mr. Jaouny during the inspections made by us on behalf of them. The Director of Land Registration never intended to alter the boundaries, he thought he was improving the record. They have no right to give away any land. 20
The right to make grants of land is vested in the High Commissioner. Articles 12 and 13 of the Order in Council. That right was never delegated to the Director of Land Registration. He did not collect badl misl because the claimants alleged that the Turks mistook the true area, had collected on 34 dunums and not 3,000 dunums, etc. So the Director of Land Registration thought he was collecting arrears of badl misl. The authority to direct the correction seems doubtful. The Mejlis Idara had authority to order correction, the Mejlis Idara has been done away with and no authority exists to-day. It is questionable whether the Land Registrar had the authority to alter the number of dunums. We know upon what 30
evidence the alteration was made. The Director of Land Registration relied upon scanty and utterly untrue representation. Cultivated area. The 14 records have been examined the case. The werko records were not consulted. They showed that Abd er Rahman had land in the area. We have heard the evidence of Jaouny and Gottlieb. We have seen how the Rural Property Tax distribution list was corrected. We have seen how the forest reserve was dealt with. The closed forest area was immediately surrendered. No one of these acts have altered the rights of the claimants who are entitled to no more or less than they had originally.

Who is to be registered as the owner of the plot? The claim has been 40
put in by the Kupat Am Bank. We have heard a lot about the position of the Bank. Art. G of the Memorandum of Articles of Association. Submitted that they have no power to acquire land. Company Ordinance 15. No authority has been given by the High Commissioner to the Bank to hold land generally. In 1937 the Bank did not disclose they were owners of the land.

ABCARIUS BEY : With regard to the Kupat Am Bank I leave the question for a time.

The first point. The case is a State claim inter departmental case. Should never have been brought. No fraud or misconduct alleged. 50

Government is estopped from disputing any act in which they have acquiesced or done themselves. I leave entirely the questions of fact to Mr. Koussa. I agree the case rests on the boundaries to be fixed by the Settlement Officer. The kushan was given about 60 years ago by the Government giving fixed natural boundaries and the Turkish law is very clear indeed as to the effect of such a kushan with such boundaries. I refer to the evidence of Mr. Jardine whom I consider to be the best head in such cases in Palestine. The conception of these grants is greatly misconceived and nothing will put us right without reference to Turkish authorities. When a grant is made within fixed boundaries, the grant covers all those boundaries. Badl misl is paid on the actual part which has been opened, not necessarily cultivated. It may be planted or prepared for planting or otherwise. The grant is in the nature of a contract and the payment of badl misl confirms the contract and is a permission to open the remaining part of the grant. The interpretation of 47 is contrary to the interpretation of the Ottoman commentators. 60 years ago I was given a grant of Khirbet Yunis within certain fixed boundaries by the old Government. This is a private individual right our predecessors had under the old Government. Present Government cannot query or question grants made by predecessor Government. Bentwich, State succession, page 37 ff. In the *Country, A.G. v. Greek Church*. Principle upheld that present Government is bound by previous Government. Jardine's evidence page 13 of Record. "All the land within the kushan whether cultivated or not"; Page 14. Record. Land identified on the 1/20000 scale plan. The land was transferred to Mr. Levy and his wife and he then transferred it to the Co-operative Society. The Co-operative Society has a right to hold land. The land was placed in the name of the bank as a trustee for the parties as agreed to by them, and the bank or anyone else may hold the land, it does not go to the

Exh. 3 is signed by F. Ongley, Director of Land Registration, an authority. The circular shows that the grant was made in Turkish times, there is usually an excess of area. It shows that the boundaries and not the area are to be considered. The evidence of Mr. Stubbs, page 14 of the record, is that the Turks had no surveyors. He also says "the money was due to Government, etc." There was a grant and the money was due to Government. "No survey, all land described by reference to boundaries. More concerned with boundaries than areas." Idle to try and speak about fixed areas. So continue, in the year 1937, by the Kupat Am. No fraud was exercised by them, they produced the kushan and they said that though the topocadastral survey map shows block XXVIII as having 3500 dunums, we ask for the correction of area in accordance with our plan, this as trustee to collect the money for the vendors and to pass the land on to the purchasers. There is nothing in the file misleading, no fraud. The Land Registry had full opportunity and authority to examine anything they wanted to. Mr. Jardine said plainly I am satisfied the kushan was the only one for Khirbet Yunis. If the Director was satisfied that the transfer was in order and agreed to collect badl misl, Government is estopped now, five years later, and say there was a mistake.

Exh. 2. The words "as arrears of badl misl" paragraph 2, information "now" in possession of Government. The amount claimed was the

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amount assessed in accordance with Ongley's circular, Turkish assessment. " Arrears of badl misl " ; Admission in writing, that arrears were due on a grant made by the Turkish Government. The Director of Land Registration is the authority for the correction of areas. Mr. Stubb's evidence. From time to time we make corrections of area. We do not intend to make any fresh grant. Applications are made under article 47 of the Land Code, not the Land Transfer Ordinance. It is now too late, 5 years later. L.A.118/37, no evidence to prove land was mewat. In that case there was a kushan obtained by prescription. Our kushan is an agreement between our predecessors and the Turkish Government and badl misl paid on part. This man is presumed in law that the man holds a kushan and has been in possession ever since he held the kushan. There is evidence that cultivation took place in the area. We have also a prescriptive title. No matter what has happened, there is the map of Khirbet Yunis 3500. We have paid badl misl 5 years ago. You have taken taxes from me since 1935, and now Government says they have made a mistake. They cannot do that unless they can prove fraud. They cannot go back on their signature. Fraud was not pleaded, it cannot be proved and cannot be dealt with now. I resent the interference of Mr. Alhassid in the case, by writing claims for other people and for interfering with people, as proved in these proceedings in C.A. 277 and 278/40. Abou Ghosh case. Acceptance of taxes. " Respondents case etc. etc." We have paid taxes. Exh. 37. Government accepted transfer to Kupat Am, accepted the correction and pressed us for payment of taxes. They are estopped. 10

As to Article 47. I refrain from expounding that article. Chiha, pages 129, 136, 444, 446, 456 and the very interesting view that putting walls around, digging wells, all means opening land. On badl misl, page 130. In Goadby and Dukhan, page 7. Woodlands may be the subject of grants, woodlands etc. may be granted. We cannot to-day question the grant made by the former Government as admitted when they claim back arrears on a grant made 60 years ago. 30

Grant of all the land, and alternatively, Government had given me 3200 old dunums and a kushan. H.C.127/42. The Kupat Am Co-operative Society could hold land for the benefit of members. The Co-operative Society is registered and corrected the area. I refer to the Memorandum of Association of the Kupat Am Bank. 2. (g) power to acquire land, to hold any estate or interest. We submit the Bank has power to hold land. If they have committed any offence, there is a law to remedy this. I submit a copy of the Memorandum of Association. Exh. 43. That the Bank are trustees is proved by the evidence of Mr. Levy and Exh. 40, 41 and 42. If the Settlement Officer find the land belongs to another, he may register the land in the name of that person. Section 27 (4). The tend of the plaintiffs' witnesses as far as I could say, was that they were taught to give this evidence. 40

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Mr. KOUSSA : The claim of my clients is based on registration, possession and inheritance. The land in dispute was originally registered in the name of my clients' ancestor by the Turkish Government, and badl misl was paid for the area actually under cultivation. Upon the death of their ancestor they inherited the land and continued in possession. I associate myself with all the arguments of Abcarius Bey. When the Government of Palestine endeavoured to declare the area a forest reserve the evidence shows they protested and Government knew at the time, as is evident from the statement of the Forest Officer. Record page 22, that my clients claimed 1,000 dunums or so. Evidence shows that the cultivation changed from place to place. It is not necessary for the whole area included within the boundaries to be under cultivation. It is sufficient to prove that the registered owner exercised possession. This has been fully supported by evidence submitted. My clients further claim that Government having admitted the actual area to be within the kushan of the Kupat Am Bank as 3,200 odd dunums that Government cannot deny them right to such an area. The shares in the land are shares in all the land. The transaction for the correction of area was authorised by the Competent Authority. The Director of Land Registration is the competent authority. They have taken the place of the Mejlis Idara. Since the Civil Administration this has been the practice, a practice that has the force of law. The Government of Palestine cannot overrule the order of the Director of Land Registration concerning the correction of the area. All the necessary formalities were carried out. Though the Registrar of Lands did not inspect the land, it is not necessary for him to do so. Mr. Jardine's evidence. The statement of Mr. Bernblum is irrelevant. The Director of Land Registration or Registrar of Lands is not interested in the nature of the land, they are interested to know if the land falls within the registered boundaries. Record page 43. With regard to the actual boundaries when the first registration was made in the name of my clients' ancestors. I agree with the Crown Counsel that there is not much dispute concerning the south and east boundaries. The real dispute is with regard to the north and west boundaries. N. boundary. Rous esh Shammas together with Ashlul Khuzurka. W. Jurn en Nassura and the Nazzaza. Government claims the northern boundary is the wady between Khirbet Yunis and Khuzurka. They rely upon witnesses, 7 of Tira, and my submission is that the witnesses cannot be believed. If it is correct that Ashlul Khuzurka falls in the place in which Government claims there would have been no necessity to mention Rous esh Shammas, for it was a physical boundary no one can mistake. Government says there is no Rous esh Shammas. If there had been any change, then it would have been to Ras el Ali from Rous esh Shammas. Ras el Ali used as a name denotes the existence of other summits. Government witness says Ras el Ali and Rous esh Shammas are the same. Record page 32. As Ras el Ali is known, then the northern boundary could not be where Government claims. Having established Ras el Ali, then the Ashlul el Khuzurka must be to the west. All the Government witnesses deny there was anything known as Rous esh Shammas, and they deny it because if they said that Rous esh Shammas was Bayadat esh Shammas, they would have to explain why the Rous became a slope. They all knew Nazzaza,

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but did not know wady Nazzaza, yet it is known the wady Nazzaza was surveyed in 1927 when the Government plan was made. The only purpose of denying all knowledge of wady Nazzaza is to confine the word and place to the supage point, in the wady. I suggest that the word Nazzaza in the western boundary description means a locality as Seyah or Musiliye, or Bei Badawiye, or Qaraniq, all localities in the land recently settled in the village of Tira. There is a locality of Nazzaza, between Nazzaza and the Wady Khuzurka. Our northern boundary is Khuzurka and we have to go that far to reach our boundary. There is evidence to show we cultivated Farsh el Batta. There are very very few trees, cultivable land of the best quality. The land we cultivated as part of Khirbet Yunis could not have been within the land if the jurn is where Government claims it. The P.E.F. map shows the Khirbet Yunis adjacent to Khirbet Shiba. There is no land between the two. As to Jurn en Nassura if the hole in the ground can be called a jurn, then any hole can be called a jurn. The holes in the Wady Nazzaza are round, deep, and all the appearance of a jurn. Hafiz en Niju and Ahmad Mahmud 'Gese said there was another jurn only 20 metres away, but no eagles ever used the second jurn. Hassan Amura and Ahd. Mahmud 'Gese are untruthful from their evidence. The only place for the jurn is on the extreme western boundary of the land. Traces of these jurns remain to this day. The land of Abd er Rahman Abu Rachad in the werko register gives the land as jurn, 'utal, 'utal and 'utal. It was the custom of Turkish officers to begin with the southern boundary Record, page 57. Applying this to the land, the jurn is to the south. The jurn he knows is to the north east, that is Abd er Rahman. Record page 21. He must have been telling a falsehood. Thus the jurn can only be applied to our position. The same witness says: The jurn is on the kitf. Record page 22. The place claimed by Government is not on the ridge, it is 400 metres or so from the ridge. Mahmud Daoud ed Dirbas also puts Jurn en Nassura on the ridge. Record page 61. Emphasises the jurn is on the ridge, "only on the kitf." This evidence goes to show clearly that Jurn en Nassura is where we claim it to be. Government witnesses not to be relied upon. Abd er Rahman his claim. He denied the evidence of Wady Nazzaza.

Yusef, Hafiz and Ahmad are the three champions of the case. They went with the Loxton Commission. They are intriguers. They were sent to a concentration camp as being men of no good character. Yusef was a member of the Rural Tax Committee. There is no mention of any Farsh el Quzli and Farsh el Batta or Farsh Tell el Batta. Only Khirbet Yunis is mentioned. The distribution list shows the area of Khirbet Yunis to be 3500 odd dunums. Ahmad Suliman Dirbas is the man who said he sold by boundaries and not by dunums. Record page 32. Wady Nazzaza is said when it gets to the plain, is called Khawariq and the Khuzurka is north. Evidence of sale all unreliable. Hassan Ammura was a member of the rural tax committee. Suleiman Ahmad says he was a voluntary witness. Convictions by forest department are for cutting trees without a licence. A private landowner can be convicted if he cuts his own trees without a licence.

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Reply of Mr. Hogan. No evidence of protest by Mr. Koussa's clients, no written evidence. Two Government witnesses, Ahmad Dirbas, Record

page 32 and Abd er Rahman, Record page 20. Both refer to Wady Nazzaza. We accept there is a Wady Nazzaza. We called a large number of witnesses and I would not say that they all gave absolutely accurate evidence in every statement. 5th witness not reliable. Because some of the witnesses said the jurn was on a ridge, but the ridge is not well defined. P.E.F. Khirbet Yunis and Khirbet Shiba. No Khirbet Shiba registration shows Khirbet Yunis as an eastern boundary. Every one agrees that Abd er Rahman has been on the land for many decades. He is a man who knows the land. He can give evidence on names.

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10 Abcarius Bey's arguments. Estopped. C.A.123/42. Estoppel by record or by representation. We made no representations to the defendants and have taken no action that would have worsened his position. If Government has no power to grant the land, and did so, how does estoppel arise. Taxes. 600 mils a year on 100 dunums or so. R.P.T. Section 46 now in force. See section 10 of Land (Settlement of Title) Ordinance. No suggestion of fraud, so correction of 1938 is conclusive and binding. This is actually so. One point, plan checked and inspected by the Government Officer. There was a definite misrepresentation. Mr. Bernblum declared the whole land was cultivated. We say the present kushan
20 holders are entitled to no more than the rights granted by our predecessor state. Our suggestion is that the original grant was for 34 dunums Mejelle 1272. Grant of land the man vivifies. Land Code 103. Article 47. Feragh. The Director of Land Registration thought he was dealing with Khirbet Yunis, that was a mistake in the face of the plan. He also included other localities. The question of whether the Kupat Am Bank can now be registered is open. Bank has only power to acquire land for their own needs. Can the Bank act as trustees? Hailsham, Vol. 33, p. 348 and other authorities.

30 ABCARIUS BEY : In (κ) the Bank is authorised to act and (N) also gives authority. Cap. 22, page 337, Drayton 1, page 339. (o) Drayton 1 and also (w). There is nothing in the memorandum running contrary to that.

Reply on
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Kupat Am
Bank.

Case adjourned until the 15th of March 1943 for decision.

19.2.43.

(Sgd.) CECIL KENYON.

No. 35.

DECISION of the Settlement Officer, Haifa Settlement Area.

40 1. This is a case concerning the ownership of over 3000 dunums of land in Khirbet Yunis. In volumes 9, 10, and 16 of the land book of Tira in Haifa sub-district there is an entry recorded under No. 140 of Kanun Awal 1298, that is, December 1882. The same entry appears in all three volumes, No. 10 being a copy of No. 9 and No. 16 being a compilation of uncanceled entries to be found in earlier volumes.

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This entry No. 140 was made for 34 Turkish dunums in Ard Khirbet Yunis and the following particulars were shown under the appropriate headings in the land book.

Entry No.	140	
Date	Kanun Awal 1298	
Village	Et Tira	
Locality	Ard Khirbet Yunis	
Boundaries	East : Kitf el Jabal	
	South : ditto	
	West : Jurn en Nassura and en Nazzaza	10
	North : Rous esh Shammas with Ashlul Khuzurka.	
Area, new	12 dunums 12 aulik 56 sq. arshins	
old	34 dunums.	
Way of giving title	ta'mir (development)	
Transferee	Muhammad 'Allu Suleiman Dirbas Hasan 'Allu Mustafa Mahmud Dirbas	
Badl misl	612 (turkish piasters)	20
Remarks	Having opened a field without permission badl misl has been taken.	

2. The Khirbat Yunis of this entry is a ruined khirbe standing on a plateau 5 kilometers south of Tira village. To reach the kirbe by the paths and tracks across the hills is a journey of two hours on foot. Whilst by car along the main road to the western boundary and from thence by a steep climb up the cliffs the plateau may be reached in less than an hour and the khirbe in an hour and a half. Within living memory the khirbe has been uninhabited and stands deserted in a small area of cultivated land. 30

3. The defendants claim they are the registered miri owners of all the land within the boundaries described in entry No. 140, a claim disputed by the Government of Palestine who claim the land is unassigned State domain and part of forest reserve No. 195. This reserve was declared on the 2nd of July 1929 by a notice appearing in Palestine Gazette No. 239. The Plaintiff does not dispute the ownership of two parcels within the general boundaries of the defendants' claim, one is the 34 Turkish dunums, and the other about 7 dunums admitted to be in the possession of a cultivator for a long time. To the rest of the land the plaintiff declares the defendants have no valid title deed, and to the greater part no ownership by long effective possession. 40

4. Before examining the registration of 1882 the class of land as it was before that date should be decided. From 1857 onwards all land in Palestine was divided into one of the five broad classes set out in Article 1 of the land code of that year. Of these five classes the land of Khirbat Yunis was neither mulk, mevqufe, nor matruka, and it was either miri or mewat. Miri land was of the kind that had been granted by the State or persons competent to make a grant, and though it was not necessary for the land to be registered in the land book, it was to be of the kind for which miri title deeds were issuable. It had to be fit for cultivation and land that could be tithed. From the evidence as to the nature of 50

the land and from the inspections during these proceedings it has been shown that the greater part of Khirbat Yunis was not of the miri class, as it could not be cultivated in its present state and requires considerable development and improvement to render it fit for agriculture.

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5. From this the remaining alternative is that the class was mewat, but the plaintiff suggests besides the five broad classes of Article 1 there is another that may be a sixth, or alternatively, a branch of mewat, and known as jabal moubah, that is, mountains which are considered as jabal moubaha and which are not forests or woodlands set aside for the public from ancient times. References to jabal moubah are to be found in Articles 1243 and 1256 of the Mejelle in Articles 30 and 104 of the Land Code, and in Article 13 of the Tabu Law, and always in contexts concerning forests or woodlands. The arguments for a sixth class of land are novel and do not appear decided, but in this case the question does not arise as Ard Khirbat Yunis is not a mountain. The land is a plateau above the Wady Falah and from its highest point of less than 1000 feet above sea level it falls evenly to the west to below 400 feet. It is covered with scrub and natural forest growth and has broad areas capable of being rendered fit for cultivation. It is most certainly covered by the definition of mewat as given in Article 6 of the Land Code and is not outside that given in Article 103 or the Mejelle Article 1270.

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For these reasons it is decided that prior to 1882 the land of Khirbat Yunis was mewat and subject to the provisions of Article 103.

6. Before entering further into the questions of mewat it will be seen from the text of Article 103 that mewat could be granted only by leave of the official concerned and subject to the conditions stated. Provisions exist for grants in instances where persons clear or open and convert to fields mewat land without permission and the tapu misl was to be taken from them and the fields granted by the issue of kushans. This grant was limited to the bestowal or conferment of the tessaruf and it is distinguishable from grants made by Article 1272 of the Mejelle.

7. Turning now to the entry in volume No. 9, the remarks states why the badl misl was taken from the transferees. They had opened a field without permission and a clearer instance could not be found of an entry made under Article 103. The remark confirms the finding that the land was mewat as well as stating the reason for the entry. A further indication is given by the use of the word Ta'mir. Hooper in his translation of Article 1051 of the Mejelle gives development or improvement whereby land is rendered fit for agriculture, and the inclusion of this word in the entry is consonant with the general conception of mewat as being land fit for agriculture after development or improvement. It may be assumed the transferees paid the badl misl stated and obtained the title deeds to which they were entitled.

8. The next question arising from the entry is identification of the boundaries. Both the southern and eastern boundaries are kiff al jabal and as the plaintiff does not seriously dispute the boundary line shown on the registered plan of the defendants, this line is accepted as being the kiff al jabal along the southern and eastern boundaries. The plaintiff does not accept that the whole of the southern boundary as being the boundary of the defendants' land but only that part to the point where the western boundary meets.

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The northern boundary is Rous esh Shammas with Ashlul Khuzurka of which the agreed translation is sunny hilltops with the khuzurka water course. The identification of Rous esh Shammas is one of difficulty as the evidence is contradictory, but this difficulty is no reason for holding the description is incorrect. The plaintiff claims that an area of whitish soil known as Baiyadat esh Shammas should be accepted because the name includes Shammas and for the further reason that the rous are unknown to his witnesses. There are, however, hilltops to the north of Khirbat Yunis and not far from the Baiyadat, and as the nearest hilltops to the north of Khirbat Yunis they are accepted as being those referred to in the entry. The Ashlul el Khuzurka is also in dispute as the plaintiff claims it is south-west of Ras el 'Ali one of the hilltops of Rous esh Shammas. The ashulul lies between the localities of Khirbat Yunis and Khuzurka and is the most reasonable place to seek an ashulul of this name. The defendants claim the ashulul is the wady far away to the west of Ras el 'Ali, and between the locality of Nazzaza and perhaps Farsh el Wastani, but the evidence of his witnesses is neither clear nor reliable on this point. The settlement officer comes to the conclusion on the evidence that Ashlul el Khuzurka lies between Khirbat Yunis and Khuzurka as claimed by the plaintiff.

The western boundary is the Nazzaza and Journ en Nassura. The Nazzaza of the plaintiff is the seepage point at the head of the Wady Nazzaza to which the defendants do not agree and suggest the alternatives of Wady en Nazzaza or Mauqa' en Nazzaza. The first alternative is not accepted as there is no reason to hold that the word wady was omitted from the description. The second alternative is rejected as the only evidence for a locality called Nazzaza is given by the defendants who include the land within their boundaries. The Nazzaza must be outside the boundary and not within the land described. This claim of the plaintiff is accepted and the Nazzaza referred to in entry No. 140 is found to be the seepage point in the wady. The second part of the western boundary is Journ en Nassura which all parties agree is a hole or bowl in the rocks. The Journ of the plaintiff is an insignificant natural depression in the surface of a sheet of rock and by comparison with the imposing natural features selected for the other boundaries is a very modest point indeed, but the smallness of the feature does not preclude it from being the Journ referred to in the entry. The defendants' Journ was on the top of the high cliffs overlooking the Wady Falah and though the cliffs have been extensively quarried there remain some traces of a hole in the cliff. The settlement officer considers the evidence of both parties concerning their Journ 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 is satisfied from numerous inspections that the Journ of the defendants was a cave in the cliffs, most probably open to the sky and the south and never a hole in the shape of a flask as the defendants would have him believe. The settlement officer decides that the Journ of the plaintiffs is the Journ en Nassura of the entry.

9. These boundaries now identified do not describe an area of land as with the exception of the southern and eastern sides the line is not continuous. There are breaks between the Kitf el Jabal on the east and Ashlul Kuhzurka on the north, and the Nazzaza and Journ en Nassura on the

west, with Rous esh Shammas lying to the north of the ashlul. This, however, is unimportant, as it is doubtful if there was an intention in 1882 to describe anything but the general boundaries of Khirbat Yunis. The possibility that a day would come when the transferees might dispute the title of the State was probably remote in the mind of the official concerned for no mewat land ordinance existed then to restrict the grant to all in need.

10 The area that was granted has now to be decided. The entry under discussion is a record that the transferees cleared and opened a field of 34 Turkish dunums and paid the badl misl as required. There is no other entry in any land book for Ard Khirbat Yunis and this is held to show that the whole of Khirbat Yunis is covered by this entry. It indicates, however, in the light of the evidence concerning cultivation and the state of the land as seen during the inspections made during these proceedings that no other persons sought permission to open or clear the land or did so without permission. The area actually under cultivation has never exceeded 200 dunums and more probably only 150 and no greater area shows any signs of ever having been cleared. The land books of Tira, as in every other village, were registers of land transactions in sequences as they came to be registered and not registers of land in which every parcel in the village was recorded.

The defendants argue that there was something in the nature of a contract between transferees and the State, that the badl misl confirmed the contract and was a permission to clear and open the rest of the land within the remaining part of the grant. This argument appears to rest upon the first part of Article 103 of the Land Code and 12 of the Tabu Law by which a grant of mewat could be made and a miri deed issued after the conditions of the grant had been fulfilled. In the case under review there was no grant for opening or development as the transferees had opened the land without permission and were granted a title for the land they had opened. If there was a grant to the transferees of the remaining part of the land under the first part of Article 103 there is no record to prove this fact. The registration into which entry No. 140 was subsequently converted was for 34 Turkish dunums and is the only area that can be claimed on the basis of that registration.

11. This was the position in 1937 by which time about 65% of the shares held by the heirs of the transferees were registered in the name of the Kupat-Am Bank Co-operative Society Ltd. as owners. On the 24th of October, 1937, the Bank filed an application to the Registrar of Lands of Haifa for the correction of the area from 31.256 metric dunums equal to 34 Turkish dunums to 3528 dunums 105 sq. metres according to a survey plan filed by them with the application. The plan showed the land divided into four parts A B C and D equal to 3528.105 dunums, and a fifth part E of 83.119 dunums which was subsequently included to make a total of 3611.224 sq. metres. The part E was described as Mauqa en Nazzaza and though not included in the application was considered and dealt with as part of the transaction.

After the plan had been examined and found correct and the application checked and various deductions made the correction was approved on the 22nd of June 1938 and the Bank registered as owners of shares

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in 3296 dunums 197 sq. metres for which they paid badl misl of LP.426.590 mils. Their co-partners, all heirs of the transferees, were no parties to this application and remained registered as owners in 34 dunums by separate registrations.

In 1940 the Bank promoted a town planning scheme, No. 34, which was finally approved by the Haifa District Town Planning Commission on the 2nd of December, 1941.

On the 23rd of November, 1941, the Bank submitted a memorandum of claim under the land settlement ordinance and on the 28th the Government filed its claim to the land as unassigned State domain and part of forest reserve No. 195. The co-partners of the Bank claimed part of forest reserve No. 195. The co-partners of the Bank claimed the remaining shares in all the land by registration and possession. 10

12. The plaintiff claims the correction of area was obtained by gross misrepresentation, that other localities besides Khirbat Yunis were included in the plan, that the boundaries were incorrectly shown, and that the whole transaction was misconceived by both parties. The plaintiff further claims there was no way in fact or intention a grant of any fresh rights and that the original grant was for 34 dunums and no more.

To take first the claim of gross misrepresentation, the application of the defendants was filed with a plan to show the boundaries. 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 on the nature of the land. The report is inadequate as a statement of the area under cultivation but it is correct in so far as it drew attention to the presence of rocks, wild trees, slopes and cultivable land within the boundaries in the plan. Finally this report contained a recommendation that certain lands should be excluded, and this recommendation was accepted. The surveyor referred to a closed forest area and the file was sent to the forest department. The closed forest area was shown in the plan and excluded from the applicants' registered land. The enquiry was limited to the closed forest area and the forest reserve No. 195 was either unimportant or overlooked. Before the surveyors engaged by the applicant to make the plan commenced their work they had sought the permission of the forest department to make a survey in the forest reserve, and there is the evidence of exhibit " 6 " to show the forest department were aware of the impending application. The file was also referred to a Government agricultural officer who rendered a report he now admits was both inaccurate and misleading, though the report draws attention to rocky and uncultivated land within the boundaries. The file was also sent in the customary manner to the revenue officer who reported upon the tax categories of the land. On the 22nd of May 1938 and after these reports were filed the attorney for the applicants sent to the Registrar a letter in paragraph 4 of which he declared the land was under actual cultivation and in paragraph 8 that most of the land was under effective and proper cultivation. A copy of the Government of Palestine map of Haifa district with the boundaries of the defendants' plan superimposed was also filed and showed the applicants' boundaries extended beyond the limits of Khirbat Yunis as shown in the Government map. All these contradictory statements were on the file before the correction was approved. 20 30 40 50

It is most probable that the applicants and Mr. Edmond Levy who has the principal interest in this land were aware of conditions in the land registry at the time and that the rebellion then in progress hampered the work of examining officers. But even so, the application was examined, passed the checks designed by Government to protect its interests who at all times could have rejected the application. The settlement officer finds the facts of registration, of the revenue records, of the forest reserves and of the nature of the land were as readily available to Government as they are to-day and that the claim of gross misrepresentation does not succeed.

*Before the
Settlement
Officer,
Haifa.*

No. 35.
Decision of
Settlement
Officer,
Haifa,
15th March
1943,
continued.

10 13. The findings made in paragraph 8 of this decision confirm the claim that other localities were included in the plan 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. The northern boundary of Rous Esh Shammas was fixed on Ras el 'Ali, and two points in low ground at the bottom of the hills. If any person competent to judge had checked this boundary on the ground it would have been abundantly clear that this boundary was pure guesswork. The part marked E and named as Mauqa' en Nazzaza is a sufficient indication that the plan included another locality and if attention had
20 been directed to this fact the inaccuracies would have been revealed. There is, however, no actual proof apart from circumstantial evidence, that the applicant was aware that the boundaries were inaccurate. The plan made for Mr. Edmond Levy in 1926 and the agreement to sell he made in 1934 show that he did not know the area of the land he purchased and proposed to sell, but that he was aware of other boundaries is only an inference to be drawn from these documents and not a fact established.

14. The fourth point taken by the plaintiff is that the transaction of correction of area was misconceived by both parties, that a mistake was made and should be corrected. The correction of area was considered
30 to be the correction of an error and it has been stated for the land registration department that by approving the correction no new right was created or intended, that corrections are not dispositions under the Land Transfer Ordinance but made by the authority of Article 5 of the Law of Immovable Property of 1331. This appears to be the only provision for the correction of a register, and is the basis for the practice of correcting the registers since the land registries were reopened in 1920. The principles that appear to have guided the registry that an entry is in error are embodied in Article 47 of the Land Code that defines the rights and obligations as between a purchaser and vendor of a miri title. This article
40 has no application in an instance like the present where between the State and transferee there was no feragh. But assuming that the article did apply, in this case the registration was of 34 dunums for which badl misl had been taken. If the transferees had any right to open up the remaining area there is no provision in law for the taking of badl misl for mewat land, and if the badl misl was taken in exercise of the provisions of Article 47 there is also no authority. Finally, there is nothing in Article 47 to authorise the correction of an error by a registrar of lands. In 1942 the plaintiff wrote to the 22nd defendant and asked for the return of the arrears of badl misl paid at the time of the correction of the area. From this it
50 appears that the badl misl was a sum due to Government which could only have been due as consideration for a grant. Since there was no

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No. 35.

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grant there were no arrears of badl misl and the sum paid by the applicant on correction of the area was not badl misl as known in land law. There is also the minor point that the taking of badl misl connotes the perfecting of a right and not the correction of an error which was the tenor of the defendants' application.

The settlement officer finds that in the absence of any person exercising the functions of the Mejles Idara under Article 5 of the Law of Immovable Property 1331 there is in law no authority for the correction of an error in the land registry other than by judgment or order of a competent court or land settlement officer. In so far as the approval of the application purported to be authority for the correction of an error the settlement officer finds it was bad in law and for want of proof of any error. The practice of correcting errors in land registers is one sanctioned by custom since the registries were reopened in 1920 but the custom can only be enforced when it is shown that an error exists. 10

15. The 22nd defendant is at present the holder of a title deed in which the area is correctly shown according to the registered plan. Though both parties misconceived the nature of the transaction the plaintiff could have refused approval if satisfied there was no error. But this was not the case for after having examined the application and referred the file to the different Government offices concerned with protecting Government interests there was no doubt in the mind of the approving officer that an error had occurred and that it should be corrected in the manner established by custom since the British occupation. Because now in the light of stringent enquiries it has been shown that the officers entrusted with the duty of making enquiries were either negligent, timid or incompetent that is no reason for withdrawing approval once granted in good faith and not obtained by fraud. The 22nd defendant has been extremely fortunate in securing a registration of over 3000 dunums for one of 34 but as the magnitude of the difference was no bar to the correction being approved, so it is no bar to holding Government to the approval which they granted. 30

The settlement officer has considered whether the defendants' registration should be corrected and reduced to the true boundaries of Ard Khirbat Yunis as found by him. He has found there was no justification for correcting the area as no error had been proved and were it not for his finding that the Government of Palestine is bound by its conduct and actions he would not confirm the correction of area. But since he holds that Government is bound by its actions it is clear they cannot be held to one part and released from another. He therefore finds that as no fraud has been alleged or proved, and that the plaintiff is bound by its conduct the 22nd defendant is entitled to have the title confirmed in the settlement. For these reasons the claim of the plaintiff to the shares of the 22nd defendant is dismissed. 40

16. In regard to the other defendants, they hold valid title deeds for 34 Turkish dunums and no more. Their registrations are independent of those of the Kupat Am Bank and they were no parties to the application and no approval to the correction of the area in their deeds was given. There is nothing in the land book to show they are entitled, however mistakenly, to obtain correction of the area on payment of badl misl. 50

Their claim to any area in excess of 34 Turkish dunums must be supported by evidence of revival and possession of mewat land before 1921. The evidence of the witnesses does not support a claim of this nature and there is no proof of any kind that they cultivated more than 34 dunums around the khirbe before 1921. These defendants can have no claim to enjoy the benefit of a mistake made by the plaintiff in correcting the title deed for the shares of their co-partner, for the settlement officer cannot order the plaintiff to continue to make mistakes.

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Settlement
Officer,
Haifa.*

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Officer,
Haifa,
15th March
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continued.

10 For these reasons the claims of the first 21 defendants are dismissed to all the shares claimed by them in Ard Khirbat Yunis as registered in the name of the Bank with the exception of 34 Turkish dunums only.

No order as to costs or hearing fees.

Decision delivered in the presence of Mr. Koussa and by delegation from Abcarius Bey and Mr. Edmond Levy on the 15th of March, 1943, at Haifa with usual notification re-appeal.

15.3.43.

(Sgd.) CECIL KENYON,

Settlement Officer.

No. 36.

LEAVE TO APPEAL.

20 Case 2/Tira.

Land Settlement Officer,
Haifa Settlement Area,
P. O. B. 395, Haifa.

No. 36.
Leave to
Appeal,
14th April
1943.

14th April, 1943.

Sir,

With reference to your application dated 12.4.43 for leave to appeal from the decision of the Settlement Officer in Case No. 2/Tira, delivered on 15.3.43, I have the honour to inform you that leave to appeal is hereby granted.

I have the honour to be,

30

Sir,

Your obedient servant,

MR/JKS

Crown Counsel
Jerusalem.

(Sgd.) CECIL KENYON,

Settlement Officer,
Haifa Settlement Area.

No. 37.
Statement
of Appeal,
7th May
1943.

No. 37.
STATEMENT OF APPEAL.

C.C.3/5/1.

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

Case No. 2/Tira.

THE GOVERNMENT OF PALESTINE

Appellant

v.

- | | |
|---|-------------|
| 1. 'AYISHA MUSTAFA DIRBAS | |
| 2. LABIBA MUSTAFA DIRBAS | 10 |
| 3. 'ALLU AHMAD MUHAMMAD 'ALLU | |
| 4. AS'AD MUHAMMAD HASAN 'ALLU | |
| 5. AHMAD MUHAMMAD HASAN 'ALLU | |
| 6. SUKKARA MUHAMMAD HASAN 'ALLU | |
| 7. WATEA SA'ID MUHAMMAD HASAN 'ALLU | |
| 8. THURAIYA AHMAD ES SARWA | |
| 9. DHIB 'ABD EL QADIR HASAN 'ALLU | |
| 10. DHIBA 'ABD EL QADIR HASAN 'ALLU | |
| 11. DHIYAB 'ABD EL QADIR HASAN 'ALLU | |
| 12. KAMILA 'ABD EL QADIR HASAN 'ALLU | 20 |
| 13. NIMR 'ABD EL QADIR HASAN 'ALLU | |
| 14. AHMAD SALIH HASAN 'ALLU | |
| 15. AMNA SALIH HASAN 'ALLU | |
| 16. FATIMA SA'D MUHAMMAD HASAN 'ALLU | |
| 17. RAUZA SA'D MUHAMMAD HASAN 'ALLU | |
| 18. MAS'ADA SA'ADA MUHAMMAD HASAN 'ALLU | |
| 19. FATIMA SA'ADA MUHAMMAD HASAN 'ALLU | |
| 20. AMNA SA'ADA MUHAMMAD HASAN 'ALLU | |
| 21. YUSRA 'ABDALLAH SALIH HASAN 'ALLU | 30 |
| and | |
| 22. THE PALESTINE KUPAT AM BANK CO-
OPERATIVE SOCIETY LTD. | Respondents |

AND

- | | |
|------------------------------|---|
| 23 BARCLAYS BANK (D.C. & O.) | Respondent
(originally
third party) |
|------------------------------|---|

Leave to appeal having been granted by the learned Settlement Officer, on the 14th of April, 1943, appeal is hereby made against his judgment of the 15.3.43, on the following grounds:—

1. The learned Settlement Officer erred in holding that the 22nd 40
Defendant was entitled to any land outside the area lying within the
boundaries:—

East : Kitf al Jabal.

South : Kitf al Jabal.

West : Jurn en Nasura and en Nazzaza.

North : Rous esh Shammas with Ashlul Khuzurka.

2. The learned Settlement Officer erred in awarding to the 22nd Defendant any land lying inside the above mentioned boundaries over and above their share in the 34 Turkish dunums mentioned in their Kushan of Kanun Awal 1298.

No. 37.
Statement
of Appeal,
7th May
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continued.

3. The learned Settlement Officer erred in holding that the alteration of entry made in the Land Registry on or about the 22nd June 1938 conferred on the 22nd Defendant any greater rights than those it possessed prior to such alteration.

10 4. The learned Settlement Officer having found that a mistake was made in altering the entries in the Land Registry in 1938 erred in holding that that mistake could not now be rectified.

5. The learned Settlement Officer erred in holding that this alteration was not obtained by misrepresentation.

6. In holding that this alteration actually conferred on the 22nd Defendant a right to 11294/17280 shares of 3296 dunums 197 sq. metres of land most of which lies outside the boundaries referred to above, the learned Settlement Officer misconceived and misapplied the law.

20 7. The learned Settlement Officer erred in holding that any one other than the High Commissioner could make a valid grant of land belonging to the Government.

It is accordingly prayed that the judgment of the Settlement Officer granting the claim of the 22nd Defendant (22nd Respondent herein) to 11294/17280 shares in the whole area of 3296 dunums 197 sq. metres be set aside and that they be awarded those shares in 34 Turkish dunams only, and that they be ordered to pay the costs of the proceedings or that this Honourable Court may give such judgment in the matter as to it may seem fit.

Dated this 7th day of May, 1943.

30

Sgd. M. J. HOGAN,

Crown Counsel

for Attorney General

c/o David's Bldg., Jerusalem.

No. 38.

NOTES by Rose, J.

C.A.160/43.

Appellant—Hogan.

Respondents 1–21—Koussa.

Respondents 22—Abcarius and Eliash.

Respondent 23—Unrepresented.

40 *Preliminary Objection.*

1. No Enemy Declaration (p. 939/1940).

2. S.63 Land Settlement Ordinance.

C.A. 133/43. Appelbom Part XII page 182.

No exemption of fees in favour of Government.

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Court of
Appeal.*

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Notes by
Rose, J.,
27th July
1943.

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Court of
Appeal.*

No. 38.
Notes by
Rose, J.,
27th July
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continued.

Hogan : Maxwell (6) p. 244. Crown not named, therefore not bound. December 1882, 4 men obtained from Turkish Land Registry a Kushan for 34 dunams within named boundaries.

Settlement Officer found clear question under article 103 Ottoman Land Code. Edmond Levy in 1937 had 63% interest of this kushan. Exh. 40. Agreement Levy and his so called partners. Petition lodged to correct area from 34 to 3600 dunams. Basis of same kushan—"error" mention of 34 dunams. Supported by plan lodged by Kupat Am Bank. (Land Registrar). Jaouni—Grade O. Clerk. Survey Department 37/38—accompanied by notables (14.12.37). Fol. 6 Exh. 1. Fol. 20 ditto. 10

Closed forest area. Whole area in Forest Reserve—since 192—.

Palestine Gazette, 16th July 1929, page 819 (14.060 dunams).

Gottliebs Report—inaccurate and misleading.

Jardine Acting Director of Lands.

22.6.1928. Folio 47 Exh. 1. Administration letter to Registrar of Land, Haifa.

(1) Jardine had no power.

(2) Mistake of fact as to placing of boundaries.

(1) No power. Art. 3, page 169 Tute. Anyhow, no power to make grant to Kupat Am Bank. This only can be by High Commissioner under 20 12 and 13 of Order in Council.

Jardine wrong in fact—no error shown. Paragraph 15, judgment.

(Information from District Administration not accurate.)

3296 new dunams.

(919–1000) (in exchange for 32 new).

Turks collected Badl Misl on 32 only. Jardine collected £.400 "arrears due to Government." He did confer title he believed they had it all right. Settlement Officer held Government bound by Jardine (who was mistaken in fact and had no power to make correction anyhow). Art. 47 (p. 52 Tute). Only applies to sales—not to grants. No similar provisions 30 as to grants.

No similar provisions as to grants. "Sale" and "Grant" have contradicting meanings.

Jardine anyhow says 650 dunams. (Loxton Commission—625 new dunams—Including closed forest area).

Art. 47 only applies to lines not to points. C.A. 145/41. Appelbom 653.

Alternatively : No grant received since 1882. Jardine does not purport to have given one. No one can do so except High Commissioner.

Land Registrar has no power. It is not a registry of title.

Prior to Land Settlement—merely a Registry of Deeds and documents. 40

If Jardine had power then relief should be given against that mistake—and error in title should be correctly settled.

Equity will relieve against mistake. Hailsham (23) p. 145 para. 204.

Anglo-Scottish v. Spolling. 1937 2 K.B. p. 607.

Money—Law clear—principle as to the recovery of land, same as for recovery of money. P. 102. Vol. 35 Digest No. 89. Page 109. No. 142.

Summary : Title depends on what happened in 1882.

Grounds made under Land Code for 34 (old i.e. Turkish) dunams.

Art. 103 Land Code. Boundaries included 625 (New) dunams but grant only 32 (new) dunams and not intended to include anything more. 50

Boundaries merely indicated where land lay.

Art. 47 had no application to this transaction. Governed entirely by Art. 103. Para. 14 of Settlement Officer's decision.

Later Levy acquired 63% of shares in that title. In 1937 they told Director of Land Registration that error in kushan itself—that boundaries actually comprised 3600 odd dunams (old). This statement untrue. Actually boundaries enclose area of only 625 (new) dunams.

Relying on this mis-statement and by mistake, the Land Registrar permitted entry in Register to be altered. So that these same boundaries were shown to include 3296 (new) dunams.

In addition to mistake of fact, Director of Land Registration exceeded his power in making this alteration. That alteration did not and was never intended to give Kupat Am Bank title to any greater area than they previously had.

No one except High Commissioner could give them that title, therefore I ask Court to direct Land Settlement Officer to hold Bank entitled only to 63% of land comprised in original kushan (i.e. 32 new dunams).

Alternatively, if wrong about Art. 47 i.e. if that article does apply to this grant then give them title to 63% of 625 dunams.

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Appeal.*

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1943,
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No. 39.

NOTES by Edwards, J.

No. 39.
Notes by
Edwards,
J.,
27th July
1943.

CIVIL APPEAL No. 160/43.

20 *Coram* :—Rose and Edwards JJ.

Crown Counsel for Appellant (Government of Palestine).

Abcarius Bey for Respondents (Palestine Kupat Am Bank Co-operative Society Ltd.) (Mr. Eliash with him.)

Mr. E. Koussa for Respondents 3–21 :

and Abcarius Bey also for Respondents 1 and 2.

Koussa :—C.A.160/43. No appeal. No enemy declaration : does not comply with Section 63 Land (Settlement of Title) Ordinance. C.A.133/43, Appelbom Part 12, page 182. No exception in favour of Government. Section 7 Crown Actions Ordinance. Defence (Courts Regulations) 1940

30 Regulations. Government has not paid a deposit. Section 19 Land (Settlement of Title) Ordinance. Civil Procedure Rules 1938—no exemption in favour of Government.

Hogan :—Re security for costs. Crown not bound by a Statute unless specifically mentioned. Maxwell 6th Ed., p. 244 and p. 248.

Koussa :—Replies. Red book. “ Appeal ” is not an action.

Judgment reserved on preliminary points.

(Sgd.) D. EDWARDS.

40 *Hogan* :—Land involved concerns thousands of dunams. In December 1882 four men got a kushan for area of 34 Turkish dunams lying within named boundaries. First part of judgment. Dispute as to boundaries. In 1882 received grant (because of cultivation) on payment of Bedl Misl. (Art. 103 Land Code). In 1926, Edmond Levy and between 1926 and 1927 acquired a share of 63% of shares in land from successors or heirs of the four men and paid LP.184 only. Levy, in 1924, arranged to sell his share at LP.5 per dunam plus 50% of profit to be made by purchasers, who intended to make a Garden City. He made plans to have the 34 dunams

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expanded. Exhibit 40 left tremendous scope. In 1937 he got busy and lodged in Land Registry Haifa a petition to correct area from 34 dunams to 3600 dunams, on basis that the boundaries actually mentioned in the Kushan comprised 3600 dunams. The Kupat-Am Bank lodged it. (Levy's interest had been transferred to Kupat Am Bank who have no permission to hold land). Petition was put in a file. Plan was passed to Jaouni early in 1938, a surveyor, who went to the land with villagers of Tireh, who were provided by Levy. Jaouni was attached to the Land Registry. Folio 6 in Exh. 1. See Folio 20. Then an Inquiry was addressed to Forest Ranger re closed forest area, but did not say that whole area was declared in 1929 a forest area. Gazette referred to. Gazette 16.7.29, page 819. (14060 metric dunams). Gazette of 11.2.37 closed forest area. Matter was then referred to an Agricultural Officer—Mr. Gottlieb—Exhibit 1. Gottlieb did go to the land and made a report which he admitted was misleading (hurried—dangerous time—brave man)—Gottlieb himself described it as misleading. Registrar of Haifa did not himself go and inspect. File sent to Director of Land Registration and on 22.6.38 Acting Director of Land Registration signed a letter ordering a correction to 3400 odd dunams. See the letter Folio 47 on Exhibit 1 addressed to the Registrar of Lands, Haifa. Exhibit No. 16 Circular of 1934 from Director of Land Registration asking them to consult Forest Officers. 10

Jardine's powers. I say he had no power to make the alteration, (S.O. found in my favour), and in making it he made a mistake of fact because he believed that the boundaries were in a different part of the land than they were. Para. 8 of judgment and para. 9. Practice of correcting area in Land Registry following the practice of old Turkish times. (Art. 3 of law of Disposition of Immovable Property of 1331—Page 169 of Tute.) Power not given to Land Registry itself. Mejlis Idara not replaced. Page 7 of judgment end of Para. 14. Jardine had no power to order and no power to make a grant of land to Kupat-Am Bank. Under Art. 12 and Art. 13 of Order-in-Council not one but High Commissioner alone. No delegation by High Commissioner to Director of Land Registration. Mr. Jardine had no power to make a grant. Top of page 7 of judgment—end of Para. 14 of judgment. Para. 15. See evidence of Mr. Jardine, page 8 (blue pencil mark). End of Para. 15 of judgment—second part of Para. 15. Jardine wrong (1) because he had no power and (2) no error established. Reference was also made to the District Administration re Rural Property Tax, which furnished incorrect information. System of levying rural property tax—not concerned with owners but only with total area of agricultural land and the Local Village Committee draw up a list, in duplicate, of who should pay. List showed "Mukhtars in trust for the village." One copy sent to District Officer and one kept in village. The Mukhtar wrote later saying it was a mistake and said it should have been in name of Kupat Am. The District Officer, without enquiry, accepted this and said it was an error. No taxes are paid on waste land. Copy of list in village was never altered and showed land belonged to Mukhtar in trust for village. That is the true list. Law now altered and these lists now are no evidence of ownership. Jardine acted on incorrect information. Mudir-el-Mal's evidence and exhibits. Jardine's evidence: he thought he could make corrections in absence of Mejlis Idara. 30 40 50

- 3296 dunams were given to Bank (new dunams). The actual boundaries were different. Jardine excluded the closed forest area (3296 instead of 32). Jardine collected LP.400 as arrears of Bedl Misl from Kupat Am Bank. He thought Kupat Am Bank had a title to this area. The Settlement Officer accepted the argument is bound by Jardine's extension. Courts will relieve against a mistake. Jardine did not think he was conferring an additional title. He was induced by representatives of Kupat Am Bank to believe that the boundaries were somewhere else. The boundaries actually comprise only an area of 650 dunams and not
- 10 3296. The Land Settlement Officer held that Art. 47 Land Code had been misinterpreted by the Land Registry (Tute, p. 52). I say that 47 applies only to sale to private individuals and not to grants by Government. You only got the area Government intended in the instrument to grant. See end of Art. 103 (word "grant") Sale (Turkish) "farrah" and grant is "Tapou" (Page 97 of Tute). See difference in Art. 3 (Page 7). Art. 78 "grant." See Art 103 "grant only of land which he has cultivated." In our case no more than 200 dunams were ever cultivated. If I am wrong re Art. 47, then I rely on Jardine's own estimation of 625 new dunams, instead of 3296. Exh. 13 (Loxton Commission
- 20 Report) which includes closed Forest Area. One other reason why Art. 47 does not apply—because the boundaries in Turkish Kushans not continuous and only on three sides are the boundaries continuous—only points and not boundaries, i.e. not continuous line—C.A.145/41, Appelbom's Reports for 1941; and p. 653 of Applebom. Assuming Art. 47 does apply by virtue of Kushan of 1882, the Kupat Am Bank would be entitled to 625 dunams. In 1882 they got a grant and never since then did they ever receive any grant. Jardine says he never gave them a grant. Not even a Register of Title—it is only a registry of deeds or documents. Subsequent to Land Settlement it might be a register of title, Book Registration of Title through-
- 30 out the Empire—1920 page 3. Cyprus—not registry of title: merely a deed registration. If Jardine had power to confer on Kupat Am more than they had before, he laboured under mistake and relief should be granted and the area if any should be correctly established, i.e. error should be correctly settled. Para. 15 of Judgment. See Para. 16 of Judgment. Kupat Am induced Jardine to make a mistake in 1938. Land Settlement Officer thought that Jardine should never have made that mistake. Wrong proposition that Government is bound by mistakes or negligence of Jardine; relief can be granted. Hailsham, Vol. 23, page 145, Para. 204. Anglo-Scottish Sugar Corporation v. Spalding Corporation. E. & E. (1937)
- 40 2 K.B. p. 607. Digest, Vol. 35, page 102, No. 89 and p. 109, No. 142.

I now close summing up—Title depends on what happened in 1882. Land Code grants by Daftar Khani. They gave this grant to four people for 34 Turkish dunams within certain boundaries in Khirbet Yunis under Art. 103 Land Code. The boundaries actually included 623 new dunams but the grant was only of 34 dunams and was not intended to include anything more. The boundaries merely indicated where the land lay. Art. 47 had no application to this transaction—governed entirely by Art. 103. I rely on para. 14 of Land Settlement Officer's judgment. In the subsequent Levy and later Kupat Am acquired 63% of the shares in

-50 that title. In 1937 they tell the Director of Land Registration that there was an error in the Kushan itself and that the boundaries actually comprised 6300 odd dunams—that was untrue—those boundaries in fact comprised

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Appeal.*

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continued.

only 625 dunams. Relying on the mis-statement and by mistake, Land Registrar permitted the entry in the Register to be altered so that these self-same boundaries were shown to include 3296 dunams. In addition to the mistake as to facts, Director of Land Registration exceeded his powers in making that alteration. That alteration did not and was never intended to give the Kupat Am Bank title to any greater area than they previously had. No one except His Excellency the High Commissioner could give them that title.

Therefore I ask Court to direct Land Settlement Officer to hold them entitled to only 63% of land comprised in the original kushan which I say 10 is 32 dunams. If I am wrong re application of Art. 47, and if Court holds that Art. 47 does apply, then I ask Court to give them title to 63% of 625 dunams.

ORDER.

Adjourn to a date in September, 1943.

No. 40.
Agreed
Shorthand
Note—
Advocates'
addresses,
24th May
1944.

No. 40.

AGREED SHORTHAND NOTE. Advocates' Addresses.

24.5.44.

Mr. HOGAN, *re-addresses* : The land with which we are dealing lies to the south of Haifa. As you approach Haifa you have got on the right 20 hand side a low cliff on which there is a plateau, where there is beautiful land. In 1882 the Turkish Government made a grant here to Dirbas and partners under Art. 103 of the Ottoman Land Code for 34 old dunams. Badl el misl was paid. 34 old dunams is equivalent to approximately 32 new dunams. The boundaries of this kushan were determined by the Settlement Officer. Government accepts his determination. The area within the boundaries is 625 dunams. These boundaries have been the subject of a bitter fight, determined by the Settlement Officer. The question arises as to whether the original grant included 34 dunams or all land within the boundaries. It is contended that under Art. 47 of 30 the Ottoman Land Code if there is a difference between the registered area and the boundaries, then the boundaries predominate. The contention of Government which was upheld by the Settlement Officer is that :

(1) Art. 47 applies only to sales between private individuals and not to grants from the State. The word used is Faragh and not Tafwid. L.A.15/28—Rottenberg, Vol. IV, page 1475. Para. 14 of the Land Settlement Officer's judgment deals with that point, and he found in our favour.

(2) The boundaries in this case are not specified, as required by Art. 47. The boundaries on one side are points and not lines. C.A.145/41, 40 Appelbom 1941, Vol. II, page 651. In order to decide on this point one has to look at the boundaries set out in the kushan, which are :

E. Kitf el Jabal.

S. Kitf el Jabal.

W. Jurn en Nassura and en Nazzazeh.

N. Ashlul Khuzurka and Rous esh Shammas.

Points—not definite. An imaginary straight line between the points is not a definite boundary. Our submission is that the original grant of the Turkish Government is only 34 dunums, but if I am wrong they get what is within the boundaries, 625 dunams only.

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In 1929 this land was proclaimed as Forest Reserve, No. 195, Official Gazette 819 of 16.7.1929. That particular proclamation covered the whole of the area with which we are concerned, but it did except two small areas, first item 16 of 10 dunams, by virtue of kushan. 2nd item of 5 dunams, not by virtue of kushan. This 2nd plot was held by
10 Settlement Officer to fall outside boundaries of Kushan. Meanwhile Mr. Levy had cast eyes on this land and decided that it would form a nice garden city. He started buying up shares in this kushan. He started in 1926, and acquired 63% interests in this kushan. The remaining 37% belong to a large number of people, whose names appear at the head of the judgment as defendants 1-21. Having got these 63% he transferred his interest to the Kupat Am Bank, who are the 22nd Respondent, and are only nominal respondents. Levy prosecuted case all through. The land was not included in balance sheet of Bank. Consideration declared in Land Registry by Mr. Levy for his purchases was LP.184 for 63%
20 shares. Whether this was the correct consideration it is difficult to say. In 1934 Mr. Levy entered into an agreement with other parties and agreed to sell his interest at a price of LP.6.- per dunam, plus 50% of profit. It makes provision for expansion of area. In 1937 he opened at the Land Registry a transaction for the correction of area. A manœuvre to acquire land at expense of Government. Mr. Levy in the name of the Kupat Am Bank applied to the Director of Land Registration to alter the registration from 34 dunams to 3528 dunams. Correction passed. Settlement Officer when referring to the transaction stated that the officials at the Land Registry were either negligent, timid or incompetent. No specific allegation
30 of bribery, but gross misrepresentation and mistake. When this application was received by the Land Registry in 1937, they opened a file, and made a series of enquiries. They got a surveyor to see whether the boundaries set out in the map were correct. Mr. Jaouni went together with three gentlemen sent by Mr. Levy. He looked at the ground and he was told by the gentlemen sent by Levy this is so, and this is so. He came back and said this is so. Inaccurate information also came from the Mudir Mal. It was said that the land was recorded in name of Kupat Am Bank in Rural Property Tax list. The local villages have a list of the total area which is cultivated. They make up the lists themselves, of those who
40 are going to pay in respect of it. This is not done by Government. This is made in two copies. One is sent to the District Commissioner, and one is kept by them. The copy at the District Commissioner's office originally showed the area in question as registered in the name of the Mukhtars in trust for the village, but was corrected on the basis of a letter from one Mukhtar, whose actions throughout this matter we regard with the gravest suspicion. The Mudir el Mal said this alteration was made on the grounds that it was a clerical error. Village copy was not altered.

The Director of Land Registration, when approving correction,
50 thought he was acting under Art. 3 of Law Regulating Dispositions, 1331. Tute's translation on page 169 not quite accurate. Correction to be made

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by order of the Mejlis Idara (Administrative Council). No Mejlis Idara at present. In absence of same, Director of Land Registration has no power to correct errors.

Mr. Jardine in evidence said he did not contemplate and had no power to grant land. He said he was merely correcting an error. Mr. Jardine did not see land. He excluded a portion because it was a closed Forest Reserve. His approval made in July 1938. No explanation as to why Land Registrar asked about closed Forest Reserve and not all Forest Reserves.

If this land was private property in 1929, it could not be declared a forest reserve. Under the Forests Ordinance no private land could be declared a Forest Reserve. 10

The Director of Land Registration in his evidence said that he did not grant new title but was correcting an error. See pages 5, 7 and 9 of his evidence. He has no authority to correct boundaries. The High Commissioner is the only person who has power to grant land.

Our contention is that the rights to this land were given in 1882 and could not have been increased by the Director of Land Registration in 1938. No question of estoppel arises. Prior to Land Settlement the registration in the Land Registry is a registration of document, and not of title. The original grant under Art. 103 was in respect of cultivated land. The boundaries given were in order to indicate the position and not the extent of the area. These boundaries included only 625 dunams, and were not in the position which the Kupat Am in applying for a correction of area said them to be. 20

COURT: Suppose increase was very small, would you agree to an alteration?

HOGAN: No. There is no legal justification for correction of area. The Land Registrar has no right to alter documents.

Mr. Jardine believed that the boundaries were as shown on the plan, and that if they were correctly shown, the applicants were entitled to the whole area within the boundaries. £400 paid as badl el misl. We are prepared to return the £400. Mr. Jardine in approving the expansion of area has excluded a few dunams. Why did not the applicants insist on non-exclusion? They thought they were doing very well without the small area excluded. Director of Land Registration was labouring under a mistake induced by misrepresentation arising from: 30

1. Information from Revenue Office.

2. Mr. Bernblum's letter that the whole land is actually under cultivation, 40

but above all:

3. The fixation of the boundaries not in the correct place.

COURT: Since 47 is not applicable, what about, say, if there is a mistake, should you wait for Settlement?

HOGAN: Yes. Only Settlement Officer has power to alter boundaries. If original grant was not in respect of the 3500 dunams, then the erroneous act of Mr. Jardine cannot give the applicants a title thereto. If they had

a good title before, they cannot have any title now. Mr. Jardine had no power to grant any title. He thought he was bringing the kushan into harmony. He was wrong. Even if he were right, it was not for him to do it. Only Mejlis Idara could do it. He had no power to do this himself. The High Commissioner only could do that. Even the High Commissioner cannot do it except in conformity with the law or the Royal instructions.

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Estoppel: Government cannot be estopped by the illegal acts of its servants. Not like an individual doing something he is entitled to do.
10 There is no question of estoppel. We cannot be estopped because someone did something he had no power to do. Everybody is supposed to know the law. If I go to the wrong person and he does something he has no power to do, Government cannot be estopped. I should not go to the wrong person.

Mr. Jardine was acting as Director of Land Registration. His statutory powers are, for example :

1. To consent to dispositions under Land Transfer Ordinance.
2. To effect registration by order of Court under Land Courts Ordinance.
- 20 3. To sign deeds of sale whereby land is purchased for Government or His Majesty's Forces.

He has no authority to direct correction of area.

We have a good grant for 34 dunums in 1882. The Kupat Am has 63%. Therefore they have a good title to everything which was included in the original kushan. My submission is it was only 34 dunums.

The transaction which was effected in 1937 could not in any way add to their rights. It was based on a mistake on the part of the Director of Land Registration, induced by the Kupat Am Bank. That was a mistake as to where boundaries lay. He made an incorrect entry which
30 conferred no title. It does not convey any title. The entry could not operate so as to make a grant conveying any title to the Kupat Am. Only the High Commissioner can do that. If I am wrong, then it was a mistake by Mr. Jardine and against that mistake the Settlement Officer could have relieved, and this Court would relieve. Court can grant relief in cases of mistake. Vol. 23 of Hailsham, page 245. Digest, Vol. 35. Mr. Jardine had taken some trouble. They had sent a surveyor, who was misinformed by Mr. Levy's representatives.

I say that the Settlement Officer was correct in every respect except in his findings in para. 14 and 16. That because Mr. Jardine has authorised
40 this alteration in the Kushan, therefore the Kupat Am have a good title, because Government is bound by its actions. Government cannot be bound by actions of officials who have no authority. In this particular case that action was mistaken, and could be corrected, and the Kupat Am are entitled to 63% of 34 dunums, within the named boundaries in their kushan.

ABCARIUS BEY : For Kupat Am Bank.

This is a dispute between Mr. Sale and Mr. Jardine, the Forest Department and the Land Department. The Forest Department have been fortunate to get the sympathy of Mr. Hogan, which is a great asset.
50 Mr. Jardine has not been represented by anybody. I have always admired my learned friend Mr. Hogan for his fighting spirit, but in this case he went off the field.

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The history of this case is as follows : I am afraid that all the relevant facts have not been put before Your Lordships. In 1926 Mr. Levy bought shares of this land from the heirs of the original owners, their kushan is dated about 63 years back. The land is described as Miri, so I fail to see where art. 103 comes in. Mr. Levy bought in 1926. In the year 1929 a survey plan was made by the Survey Department, which has been exhibited as No. 26A, an official map made by the Survey Department. If you look at block 28 Khirbet Yunis, it is shown as being of an area of 3528 odd dunums. This was printed at the Survey Office at Jaffa in June 1932, and surveyed in 1929. An official document of the Survey Department having surveyed Khirbet Yunis in 1929 and marked the area as 3528 dunams. If Your Lordships will add to that the evidence of the Tax Department, Shaker Eddin Ashur, who said that in their books the land is registered as in the Survey map made by a Government Official, and entered in the Werko Records as such. 10

The Bank bought in 1934. In 1937 the Kupat Am Bank applied for rectification of the register. The transaction took nearly a year. It passed all channels. The District Commissioner, the Forest Department, the Land Registry, Finance Office, etc., who inspected and approved the rectification. 20

In para. 5 of the judgment my friend Mr. Hogan has boldly suggested that there should be created a sixth class of land. This was rejected.

See para. 11, 4th line, page 5 of the judgment :

“ After the plan had been examined and found correct and the application checked and various deductions made the correction was approved on the 22nd of June 1938 and the Bank registered as owners of shares in 3296 dunams, 197 sq. metres for which they paid badl misl of LP.426.590 mils. Their co-partners, all heirs of the transferees, were no parties to this application and remained registered as owners in 34 dunams by separate registration.” 30

When the Kupat Am applied for the correction of the area, they put in their application, and they attached the plan which I have produced as Exh. 26a, which was the basis on which they have claimed, after it was examined and found correct and various deductions made, the correction was approved on the 22nd June, 1938. It was very carefully examined. No deductions can be made without going into the matter, and they were called upon to pay Badl Misl, and they paid LP.400 odd. This is not a new grant, therefore no question of reference to the High Commissioner. It is an old grant, and this is an interior administrative act. Exh. 4. They were instructed by the Director of Land Registration that when taking Badl Misl they should take the original value and not the actual one, and that is why they paid LP.400 odd for the larger area, which they paid at the request of the Competent Authority. No greater good faith could have been shown by the Bank than by making an application in accordance with the procedure since 1920. It was the practice that the Director of Lands was ordering these corrections. When the boundaries are known the correction is made. It went through the Forest Department, who are making all this trouble now. 40

Two years after, in 1940, the Bank promoted a Town Planning Scheme No. 34 finally approved by the Haifa Town Planning Commission on the 2nd December, 1941. I believe that in that Committee the Forest Department is represented. (Mr. Hogan agrees they are.) The scheme 50

was for parcellation. It was approved by the Government in the presence of the Forest Department. Plots were sold in Egypt (where damages can be claimed under the law applicable there), and our whole position has been altered in consequence of the action of the Land Registration, in co-operation with the Forest Department. The Forest Department should have come to the High Court and asked for an order. They were present there, and they have not sought any remedy, and that means acquiescence. This present action began in 1942. On 2.12.41 the Town Planning Scheme was passed.

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10 Even assuming that English law applies, I certainly can come and claim that you are estopped from raising this action. I have incurred fees. Land was sold. I have made roads, and now you wake up and tell me that "I made a mistake." This is too late.

If you go to para. 12 of the judgment, the Plaintiff claims that correction of area was obtained by misrepresentation.

They cannot come to me after they have altered my position. They are estopped, and unless, as Your Lordships put it, they plead fraud, and fraud was not pleaded or proved, that is finished. But they have never pleaded fraud, and they have no leg to stand on.

20 Exh. 6 shows that the Forest Department were aware of the impending application. The file was also referred to the Government Agriculture, who tendered a report.

COURT: Even if it went through all these Departments, it may still be a mistake.

ABCARIUS BEY: It is not a mistake, nor can a mistake be pleaded now by the present appellant. We did not get a fresh grant. Only the old grant given by the Daftar Khakani.

30 Exh. 2 drafted by Crown Counsel, dated 4.11.1942 addressed to the Kupat Am Bank offering to pay back the LP.426 as being arrears of sums due. The Government was claiming the *arrears* which means an old debt. He does not say that it is a fresh grant. He calls for payment of arrears. Even this letter shows that this new argument does not come in. We are not claiming that Mr. Jardine could have granted us something new. We say that this is an old grant. If you claim arrears it means you are claiming money which I should have paid long ago. It is not an innocent mistake made. It is a deliberate action made by one department against another.

40 I can go a step further that by the High Commissioner approving the Town Planning Scheme he has acquiesced, within the meaning of art. 13 of the Order in Council. Whatever may have been the position before, by making the Town Planning Scheme in the presence of the Forest Department and by approval of the High Commissioner, it was a rectification.

50 Page 5 of the judgment the last two lines: "the application was examined, passed the checks designed by government to protect its interests who at all times could have rejected the application. The settlement officer finds the facts of registration of the revenue records, of the forest reserve and of the nature of the land were as readily available to Government as they are to-day and that the claims of gross misrepresentation does not succeed."

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Here we have a finding of fact that there is no misrepresentation at all. In the absence of fraud and misrepresentation, what has he in hand. Oral evidence against a kushan, which he gave me. The Court on many occasions held that a kushan is conclusive evidence and cannot be set aside except if fraud is proved. The Courts have held that this Court does not sit as a Court of Appeal from the Settlement Officer on questions of fact. Page 7 of the Judgment, 3rd line from the top. The practice of correcting errors. This custom has been going on for a long time. Even assuming that it is not a right practice, they have been sanctioned by custom ever since 1920. I should not be penalised as I have sold land 10 in Egypt, and I shall be sued for damages.

Para. 15 of the Judgment, 6th line from the bottom: "But since he holds that Government is bound by its actions it is clear they cannot be held to one part and released from another. He therefore finds that as no fraud has been alleged or proved, and that the plaintiff is bound by its conduct the 22nd defendant is entitled to have the title confirmed in the settlement."

This is a very strong point in my favour. No fraud has been proved, that is, there is a finding of fact that no mistake was made, as suggested by Crown Counsel. 20

From the judgment it is very clear that in the first instance the application to the Court was only misconceived. I am the holder of a kushan which was given to me by the Government itself. You are coming to defeat this title. No fraud. Even if there be a mistake you cannot now plead it. The Settlement Officer held that there was no mistake. In reality our case should have rested here, but owing to the convocation by Crown Counsel of art. 47 I feel I am compelled to show that he has been acting under a misapprehension of the law. My friend relied on art. 3 of the Law Regulating the Right to Dispose of Immovable Property.

Let me tell Your Lordships the functions of the Mejlis Idara. 30 Section 66. This was amended after the promulgation of this law. The function of the Administrative Council was to try officials of the Departments when they think it necessary. Now, the employee gets a letter from the Chief Secretary. They have not abolished this. To say that no one can effect this correction is wrong. Assuming that this argument is true, I say that it has been sanctioned by practice, and it so says in the judgment of the Land Settlement Officer. I brought you here 3 kushans where you find enormous differences of thousands of dunams. This is one which from 3,000 became 12,000 dunams. An area of 1,000 became 18,000 dunams. All these and hundreds more have been made since 1920. 40

I would have stopped here. I am the holder of the kushan given by the Government. Unless you prove fraud or misrepresentation. That was not pleaded. Since 1920, for 24 years the practice has been such. Custom is one of the sources of law, and English law does not apply in this case.

COURT: Courts have been most reluctant to change practice, but they may be compelled.

ABCARIUS: Government can make new laws for future, but not for the past.

Can you, on a mistake, upset a kushan. I maintain that the Settlement Officer was right to come to that conclusion, that as they do not claim fraud, 50

they cannot upset a kushan. He is estopped under Ottoman Law, and the Privy Council judgments say that estoppel is governed in Palestine by Ottoman Law.

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ABCARIUS BEY, *continues* :

We left yesterday at the point which was on page 5 of the judgment, in para. 3 where we stated that in 1940 the Bank promoted a Town Planning Scheme No. 34, which was finally approved by the Haifa Town Planning Commission on the 2nd December, 1941. I will try and be as brief as possible. I would have stopped there because I think that the real point at issue is the following: Are the appellants estopped from making any further claim regarding this case? I have submitted to Your Lordships yesterday that they are estopped, and I go still further and say that a practice which has been followed from 1920 till 1944, that is a quarter of a century, cannot now, on the disguise of an innocent mistake, be upset. In Holland on Jurisprudence it is stated that custom is one of the sources of law, and the Court has already held on many occasions that a judgment which has been followed for some years cannot be upset. It was held that a kushan cannot be upset unless you have a written instrument against it, or unless you prove fraud. In this case there is nothing but oral evidence against a written document. There is no fraud alleged or proved. Misrepresentation was not proved, and from my submission yesterday, there could not be any better bona fide transaction on the part of the Bank when they submitted a map made by the Survey Department showing an area of 3625 dunams.

An insinuation was made against Bernblum, advocate for the Kupat Am Bank. I must submit that he is not to blame. His letter was received after all the investigations were carried through and all the departments had ample time to investigate the matter, and they in fact scrutinised it very carefully. What is binding on Your Lordships, and every one of the Supreme Court, are judgments which held that if a judgment has been acted upon for some time, it cannot be set aside. Heaps of judgments held that this procedure has been adopted.

Art. 3 of the Law of Disposition of Immovable Property, where it speaks about the Mejlis Idara, it begins by saying: "Formal title deeds are valid and executory. The Civil and Sharia Courts shall give judgments on these deeds and their registration without further proof. A formal title-deed shall not be annulled except by a judgment of a Court based on lawful reasons provided that errors, which contradict unambiguous entries and official documents, may be corrected by the Registry office on an order given by the Administrative Council after informing the parties interested."

You will find that the same weight is given to a kushan as to a title deed. When Crown Counsel relied on a paragraph of that article, he cannot disregard the whole article. My kushan is valid, doubly so because it was issued by the Government itself, after 9 months of investigation. I ought not to be penalised for the mistake of someone else, if there be such a mistake, which I deny. I should not suffer for that. In my submission this is only cleverness of pleading to say a mistake. When they keep a file for nearly a year, it is scandalous to come and say there was a mistake. I should like to see the Government adhering to its acts. Neither the

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Director of Land Registration nor we respondents allege a mistake to have been committed.

Good many points were raised, so that one is not justified towards one's clients to pass in silence over these matters. I remember the July sitting. If my memory is good, when Your Lordships patiently heard the arguments of Crown Counsel you put it to him: "Was fraud alleged?" and the reply was "This is not a statement of claim, this is a summary trial" and kept it away. In Vol. 3 of Drayton, page 1804, you will find that it is called a statement of claim. It is true that the Ordinance says "Memorandum" but the Rules which are binding state "Statement of Claim." A person is entitled to go before the Settlement Officer and put his claim before him. When the Government, through such a capable Crown Counsel, draft their Statement of Claim to the Land Settlement Officer, I should have thought that he would have stated that this was fraudulently obtained. As my friend Mr. Goitein pointed out, in Crown Counsel's pleadings of 4 pages, before the Settlement Officer, nothing was stated. Fraud was not pleaded. Misrepresentation was not proved.

I have spoken of Bernblum, and I submit that no action was taken on his letter. The examination of the file was made long before his letter, and his letter had no effect of moving the Land Registrar to doing what they did.

I will go into the question of Estoppel. My 2nd point is that Government is definitely estopped from making any claim to this land, and I should like to refer Your Lordships to the Mejele, art. 36. "Custom is an arbitrator; that is to say, custom whether public or private, may be invoked to justify the giving of judgment."

The Land Settlement Officer tells us in his judgment that ever since the opening of the Land Registry in 1920 it was the custom to effect a correction of area. If the custom has been followed for the last quarter of a century, whether rightly or wrongly, and it has come before this Court on many occasions, it should be binding, and as I have submitted, there is still a way for legislation. I draw Your Lordship's attention to art. 40. "In the presence of custom no regard is paid to the literal meaning of a thing." My friend the learned Crown Counsel wishes to rely on the last 2 lines of Article 3 of the Law of Disposition of Immovable Property and disregards the rest, which is in my favour and against him. Further, I draw Your Lordship's attention to Art. 41 of the Mejele, which reads as follows: "Effect is only given to custom where it is of regular occurrence or when universally prevailing."

In our case here the Land Settlement Officer has found it as a fact that ever since the establishment of the Land Registry this custom has been followed.

Please look at Art. 45 of the Mejele: "A matter established by custom is like a matter established by law." Reference is made to the Cyprus Law Reports, Vol. 2, page 140.

My submission is that it is the established practice sanctified by this Court, and it cannot now, under the disguise of a mistake not on my part, upset a kushan.

See Art. 100. If you read the commentaries in Tyser, it is really wonderful, and it is still in force. They did this. They are trying to undo what they themselves did, after altering my position, after making me spend money, and so on, they come and say I made a mistake. There

is no such thing in a transaction of this kind. Neither the Land Registry nor I admit they have made a mistake.

See Art. 1647, on Estoppel. "A statement contradicting a statement previously made with regard to the same matter invalidates an action for ownership." Is not that conclusive? Mr. Eliash will be quoting judgment of the Privy Council that estoppel is governed by Palestine law and not English law.

10 Art. 1658. "A person who admits being a party to an unconditional and perfectly valid contract, his admission being reduced to writing, is estopped from alleging later that the contract was entered into subject to a condition as to redemption, or is voidable." This is exactly what has happened. They are the same persons who have given me the title. Government gave me the title after long investigation. Surely they are estopped from coming to try and upset what they themselves did. They are the Government. They gave me the title, and this is an official document given by Government. It is unheard of to come and say, a little mistake, I want rectification. If you will do that, you will be upsetting a custom which has been going on for a very long time. This is the 2nd point, where I submit to Your Lordships that the Government
20 is estopped from making any claim regarding this matter. Neither the Land Registry who gave me title deed, nor I, admit that there was a mistake.

I think I mentioned that the Administrative Council Law was amended subsequent to the Law of Disposition of Immovable Property.

Now I am compelled to embark on Art. 47 of the Land Code, to which reference was made and my learned friend the Crown Counsel started by saying that this article speaks of transferor and transferee. He has been misled in all this. You will perhaps be surprised to hear that the Land Code is entirely based on the Mohomedan Religious Law
30 and on custom. If Your Lordships will look on page 1, the Introduction in Goadby, 2nd para. . . . On the following paragraph, the same page, the last words. . . . If you go to page 4, para. 2, the 4th line. . . . The reason I am quoting this is to show Your Lordships that the question of boundary is the main thing. On the following page 5 you will find in the 2nd para. first two lines . . . in the same paragraph, 10th line, "there is no doubt that . . ." First we started with the Timars, then we go to the tax collectors and the spahis. There was no Department of Land Registration. There were 2 taxes, one werko and one tithes, and although a man may have had a very large area, he would minimise it in order to
40 minimise taxes. On the same pages, the following paragraph. "State land . . ." If there is State land, where does art. 103, which my friend tries to drag in. There is no question of mewat land being opened. The only difference arose out of boundaries, which they call Jurn en Nassura. Some people wanted to do away with that stone, and they started to break it. Mr. Levy complained to the Settlement Officer. Now they must have found a new Jurn en Nassura, and with all due respect to the Settlement Officer, this is too small for a Jurn en Nassura (Eagle's nest). When the predecessor in title of my client was told, this is the Jurn en Nassura, he accepted it as such. After all the enquiries made by the
50 Government, to come now and say there were troubles, and hence the officials concerned were afraid to go on the land, surely this is no reason for the Government. There was no bad faith on the part of my client.

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See the last paragraph on the same page 5 of Goadby “. . . One went by boundaries.” That was the Mohomedan law. I shall be taking you presently to the details of the rules of boundaries. If you go to page 11 (Goadby), the last para. “The Moslem Law . . .” With all due respect, the English Law is not applicable to our case. If Your Lordships will go to page 15, 3rd para. “Finally it may be remarked . . .” Therefore we do not have to go to what is English Law on this subject. We have ample provisions in our law. See page 300, 2nd para., 6th line *et seq.* of Goadby.

There is no Mejlis Idara now. It has not been replaced. It was 10 absorbed in different departments. This, amongst others, was absorbed in the Land Registry. Please see page 300, 2nd para., 6th line. Also page 301, 2nd para. and the last para. where it speaks of cases of correction of area of properties already registered, and you will find that they have always adopted this art. 47 of the Land Code. See page 302, 3rd para. ; page 308, 6th para., last two lines. This principle has been maintained right through ever since 1920. A kushan is conclusive evidence of ownership. They cannot come on oral evidence to upset a kushan. This is against hundreds of judgments delivered till now by this Court. My learned friend, the Crown Counsel, called Your Lordships' attention, in 20 the hearing in July, to abolish all this and to lay down a new judgment. In my submission, you will be destroying what has been done for the last 25 years. They can make new legislation.

I think I put my case very plainly to Your Lordships. We now come to art. 47. Is that a creation of the Land Code? My reply is No. This is taken from the Mejelle, which, as I have submitted, embodies the principles of the Moslem Law, and the reason is very simple. Even by a cadastral survey you cannot pin one down to a number of dunams. Crown Counsel tried to draw a distinction between sale and a grant. I am not concerned with that. My case is a case of sale. I bought from 30 Edmond Levy who bought from villagers. It is not part of the game to say Faragh and Tafwid. There is no difference between State and private individual. The Government is selling land. I am paying Government for this land. When they have no cadastral survey they cannot say which land it is. We are not [now] confronted with a kushan 63 years old. Some time back it was a village, and it was ruined. Khirbet means ruin. When the Survey made their plan, they made their investigation and they found in Khirbet Yunis some 3,500 dunams odd. More clear evidence than this, there cannot possibly be.

[sic]

COURT: What about Mr. Hogan's suggestion that Art. 47 deals only 40 with matters where lines are given and not points.

ABCARIUS BEY: You cannot expect people 63 years ago to give you lines. They usually gave you points. Sometimes they used to give you only 3 points, and you had to add the 4th. You draw a line between the 2 given points and you get a straight line. The nest of the eagles, Jurn en Nassura, is a very fixed boundary up to date. You draw a straight line and not a crooked one. That is the only course to follow. The question of Art. 47. I shall be leading Your Lordships to the Commentaries on the Mejelle by Ali Haidar, page 170, art. 221 *et seq.*

This is the golden rule taken from the Mohamedan law. Once there 50 is a survey made of all Palestine this sort of case will no more occur,

but now, to come and pin us down to measurement is most unjust. Is there any authority that this article is binding only on private individuals and not on the Government? No. Government is in the same position. I paid Government for the land. I am entitled to it. People had to pay tithes and taxes, therefore they kept the area down. It may have been cheating, but that was the practice.

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COURT : Area is a fiction, only boundary counts ?

ABCARIUS : Yes. The evidence before the Land Settlement Officer was that most of the land was cultivable.

10 COURT : Has it got water ?

ABCARIUS : There is a stream near it. Plans have been made, and people from Egypt have bought plots of land as a summer resort.

You have got the whole case. Your Lordship's remark in July, after having very patiently heard Mr. Hogan, you asked him : "Was fraud pleaded?" This is the only point to decide. There was no fraud or misrepresentation, and this is conclusive. I tried to settle this matter friendly, but unfortunately all our efforts did not succeed. I am not interested with the other Arabs, with the 2nd appeal, what they get or they do not get. I have got what my kushan gave me. There I need
20 not appeal. My final words are that in fact and in law no appeal lies on a question of fact. If a mistake was made, I am not the author of it. The evidence of Mr. Jardine and Mr. Stubbs will be read subsequently, and Your Lordships will see that they do not agree that a mistake was made. Is Mr. Sale entitled to plead a mistake ?

My first submission is that being the holder of a title deed given by the Government for which I paid consideration in good faith, my title cannot be defeated unless there be fraud, and this has not been alleged, pleaded or proved.

My second submission is that the correction of area was done in
30 accordance with the practice sanctioned and sanctified by judgments of this Court and other Courts for the last 24 years. I submit respectfully that it was rightly so. My friend Mr. Hogan says wrongly so. But we cannot run away from the fact that this was the practice. The Land Settlement Officer was wrong in holding that they had no authority. You want to correct your area, you produce a plan, and your neighbours examine the plan, and sign it. In this case no neighbours. It was Government and the Government has acquiesced and agreed to the plan by signing the parcellation scheme.

40 COURT : If Government were neighbours, they should have gone to look at the land, and if they were frightened, it was their business ?

ABCARIUS BEY : Yes, my Lord.

The District Commissioner has authority to sign on behalf of the High Commissioner in questions of Town Planning Schemes.

COURT : Is there any inference that if Town Planning has been approved that the property belonged to the people concerned ?

ABCARIUS : Yes, My Lord. Because they have to produce their kushan and prove their ownership, and the official gazette publishes a notice, and anybody who has any objection can come and object, and

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Government could have objected. If the Municipality puts up a Town Planning Scheme and I object, I go to the Land Court and the scheme is left in abeyance. It has happened with the Greek Convent, who have protested on several occasions, saying that they were the owners of the particular land and they went to Court and it was decided in their favour. If Mr. Sale (Forest Department) thought he had any right to the land, he should have had recourse to the Attorney-General, and say we are taking his forest area. As far as the Kupa Am is concerned, we are the bona fide holders of a kushan for value. Two years after it was issued it was the subject of official parcellation scheme. It was examined from 1937 to 1938. They checked it. They should have looked into the file and discovered it. They were not deceived. They could have recourse to the Court and say you have trespassed upon me by taking my land. They should have tested it then. They should at least have lodged their claim then. I say that I have an indefeasible title which cannot be upset, and an appeal should not have been lodged on a question of fact. The Government is bound to respect its engagements, much more so as Government. This is an official document issued by the Government after very long investigation. They are estopped under all laws, to try and undo what they of their own will and accord have done. 10

My humble prayer is that the appeal be dismissed with costs. 20

Mr. ELIASH: After all Abcarius Bey has said, I shall be short. I should like to note a few essential points of this case which, in my submission, are very material in deciding it. I will observe there is no significance whatever in this case having been before the Settlement Officer. It is a case like one in the ordinary Land Court jurisdiction. The Settlement Officer has no more power than the Land Court or a Magistrate. The Settlement Officer has admittedly disregarded the evidence of other witnesses and decided on the evidence of his own eyes, but is there anything to suggest that the Settlement Officer can be a witness before his own Court. We have got now to take this case as a land action. The fact that it has come in a Settlement area makes no difference. The 2nd point is para. 15 of the judgment. We have a registered title together with a registered plan since 1938. I say this because in his address before the Settlement Officer learned Crown Counsel drew attention to the fact that in Palestine we have no registration of title and therefore Government gives no guarantee for title. In ordinary sale the Director of Land Registration does not guarantee the title, but in this particular case there was a registration of title, the best type of registration. There was an enquiry as to the land, its boundaries with a special map appertaining to the title. You can have no better registration of title. The Appellant submits a double case: 30

(A) The correction of registration was not done by the proper person ;

(B) The correction was wrong.

My reply is that (A) it was done by the proper person, (B) there is no finding in law that the correction was wrong. If you have a registered title with a registered plan, what is your position? If you look at Privy Council No. 56/38, in P.L.R. 1940, Vol. 7, page 113: "After twenty-one years it is not for the Government to explain and justify their claim to the State imposts but for the appellant to establish the rights of the waqf therein . . ." 50

This has become part of the established law which our Courts apply that the "*strictest proof*" is necessary to do away with the registration. In this case the registration has also included a registered plan. See C.A.2/32, 5 P.L.R., page 193. "In my judgment the effect of the legislation to which I have referred and the authorities I have cited is not to lay down a rule of law that entries in the Land Registry are conclusive and unimpeachable, but to provide that admissions made therein create an estoppel similar to that created by the execution of a deed according to English law. Such an estoppel may be rebutted by proof of fraud or duress, and in certain circumstances it is open to a party to show that despite his admission he has not received the consideration stated . . ." These two grounds (i.e. fraud and duress) have been limited to one of fraud only.

If Your Lordships look at C.A.206 40, 6 P.L.R., page 32. This shows us how our Courts have understood the Privy Council decisions. Registration is *prima facie* evidence and only the strictest proof can be used to upset it.

A judgment as to the measure of strict proof is : C.A.179/42, Annotated Supreme Court Judgments, page 927. (9 P.L.R. page 798, reported only partly.) See C.A. 55/40, 7 P.L.R., page 291. I read page 301. "The long established practice of this Court not to accept oral evidence in defiance of a registered title has been recently upheld by the Privy Council, P.C.A. No. 56 of 1938, *Mamur Awqaf of Jaffa v. Government of Palestine*, in the following words : "Their Lordships are of opinion that the latest tapou register is competent evidence as to the character of the land in question, and that the strictest proof should be required before holding that on such a matter the subsisting entries are incorrect ; otherwise the provisions for a new register would be made to unsettle titles in disregard of the land law . . ." No written evidence of any sort was produced in Court against this kushan. On the contrary, all the written evidence is on the side of the Respondents.

It was agreed before the Settlement Officer that as regards boundaries we have to find what is Khirbet Yunis. The land in the original grant is called Ard Khirbet Yunis. This is the only registration of Khirbet Yunis. So far as we come to any survey made prior to our correction, they always show it to be of an area of 3500 dunams. We had another plan ; the tax plan, again prior to our correction, describes it as an area of 3500 dunams. I refer to Exh. 40 which was referred to by Crown Counsel as showing that my clients knew that the land was less. It is entirely to the contrary. It reads : . . . If Mr. Hogan came before a Land Court and said I wish to demolish a registered title with a registered plan, these cannot be set aside. He must produce "*strict proof*." He has only mentioned Exh. 41. Para. 10 of the agreement says . . . It deals with a possibility. My client did not have his correction yet. He might get less. He certainly mentioned a survey which speaks of 3500 dunams.

In my submission there is no evidence in writing that the plan was not correct. If you look at the opening address of the Crown Counsel, he proposes to prove by the evidence of witnesses that the boundaries were not correct. Page 4 of the typescript. Before examining the evidence I will examine the principle. If I have one of my boundaries at Mt. Tabor. If I have a registered plan, can my land be taken away because the area is not so ? Is that sufficient without some other documentary evidence ? I say you cannot upset a registered title with a registered plan. Let us

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have a look at the evidence. There are 4 boundaries. No dispute as to the Eastern and Southern boundaries but dispute on Northern and Western boundaries. On the Northern boundaries the dispute is where the Rous esh Shammas are. The judgment says: para. 8 of the judgment. . . . The evidence with which they want to set aside my kushan is contradictory. We say that Ras el Ali is our Northern boundary. The Settlement Officer himself says that Ras el Ali is one of the boundaries of Rous esh Shammas, para. 13 of the judgment. Ras el Ali is one of the hill tops. If you will turn to the Record of the evidence, you will find that one of the Crown witnesses, 5th witness, Ahmad Suleiman el Dirbas, stated . . . The Western boundary depends on the eagle's nest. See para. 3 of the judgment. Is that the same category of evidence as mentioned in C.A./179/42 where they tell us what strict proof is? I say no. Suppose I have a registered title. It says Mt. Tabor is my boundary. I have a registered plan showing exactly where my boundary is. A Bible student then comes along and says that he has come to the conclusion that Mt. Tabor is somewhere else. Will I lose my title because he says so? I therefore say that the whole basis of the claim fails. The Settlement Officer was not entitled to upset my registered title on the vague evidence. He is dealing with a registered title. The onus of proof is on the other party. 10

I therefore say that I need not cross appeal at all. One cross appeals if he is not satisfied. I say that the Settlement Officer was wrong. He had no proof to upset a registered title. No evidence that more land was included in my kushan. 20

Now we come to the question as to whether the man who made my correction was the right person. First strict proof means evidence in writing. You cannot risk a registered title to the oral evidence of a witness. Otherwise, what is the use of a registered kushan?

See : L.A.137/23, Rottenberg, Vol. II, page 764.

L.A. 13/33, Rottenberg, Vol. II, page 808 (812).

C.A. 55/40—7 P.L.R., page 301. 30

If Your Lordships will look at the notice which declares this land as Forest Area, you will see that it excepts a piece of land (page 821 of Official Gazette, July 1929) plot No. 15, belonging to . . . On the Survey plan it is outside Khirbet Yunis. In the Official Gazette it is within Khirbet Yunis. Is the very declaration of the Forest Department evidence in writing against me? No. See Forest Ordinance, Section 12. No mention at all that the Government has any claim to the land. I can oppose if I want to. There were criminal proceedings against people who trespassed on the land, and they said in Court that this was not forest but private land, and the Court accepted it. Exh. 5. 2nd point : I say it was not established at all that I have taken more land into my boundaries than I should have taken. 40

3rd point : Who can allow me to take it? I say the common law in this country recognises the principle that you own your land within your boundaries. Art. 47 of the Land Code lays down the same principle, and once you have a general principle of law, you cannot say it applies to a sale only and not a "grant."

See Mejele, Art. 221, 1619, 1620, 1623, 1624, 1691, 1692 (Read out). You owned what was within your boundaries, and Art. 47 gives us the same principle, and you need not underline the word "sold." 50

COURT: If that is so, you would say that the area is quite unimportant. Then why ask for correction?

ELIASH: Because we are forced. There is legislation. The need also arises if it is sought to mortgage the land to a bank, in order to show the true area.

Coming to the question of sale, after all every miri holder's title originates with a grant. The Land Code lays down a principle and it should be followed by Government also.

I now come to the meaning of Art. 3 of the Law of Disposition (Translation read out . . .). Yesterday our friends have brought in a decision of the Turkish Council of State which clearly shows that this was the article by which one corrected his area. (Read out.)

If the plan shows that your kushan within your boundaries contain more land, then you apply for correction under Sec. 3. Sec. 3 is particularly devised for the purpose. If I must go to Court for it, it would create a lot of difficulties. There are judgments saying that whenever you come across some Turkish Authority, you have to find out who at present functions in its place.

High Court 1 32, P.L.R., Vol. I, page 649, read at page 657 . . .
 20 " " 70/27, P.L.R., Vol. 1, page 175.

Young, Vol. I, page 50, regarding the Villayet Law.

Young, Vol. I, page 65, tells you the functions of the Kazas. It had numerous functions. All functions of the Turkish Government have been absorbed by various Government departments, and there is no reason why this function of correction of registration should form an exception to the rule. Art. 46 of Palestine Order in Council. Villayet Law, Baghdad translation. Sec. 66. Functions of the Administrative Councils.

Goadby & Doukhan, page 300.

The person who looks after State land is obviously the Director of Land Registration. Surely notice to the Government can only be conveyed through the Director of Land Registration. If the Mukhtar can be informed on behalf of the village (See 6 P.L.R. 516, at p. 520), knowledge by the Director of Land Registration is enough for the Government.

To Court, Abcarius Bey: There is a case, *Khouri v. Government of Palestine*, where the boundaries showed a lesser area and nevertheless the Court held that the boundaries are binding. I shall produce that to-morrow.

26.5.44. ELIASH, continues:

I refer you to the passage in Ongley, Ottoman Land Code, page 71, where it states that "Mudir el Mal . . ."

Mudir el Mal (Revenue Officer) was actually the man who assessed the Badl Misl on the land. See folios 38, 39, 40.

See page 6 of the Record "XX by Abcarius Bey . . ."

If you turn to page 7, "A manual of . . ." and lower down on the same page, "the Registrar was responsible . . ."

"The Director of Land Registration would himself take steps . . ."

If you turn to page 8, at the bottom, "I believe that the . . ." If you turn to the evidence of Mr. Stubbs, page 16. He says from time to time we make corrections of area. If you look at the re-examination by Mr. Hogan . . . The chief witness for the Crown stated that you go by

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the boundaries and you give the area within such boundaries. Before I pass to another matter. Mr. Hogan stated that Article 47 does not refer to grants, but only to sales. He quoted C.A.145/41, Appelbom's reports 1941, page 651, but from this it is quite clear that it applies to grants as well as to sales. Read out . . . You will see that it deals with Art. 47 with regard to a grant and not to a sale. If you got a kushan, you are entitled to the land within the boundaries.

Land Appeal 15/28, Rottenberg, page 1476, quoted by Crown Counsel, read out . . .

He has had his boundaries as waste land, which are not boundaries. 10
Therefore you cannot use Sec. 47, because you do not know what you are up to. This is not a type like our case. Our original kushan was within definite boundaries.

The next point mentioned by my friend, that when you have points only you cannot apply Art. 47. For this he relied on 145/41. When you come to the Director of Land Registration and you have only points, the Director of Land Registration can turn down your application, or if you claim before a Land Settlement Officer, he can turn down the application because it is not clear. But once the proper Department found it to be clear, he cannot come and say it should have been clear to him. If it was 20
clear to the proper Department that is enough. You cannot, once I have satisfied the authorities, come and say you should not have been satisfied. It depends where the points are. If I have a boundary dispute with a neighbour and I go to Court, my neighbour may come and say you have stated the wrong boundaries, but if I settle with my neighbour before, and the boundaries are no longer in dispute, then the case is different. L.A.15/28, IV Rottenberg, page 1475, must be distinguished from our case. In that case one of the boundaries was "waste land." In our case, although there was nothing to prevent the Turks from stating waste land to be our boundary, they did not do so. On our Western boundary there 30
were two points, and from the indication of these two points he could find the correct boundaries. Judgment in the case of *Khouri v. Government of Palestine*, Land Appeal 134/25, referred to by Abearius Bey yesterday, produced. Judgment by Corrie J. and Judgment by Jarallah J. both read out.

There is one other point. Is it possible that the Turks have really only granted 34 dunams? I say this is impossible for two reasons. If they would have granted 34 dunams, they would have given the boundaries of the 34 dunams. If one of the boundaries were waste land, they would have said so. They would have registered the rest in the Registry as 40
State Domain. There is no other registration of Ard Khirbet Yunis. See judgment of Jarallah J. above referred to.

Although for 60 years the land may not have been cultivated, yet once miri always miri. See Tute, page 10, note 8 to article 3. "Once Miri, always miri . . ." If it is a kushan for miri, that prevails. Another point is the position of the Registrar, or Mamur Tabu in Turkish times. If you turn to Ture, page 135, art. 8 . . . This is the ground of what is known as new registration. The practice is still prevailing now, as may be seen from the Land Transfer (Fees) Rules, Drayton, Vol. 3, page 1823, item 12 . . . New rules are to be found in 1935, page 396 and in 1939, 50
page 1482.

See L.A.135/36, Rottenberg, Vol. V, page 1734. It quotes a decision of the Council of State. Read out . . .

Look again at Tute, page 171, art. 15. As a matter of fact the Mejlis Idara was the Tabu. See Tute, page 129, art. 3 of the Tabu law. See art. 4. Look at page 130, art. 13

If you look at Drayton, Vol. 2, page 852: "Any person who, without obtaining the consent of the Director of Lands . . ."

HOGAN : There is no Director of Lands since 1935.

ELIASH : Department of Lands amalgamated in 1923. The functions
10 have been split. Look again at page 852 Drayton, Mewat Ordinance.

HOGAN : Mr. Samuel was Commissioner of Lands and Surveys. No Director of Lands since 1935. There was Director of Land Registration.

ELIASH : If you look at the Interpretation Ordinance, page 772. (Amended in 1939.) Mr. Jardine was the right person to deal with.

See page 131 of Tute, art 18 . . . page 132, art. 21, ". . . Director of Land Registration gives me kushan now."

See Ongley, page 196, art. 13, you will understand then what art. 3 means. If you turn back to page 187, bottom of page . . . "Duties
20 of the Tabu clerks."

If you look again at Drayton Vol. 3, page 1823, item 16 . . . Director replaces Mejlis Idara. These rules are under the Land Transfer Rules. Director means Director of Lands under the Land Transfer Ordinance. I refer you to Maxwell, 6th Edition, page 532 and 533 . . . May I refer Your Lordships to High Court 58/43, 10 P.L.R., page 349, where this Court has expressed the desire that the Director of Lands should force people to correct their kushans. The Legislator applied it immediately by Supplement No. 1, page 23, of 10.8.43 amending the Land Transfer Ordinance "the petition shall be accompanied . . ." Long practice
30 is binding. Many cases on this, but the following two will suffice.

See C.A.178/38, 5 P.L.R., page 433. I read page 435. The practice of bringing appeals from Magistrate Court within a definite period, although no provision, must prevail. I therefore say that I have applied to the right person and I got my proper correction. See also C.A.131/42, 9 P.L.R. 752, at p. 756 : "Construction which is supported by practice should prevail."

If I want to correct my boundary, my neighbour must know. See C.A.129/32, Rottenberg, page 1133. The language is exactly as in Section 3.
40 If Government was my neighbour, and it is alleged that I took in part of the land of Government, I should notify Government. How should I do it ?

See C.A.35/39, 6 P.L.R., page 159.

The Director of Lands also gave a consent. He stated that it was in order, and therefore it was in order. I have to give notice to the other side. They have to know about it. If the Director of Lands knew, and the Mudir knew, and the Conservator of Forests knew, the Treasury knew, etc., therefore they had sufficient notice. I refer you to C.A. 114/40, not reported (read out). The point is: Did the other party have knowledge? The same point is here. Did Government know about it, or did I do it secretly ?

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I should like to take the case now from another angle, and that is Agency, and I would refer you briefly to Hailsham, Vol. 1, page 209, para. 365, "Agency by Estoppel arises . . ."

I want to say that I have obtained my admission from a person who is the proper person to make that admission. I have obtained from the proper person an admission that I have taken no land of his, that I have taken my land included in my boundaries, and that became registered in the Registry. As to the effect of an admission in Palestine, we have high authorities from the Privy Council. One is All England Law Reports, 1939, part 4, page 15. Ottoman Bank *v.* Menni and Mansour. Another 10 Privy Council case is 6 P.L.R., page 528, Privy Council Appeal No. 23 of 1938, I read at page 534, bottom: "The legal effect of admissions in Palestine is to be found in the Turkish Code (the Mejlle) which provides in article 79 that a person is bound by his own admission and in article 1588 that no person may validly retract an admission made with regard to private rights . . ." A person binds himself by an admission. He cannot retract it.

The case known as the Dasuki case has applied the same principle. C.A.168/41, 8 P.L.R. page 563, 2nd para. Here one is bound by his admission, and it is not only evidence, but obligation is created by the 20 admission.

I therefore say that quite apart from the admission in the Land Registry if I merely had the admission on the plan, it is binding on them. But as to admissions in the Land Registry they have even a greater sanctity. See C.A. 2/38, 5 P.L.R. page 187. I read at page 190, middle of the page: "The first point for our consideration is what is the true effect of an admission made in a transaction in the Land Registry . . ." and it quotes judgment after judgment as to the value of kushans. At page 192, it quotes C.A.10/34.

That takes us to the next question of estoppel. In spite of the special 30 Palestine provisions as to an admission, we may still go back to English law as regards estoppel. Our law of estoppel is based on admission. The admission in itself binds you, and that is estoppel. I shall deal with English law.

Now let us see whether Government, too, is estopped by an admission. I should refer you to C.A.227/40, Current Law Reports, Vol. 9, page 211, I read page 212, 1st para . . .

On the same lines here they have allowed re registration of the land. They have allowed a parcellation scheme, in which the Government was represented. But for a slight change in the legislation, we would have had 40 the signature of the High Commissioner to approve our scheme. The original Section 18 of the Town Planning Ordinance, 1936, provides that the High Commissioner signs the plans, and thereupon it goes into force. In 1939 a section 18A was added, which is almost the same, but the District Commissioner signs in his capacity as District Commissioner, on behalf of the High Commissioner.

We now come to the final approval of the scheme. In the notice of the Official Gazette referring to this land, provisional approval appeared in January, 1940, giving the boundaries of the scheme exactly as we call them now. Then there was a final approval on 2.12.41 referring to the 50 same scheme. As a matter of fact that scheme has gone into force.

The next judgment is C.A.278/40, to be found in the Current Law Reports, Vol. 9, page 193. (Also 8 P.L.R. page 110.) This shows again

what the Mejlis Idara did, it just shows that the Mejlis Idara was watching over State land and they are represented now by the Director of Lands. In our case it was produced in the evidence that the Tax Department in 1935 charged taxes on this entire land. (Exh. 37, Certificate by Mudir Mal, Haifa, that payment was made for the whole area.)

HOGAN : This was in a non-taxable area.

ELIASH : The estate was 3508 dunams. I paid on the part which was taxable.

I therefore say that Government is estopped, but if it will be submitted that under English law estoppel by deed alone against the Crown is not sufficient, in our case we have estopped by deed and also by conduct.

On the point of taxation I refer you to page 42 of the Record, where the Mudir Mal, 13th witness, gives evidence. Page 43, cross-examination by Mr. Koussa. Taxes were paid for the Kupat Am by E. Levy.

My friend Mr. Goitein will deal with estoppel, but I will refer you to Hailsham, Vol. 6, page 483, Note B. And Digest, Vol. 11, page 529, item 338. The Crown is bound by estoppel in fact although not by estoppel by deed. See also item 340.

I have made it quite clear. We do not allege that we have a grant, but we got a correction from the proper authority, with notice to the proper party.

Para. 2 of the Palestine Order-in-Council, page 2573, Vol. 3, defines public lands. It does not say all lands that the High Commissioner holds in trust for the Government of Palestine is State land. It does not say that the Director of Lands cannot dispose of State lands, because public lands is one thing and State land is another. Clear indication of this distinction, Sec. 3 of the Land Law (Amendment) Ordinance, 1933, page 849, Drayton, Vol. 2. Land belonging to the State or held by the High Commissioner in trust for the Government is not public land at all. For another instance of this clear distinction see the Notice published in Palestine Gazette No. 403, 16th November, 1933, at page 1711.

I am therefore left with the final argument of mistake. I say neither Mr. Jardine nor Mr. Stubbs said they were mistaken. It is not a mistake of fact. In order to get relief, the plaintiff has to come and say I made a mistake. In this case he said he has not made a mistake. The fatal argument, he did not establish the fact that more land was included. Coming to where relief is granted in cases of mistake, see page 131, item 181 and also page 145, Vol. 23 of Hailsham, item 204 . . . They had all the documents before them and no relief could be granted.

In my submission, as a lawyer, I would say that the main ground on which my client ought to succeed is the fact that there is nothing to show that there was a mistake.

2nd June, 1944. Mr. GOITEIN.

May it please the Court.

It has been said that it is not history that repeats itself but historians who repeat one another. I will try not to repeat what has already been submitted more ably than I could hope to do. My colleagues have asked me to confine myself to the English law regarding questions in issue and this makes the matter very simple because, as they have already shown,

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it is Palestine law which applies and English law only seems to be relevant because counsel for the Crown relied upon it.

My Lords, we appear to be dealing with a very slippery Government which attempts to disown the acts of its own officers, when those acts subsequently do not please another officer. Because this Government is inclined to disown what its officers do, it might be wise to look at the appeal which is before you in order to see whether Government really appears. Otherwise, we may find ourselves, should Your Lordships give judgment in our favour, before the Privy Council hearing the argument that the Government of Palestine has never been heard on appeal because 10 the officer who appeared had no power to appear.

The appellant in this case is the Government of Palestine, but the appeal is signed by Mr. FitzGerald, not on behalf of the Government of Palestine. Mr. FitzGerald is now Chief Justice. Perhaps, therefore, we need an appeal signed by someone else. His address is given as David Brothers' Building. We all know that the Attorney-General has his office at the King David Building, and Government may well argue elsewhere that the King David Building belongs to a legal entity different from the building owned by the David Brothers. Further, we see Crown Counsel appearing in this Court and not the Attorney-General. His acts may 20 subsequently be disowned by the Government of Palestine.

I mention all this, my Lords, to show the absurdity of the view put forward with such eloquence by my learned friend the Crown Counsel in this case, that Government is not bound by the acts of its officers unless the particular officer bears a particular title. He would seem to put the onus upon me to go running around and find out whether the officer—given an office by Government, paid regularly by Government, doing acts which are known to Government—is really the officer to carry out the duty in question.

Have I really to test whether Your Lordships have a warrant to sit 30 and hear this case? I submit that when a Government officer, with the knowledge of Government, carries out for a large number of years certain acts, then his acts are the acts of Government. If it were otherwise, we would find ourselves in the position suggested by my learned friend, Abcarius Bey, that Mr. Hogan does not represent the Government of Palestine but represents Mr. Sale in a private squabble between himself and Mr. Jardine.

Per curiam: Were I to issue a licence, would my act bind the Government of Palestine?

GOITEIN: With great respect, it would not be Mr. Justice Rose 40 who was granting the licence but the Government of Palestine.

I am glad Your Lordship asked me that question because if one looks at any kushan issued by Government, you will find that although it bears the signature of an official, it is issued by the Government of Palestine. The words at the head of each kushan are: "Government of Palestine" and in the extracts which are before you, you will also find at the head the words "The Government of Palestine." The test really is this. If a person outside Government were to sign a licence, then of course that licence would have no validity. If it were signed by a Government official, then the Government would be bound by the issuants. Government might 50 take action against the particular official who had usurped the functions

of another official. But, I submit, in the absence of fraud, the licence would be a good one. Government cannot take objection because it is Government who issues the licence in question.

I am supported in this view by the text of the law as it appears in every kushan—at least issued up till 1943, and I have no reason to believe that there is any difference in 1944. I have before me two blank forms of kushans issued by the Land Registry and reference is made to the Land Transfer Ordinance of 1920. The Ordinance, as it originally appeared in Bentwich, read in Section 8 (3) :

10 “ No guarantee of title or of the validity of the transaction is implied by the consent of the Government and the registration of the deed.”

In the kushan the words “ Consent of the Government ” are given as “ Consent of the Administration.” In Drayton, the words are (Section 8) : “ Consent given under Section 4.” The consent under Section 4 is that of the Director after receiving a petition “ through the Land Registry Office.” “ Director ” in the Land Transfer Ordinance means the Director of Lands. Under the Interpretation Ordinance, the titles “ Director of Land Registries ” and “ Director of Lands ” are deemed to be replaced
20 by “ Director of Land Registration ” (Section 3 as amended).

It follows, therefore, that Government in land registration matters uses indiscriminately the words “ Administration,” “ Government,” “ Director of Lands,” “ Director of Land Registries,” “ Director of Land Registration.” It is merely a question of nomenclature and nothing else.

It follows, therefore, that the kushan granted to Kupat-Am Bank by the Government of Palestine was granted by the present Appellant, namely the Government of Palestine, and no particular official of that Government.

30 This leads me to the next link in the chain. Under the Land (Settlement of Title) Ordinance, it is Government who is the claimant to land (see Sections 19 and 20), and land is registered in the name of the High Commissioner in trust for the Government (Section 29 as amended). Therefore, the claimant in this case is the same person which granted the kushan for 3500 dunams. By so granting, it was the same Government of Palestine which made an admission that the land within the boundaries of the old Turkish kushan covered an area of 3500 dunams, and my learned friend, the Crown Counsel, can only succeed in this appeal if he can show that the admission made by Government is one which does not bind Government.

40 If you turn now to the staff list, take the year 1938 as an example, you see that when you come to the Department of Lands you find a reference to Commissioner of Lands followed by the word “ vacant.” On the next page in connection with the same department, you find : “ Director of Land Registration ” and then the name of Mr. Stubbs is given. In 1939 you find the same thing. A Director of Lands does not exist. It follows therefore that the argument of Government on this occasion, that the particular title given to an officer is of any consequence, falls to the ground.

50 It would seem as if my learned friend were claiming some equitable right. Exactly what that right is, I could not discover from his argument before this Court. But if he rely upon some equitable doctrine, must not he himself come to the Court with clean hands ? Should he not be

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in a position to say : " We have always acted above-board and honourably. We have never admitted the claim of the other side. We have always held that the kushan was one of 34 dunams and no more." But he cannot argue anything of the kind. He does not come with clean hands. This very same Government, acting through the Department of Surveys, the Department of Lands, the Revenue Department and the District Commissioner's officer have all agreed that this property covers an area of more than 3500 dunams. Even the Attorney-General himself in a criminal case had declared that this land is within . . .

HOGAN : My learned friend cannot say that, I would like to know 10
where the Attorney-General has so stated.

GOITEIN : If you are interested, I will show you where. In Criminal Appeal 56/40 (This is exhibit 5) the representative of the Attorney-General admitted that the land in question was covered by the kushan. This was three years after the correction of area. (Goitein reads the paragraph.)

HOGAN : There is nothing to show that this covers the same land.

GOITEIN : It can scarcely be denied. The document was produced in the Court below.

So I say that Government has not come with clean hands when 20
practically every department has already made the admission that the land within the boundaries covers more than the old kushan and more than the Land Settlement Officer has found.

If my learned friend's argument were to be stated fearlessly, he would have to say : " I have misled you. All the departments of the same Government I represent have told you that your land is more than 3500 dunams. All the Departments have led you to believe that you may spend money on the assumption that you have an area of more than 3500 dunams. You have paid money to the Government of Palestine on the basis that your area is 3500 dunams. But we do not care for all 30
that. You have been misled, but that does not matter. I have an equitable right." When my learned friend's position is put thus clearly, it can be seen immediately that he cannot claim any equitable right because his hands are not clean. Merely as a matter of comment, I would add that not alone does my learned friend not trust his Government when it is represented by the Departments I have already mentioned, but he does not even accept a decision of his own Land Settlement Officer, hence this appeal.

As I understood my friend's second argument, it was this, that there 40
has been a mistake and he was entitled to relief on the basis that there has been a mistake. But the curious thing is that everybody now agrees that there had been a mistake. The old Turkish kushan said 34 dunams. The Settlement Officer has found as a fact that there are 625 dunams. What follows ? It follows that it is no longer possible for Government to come and say that we are entitled only to the small area within the old kushan. There must be a change in order to bring the original grant in relationship to the facts. Therefore it is no longer a question as to whether a mistake has been made or not. It is only as to the extent of the mistake. On that point, many persons may have different opinions. 50
The facts in this case show clearly that there may be very different

opinions. The opinion of the Settlement Officer is not of the Survey Department. The opinion of the Settlement Officer is not of the Revenue Department. Therefore, before dealing with the legal question whether there be any relief against a mistake, the prior question is: On what do the Government now base itself for arguing that there is a mistake? The answer is: The eyes of the Settlement Officer.

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10 Before referring to the judgment in which the Land Settlement Officer gives the grounds for his belief, I would like to give an illustration which may perhaps appeal to this Court. I will suppose that a gentleman comes to London and has heard about that famous tavern, the Elephant and Castle. He asks the local inhabitants and they all point out to him the tavern itself. "No," says the stranger, "I am sure this was never a castle and no elephant could possibly have entered it. This cannot be the Elephant and Castle." So he walks along and sees the Tate Gallery. "This looks more like a castle," says he, "and there elephants could easily enter." So he decides that in fact this is the elephant and castle and not the tavern of that name. Subsequently he may be told that in fact the Elephant and Castle has nothing to do with elephants or castles, but is a mispronunciation of the Infants di Castilli.

20 Mr. Justice ROSE: But suppose the yokels disagree, whether the Tate Gallery or the Elephant and Castle is the place in question—could not the foreigner decide by using his own eyes?

30 GOITELN: My answer is that if a claimant came forward to claim the Tate Gallery and the Judge did not believe his witnesses, the Judge could not give the ownership of the Tate Gallery merely by using his eyes and saying that elephants could more easily enter one place rather than the other. What has the Settlement Officer done here? He has heard witnesses and he has not been satisfied with them. But he has argued that one of the boundaries seems to contain the words "Eagle's nest," so he looks for a place where there might have been an eagle's nest. He has forgotten that names in Palestine continue for thousands of years. The Philistines stayed in a place near Ashdod and it is known as Ashdod to this day and so with Askelon and Gaza. There may have been an eagle's nest in the place some 2,000 years ago but all traces of it may have gone and merely the name remains. When, therefore, the Settlement Officer says in his judgment that he relies upon his own eyes, he means that he is relying upon the meaning of a name which may have lost its meaning 2,000 years ago.

40 (Counsel then referred en passant to the different accounts given in the Bible of the origin of the name Beer-Sheba and pointed out that archaeologists believed that neither of the accounts is correct.)

The matter does not stop there. The question of the Land Settlement Officer's eyes might in some cases be important. Where there are two land marks and the evidence of, say, the Plaintiff seems overwhelming, then the Settlement Officer can go out on the land and add the evidence of his eyes to the evidence of the witnesses. In this case, the witnesses were not believed by the Settlement Officer, and therefore he had only his eyes and, as I have just submitted, that evidence is not enough, based as it is on fallacious reasoning.

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After all, what was the basis of the Crown Counsel's claim? It is set out on page 4 of the Record:—

“We ask for a correction to be made in accordance with our claim which we propose to prove with the evidence of witnesses.”

The Government brought witnesses and this is what the judgment (page 4) says regarding those witnesses: That their evidence “was partisan, biased or specially selected and the witnesses have freely drawn upon their imagination.” This has one meaning and one meaning only, that the Land Settlement Officer did not believe the “evidence of witnesses” on which Government relied, and he says “The only evidence”—I 10 emphasise the word only—“that can be accepted is that of the Settlement Officer's own eyes.” Those eyes of course cannot be cross-examined and, as I have already submitted, the Settlement Officer thought he was relying upon his eyes but in fact he was relying upon the meaning of a place name. Therefore, the Government failed to prove its claim by the only evidence it had. My colleagues have already argued that to set aside a kushan, one needs more than oral evidence and therefore I shall not go into that question. But supposing even that oral evidence was admissible, it failed to prove what Government set out to prove. Therefore, there was no *evidence* of mistake. 20

But again I will suppose, for the sake of argument, that there be a mistake. Does that give rise to any cause of action? I have already expressed my doubt as to the right of my learned friend to ask for equitable relief. But he does not appear to base himself on equitable relief. All his references were to Hailsham on the question of mistake and one case the Anglo-Scottish 1937, 2 K.B., page 607, all of which deal with mistake at common law. My learned friend cited from Volume 23 of Hailsham, page 145. But if you turn back to page 128, you will see that the particular title deals with actions at common law. There are three cases in which one is entitled to come to Court on a mistake (page 128, para. 176): 30

“(1) In actions ‘for money had and received’ to recover money paid under a mistake of fact;

(2) In actions of deceit to recover damages in respect of a mistake induced by fraudulent misrepresentation; and

(3) As a defence in actions of contract where the mistake of fact was of such a nature as to preclude the formation of any contract in law . . .”

As Your Lordship has pointed out, even the paragraph cited by my learned friend is followed by the words:

“But the Court will not interfere in favour of a man who is 40 wilfully ignorant of what he ought to know, or, in other words, who commits a mistake without exercising the due diligence which the law would expect of a reasonable and careful person . . .”

That is exactly why the Land Settlement Officer gave the judgment he did. I do not know whether he was aware of the law as set out in all the English cases, but certainly his decision is in entire keeping with those decisions. Nor is the Anglo-Scottish case of any help to my learned friend. That was a case of a return of money had and received paid under a mistake. It decided nothing regarding the matters in issue in the present case.

Let it be remembered that when the Government corrected the 50 area, its attention was called to this very question of area. This is not one of those cases where a mistake is made because either or one of the

parties did not pay its attention to the question in issue. Here the question and the only question was: "What was the area.?" Before taking money from the Kapat-Am Bank on the basis of the new area, Government satisfied itself as to what the area was. Therefore, the question of mistake is beside the point. The parties knew what they were dealing with, Government acted after an application had been made dealing with this very question, and a year's investigation was carried on before its decision was given. No court in the world would allow Government to hide behind the word "mistake" in circumstances such as those.

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10 In equity no steps can be taken after conveyance—I always excluded questions of fraud—of setting aside a transfer, even when there has been a mistake. There may be a question of recovery of money. No more. In this case the land was conveyed to us in 1882. We have held the land since and have ploughed out parts of it. The only question was a rectification of the title deed. That rectification took place after some possession of half a century and after a grant given more than half a century ago. Equity will not then step in and say "But a mistake has been made. It is true it is through Government's own fault, but we think that the position of the parties should be changed again." Equity will not say

20 that because after conveyance the Courts of Equity have never interfered.

I would submit that if the Land Settlement Officer can set up his own opinion against that of the Director of the Department of Lands, and the surveyors of the Government of Palestine and the officers of the Revenue Department, then you will have not a settlement of title but an unsettlement of title. There are so many cases in England showing that a mistake of this nature cannot be set aside, even in a case of mistake, but I will not waste your time with citing more than one or two, in particular because Government has not cited any English cases dealing with the so-called equitable doctrine.

30 As I have said, my learned friend merely referred to common law cases for money had and received. I will refer to *Brownlie v. Campbell*, 5 Appeal Cases, at the top of page 938 :

"That representation having been believed to be true at the time it was made and having been made in good faith, it was held, after conveyance, by the Court, that it was no ground for relief in equity, either by way of compensation, or by setting aside the contract."

Then, again, in *Besley v. Besley*, 9 Chancery Division, page 103, a lease was granted for 23 years when in fact only 16 years was left to

40 run. This was clearly a mistake, and the lessee claimed compensation. It was held that the lessee was to blame in not inspecting the original lease and ascertaining for himself the precise term. It was held it could not recover. V.-C. Malins said :

"If they chose to take the lease without investigating the title they must suffer for it. There was no fraud or unfairness in the matter, but an accidental mistake occurred."

Then, again, on page 108, at the bottom :—

50 "Now, if this error had been discovered before the execution of the lease . . . I think they would have been justified in claiming compensation, or possibly in rescinding the contract; but, as a matter of fact, Reed & Fox gave up their right to inspect the original lease, and took Micklem's word in regard to the contents

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of that lease, and having executed the contract and bound themselves to take the residue of the term, . . . they could not object to any covenants, however onerous they might be; they, in fact, bound themselves by covenants in a deed which they had not seen.

Under these circumstances, what are the rights of the parties? It has been laid down as a rule that a purchaser must be wise in time, and it is quite immaterial whether the rule is applied to a purchaser for valuable consideration or to a lessee, because a lessee is a purchaser for value, and is equally bound to look into the facts connected with the subject of the lease as a purchaser is to look 10 into the matters connected with his purchase . . . a purchaser cannot recover his purchase-money after the conveyance is executed, either at law or in equity."

The rest of that judgment is also of great interest in this connection.

Similarly, I refer to *Clayton v. Leech*, 41 Chancery Division, page 103.

Palestine authorities have been cited by my learned friends to show that Government is bound by its admissions. In particular, I would refer to C.A. 227/40, 8 P.L.R. at page 110.

If you look at Phipson on Evidence, 8th Edition, at page 213, you find that English law is not different. "Admissions bind the Crown as 20 well as ordinary parties."

The same thing is stated in Everest on the Law of Estoppel, page 8, where it is stated that Government is normally bound by an estoppel in pais, which is defined in Hailsham, volume 13, page 400.

Therefore it does not matter whether you look at English law or Palestine law. Government granted to the predecessors in title of the Kupat-Am Bank a kushan within certain boundaries 50 years ago. Government granted a new title deed to the Kupat-Am Bank with the area of land corrected to what Government then considered was the proper area. Government owns this land only by virtue of being successor 30 to the Turkish Government. But Government did not keep this land from the Turkish Government because that Government had granted it to the predecessors in title of my clients and its correct area had been admitted by the present Government.

That is really all I wish to say. My learned friend might have had something to argue before the new title deed was issued. To-day, he is too late. He is estopped by the admission of the Government of Palestine when it issued a title deed for the corrected area to the bank.

Secondly I say that no action lies before the Settlement Officer for a correction of a title deed by way of mistake. After transfer, all that 40 could be claimed was compensation.

Next I say that Government, by accepting money for the equivalent value of the land on the basis of the corrected area, cannot now come and say that it wants to undo what it has done.

Fourthly, I say that it is the duty of the Land Settlement Officer to put on the new register what was on the old register, unless the same can be upset by admissible evidence. In this case, no such admissible evidence was adduced and such evidence as was brought by Government was not believed. Therefore, the Settlement Officer could not set aside the title deed held by the bank. 50

Lastly, I say that the finding that there was a mistake was based on no evidence, except that of the eyes of the Land Settlement Officer and

that that evidence is not sufficient to set aside the kushan, nor is it sufficient when the eyes of the Settlement Officer are misled by his ears. I mean by that, as I have already stated, that "Eagle's Nest" are not words which necessarily show the modern boundary.

In the same connection I say that once a mistake has been admitted, as it now has, namely the difference between 34 dunams and 600 odd dunams, then a deed of conveyance cannot be set aside merely because there is a difference in the size of the mistake.

Your Lordships said on the last occasion that you would like to hear something about the merits. My learned friend, with his usual skill in advocacy, threw out the suggestion that as Mr. Edmond Levy was the real purchaser of this land, that he was a speculator, that he knew when he paid so little money that he was only getting 34 dunams. I do not like the word speculator. I prefer a person with imagination.

Mr. Justice ROSE : There is no objection to a man's speculating.

GOIETIN : No, my Lord, but the words are used in order to suggest that the man is not a very honourable character, but I submit that in Palestine, much modern progress has been brought about just by such speculators. Let it not be forgotten that Mr. Levy began buying up this land in 1927, when there was an economic crisis in Palestine. Instead of immigration, there was emigration from 1926. Here was a great stretch of rocky land. It was far from any town. Haifa harbour had not been built then. Nevertheless, Mr. Levy had sufficient imagination to see the possibilities of this barren stretch. He invested his own money and other people's. He stood to lose quite a lot of money if he could not persuade Government to rectify the area as stated in the old kushan. In addition, anybody who knows anything about land purchase in Palestine, will know that you do not only pay persons who have title under an old kushan but their uncles and their cousins and their brothers. You pay practically the whole village and sometimes the people from neighbouring villages too. Otherwise you will get objections which may make the transactions drag on for years. Furthermore, it was not sufficient for Mr. Levy to see things with the imaginative eye. He had to persuade others to see possibilities of the future. He had to persuade them to invest money in what on the face of it seemed a worthless bit of land. Therefore, the actual sum paid, I think he said it was about LP.1500, for the actual purchase from the so-called vendors is no test of the amount actually paid out by him before securing his title deed. I say nothing of the fact that he is even bound to pay more fees to come and fight Government in settlement.

Furthermore, the interest of Government in this piece of land seems a little quaint. Their closed forest area will be respected. When this summer resort has been built up, there will be more trees planted than Government ever dreamed of planting. If the Forest Department wishes to make any suggestions, they will be carried out faithfully.

If Government wishes to make a summer resort, well, there are plenty of other stretches in the neighbourhood and enough barren soil in Palestine to enable it to do so. So far all that it has done in the way of summer resort is to take over from the Custodian of Enemy Property two cities, why therefore should not Mr. Levy or anybody else turn a barren soil into a happy healthy summer resort ?

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I therefore ask that this appeal be dismissed with costs and advocate's fees.

Mr. KOUSSA : I associate with what my friends submitted. I would only add two points: that the area shown in the Kushan is wrong, is agreed to by the Government, first by the correction which the Government effected, and second by the Loxton Commission, who went to inspect the land at the request of the Forest Department in 1942, after the case was instituted before the Land Settlement Officer and no notice whatsoever was given to the present Respondents. Therefore this Report is null and void. Further, this Commission was not appointed by any Court. 10 I objected before the Settlement Officer to the evidence of Mr. Loxton, and to the submission of the report and plan. This Commission stated that the area of 34 dunams is wrong. Also the Settlement Officer put in his judgment that the area of 34 dunams is not correct.

Mr. Jardine stated in evidence before the Settlement Officer that whether the land was cultivated or not, he was satisfied that the boundaries were correct as claimed by the Kupat Am. It is clear that the letter of Advocate Bernblum, as pointed out by my friend Abcarius Bey, has not influenced the mind of the Director of Land Registration nor was it acted upon. There was ample evidence in the file to show the nature of the land, 20 and it was admitted in evidence that there was an application by the Kupat Am together with the plan of the Government, and further there was the Report of the Agricultural Department which showed clearly what was cultivated and what was not. The Government failed to show where the Jurn en Nassura was. As my friend stated, this was a guess work. I was present, and I would not say that the Jurn en Nassur was where it was stated, because it is too small to hold eagles, as it is only 15 cms. deep approximately. Therefore the finding is of no value. On the other hand you have the finding of the Director of Land Registration who is the 30 competent authority. The plan was made by the Government, block 28, Exhibit 26A, which is in the file of correction of area, shows the same western boundary Jurn en Nassura as submitted by the Respondents, which is about one metre deep.

The correction of area was made in 1938, i.e. two years before that area was declared a Settlement area, and therefore it was within the exclusive jurisdiction of the Director of Land Registration. I submit that the evidence before the Settlement Officer was that the practice since the commencement of the Land Registry, that the Director of Land Registration would effect the correction. Is it right that they should come and ask you to upset this practice? The evidence of all the three officers who 40 have been in the Land Department since 1919. Is it fair or wise for the Government to come and say I ask Your Lordships to upset that practice. What would the effect be. The effect is that the people would say that this Government has appointed officers found by the Court to be incapable to perform their duty. If Your Lordships would say that this practice is wrong, it would mean that the public would be defrauded by the officers of the Government. Public interest alone requires that Your Lordships should not interfere.

In any case it is humbly submitted to be absurd to come after six years of the correction of area to make such a claim. 50

Mr. HOGAN :

I anticipated that my friends would try to put me in the position of being somebody trying to upset a registered title. I am not trying to do that. The only registered title in this case is the registered title issued in 1882. In 1882 they issued a kushan which had greater validity than a kushan nowadays. If you look at the evidence of Mr. Jardine see page 6, on the top . . .

10 It might be suggested that in this case we have two kushans, one of 1882 and one of 1938. I prefer to put it like this. Mr. Eliash stated that all Miri kushans must go back to a grant. The grant in this case was made in 1882, and year after year that title for 34 dunams remained, and was always transferred as 34 dunams. They were not fictitious transfers. That was the position up to 1937. Then we get this application by the Kapat Am for a correction of area. In pursuance of that claim they say they got a new title. Mr. Jardine and Mr. Stubbs have been emphatic that it was never their intention to issue a new title. See page 5, "The Land Registry has no authority to grant lands. . . ." Then again, on page 7, "it was not my intention, and I have no power to make a fresh grant." Then on page 9 . . . Mr. Stubbs at page 16, "We did not
20 intend to give any."

Let us first look at the document they have referred to as a registered title. It is no registered title at all. May I refer to the two sorts of registration which can exist.

We have got registration of title, and we have got registration of deeds. Under a registration of title you have a guarantee of title. Under a registration of deeds you do not get any guarantee. You do not derive title from a register of deeds.

30 In this country since the Turks went you only have a registration of deeds. Once you have settlement by a Settlement Officer, you may get a registered title. Sections 43, 44 and 45 of the Land Settlement of Title Ordinance. Read out.

Documents which are registered prior to Land Settlement do not guarantee title. There is a book by Hogg, Registration of Titles to Land throughout the Empire. It refers to the Cyprus system of registration. See page 4 of the Introduction. It says it is only a registration of deeds. Our system is similar to the Cyprus one.

We only have a registration of deeds here, and if you look at the document on which my friend relied, it is headed Extract of the Register of Deeds.

40 GOITEIN : Only the copy is headed Extract, which everybody can get for the payment of 50 mils. What I produced is the original.

HOGAN *continues* : In this case it is an utterly fictitious deed that has been entered on the Register. There is no deed. If there was a deed, perhaps you would see more clearly how the Registrar of Lands was exceeding his powers.

A correction of area is said to be made in order to bring the register in harmony. Your Register says 300 dunams, my kushan says only 34 dunams. You have to make the Register agree with the kushan.

50 COURT : If you are correct, there would be no point in applying for a correction of area, and there have been very many cases of corrections

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of area. Nobody can give me more, according to your argument, you are not likely to apply for a correction to get less, and for the last 20 years people have been applying for rectifications of area.

HOGAN : I say they have no right to claim more than the original grant.

COURT : You must admit that nobody would apply for a correction, where he wants the locality changed. Therefore the only cases would be where the Register would show less than the kushan. On the other hand we have been told that it was the custom to apply the question of boundaries, and not the question of area. The area is fictitious and only the boundaries count. If in fact boundaries was the answer, they merely made a fictitious area. You have statements of Stubbs and Jardine to that effect. You say that the Settlement Officer's finding as to the area would carry weight against Mr. Jardine ? 10

HOGAN : Mr. Jardine did not go on the land. If you look at his evidence he states he never even saw the kushan.

WEINSHALL objects. He says the contrary.

HOGAN : Bottom of page 4 . . .

GOITEIN : He misquotes. He says . . . para. 2 page 5 . . .

HOGAN : I am quoting from the Record. 20

And yet Mr. Koussa asked you to say that Mr. Jardine's finding must be preferred to the Settlement Officer, who inspected the land on several occasions. Jardine himself says it is for the Settlement Officer to fix the boundaries. See page 5, and then at page 6 middle. He does not pay much regard to the area, which he himself accepts as being of no account.

COURT : If he really means that, then the application for correction becomes absurd.

HOGAN : He does not see himself as making a grant. People come to him and say we have a title but it is not accurate, and ask him to make it accurate. 30

Jardine could not give them anything. He had no power to give them anything. He could not give them a title for what they did not have before. Look at Corrie J.'s judgment in the Khouri case. There the Land Court cut down the area, and nobody suggested that they had no power to do that.

ABCARIUS BEY : In the Khouri case only 3 points were shown, and the Court drew a line between the points. We produced it when Your Lordship asked if there is a case where a lesser area was given. There was no kushan in that case.

HOGAN : See page 5 of the judgment . . . 40

Mr. Jardine has not got the power to grant, dispose or give away Government land.

COURT : If the Director of Land Registration could not grant him anything, you say he should wait for Settlement ? If he were taking no proof before the Settlement, that would make his position rather dangerous.

HOGAN : The Kupat Am say they had a title to 3290 dunams. If so, somebody must have given it to them. If the Director of Land Registration gave it to them, he had no power to do it. The Settlement Officer found that.

I would like to make it clear that we state very definitely and very clearly that we consider the Kupat Am are entitled to every dunam that was granted to their predecessor in title by the Turkish Government. They must get that. We dispute their title to anything over and above that. See Art. 3 of the Land Code by Tute, and article 1 of the Tapou law. There were officials in 1882 who could make grants, and such grants were made. Since we came, this right is vested in the High Commissioner, and that power has never been delegated.

COURT : I thought you stated it was the Settlement Officer.

HOGAN : I say that it is not for Jardine to interpret the original Turkish grants but for the Settlement Officer or the Land Court. See Section 3 of the Land Courts Ordinance.

COURT : What would the Land Court say ?

HOGAN : They would give a declaration, and that would bind the Settlement Officer. Sometimes the decisions of the Land Courts are very difficult to follow, because they sometimes do not have proper maps.

If that is clear, I will pass on to the interpretation of the original grant. I wonder if I can ignore the judgment referred to by Mr. Eliash as to what proof is required to upset a registered kushan. I am not upsetting a kushan. I am following a kushan which was delivered in 1882. If Your Lordships have been impressed with his argument on this particular point, I would say that I do not think it was a very fair representation of the leading cases on this point. See L.A.56/35, not reported. I will give you a copy. Read out . . . That seems a very fair statement of the law. That judgment was quoted with approval in C.A. 195/37. Then you have this case which was quoted by Mr. Eliash. C.A. 98/39, 6 P.L.R. page 507. I read page 509 . . . But remember I do not admit for a moment that we are attacking a registered kushan. Then again in C.A. 137/42, 9 P.L.R., page 596, I read 598 . . . and then we have the judgment of the Privy Council No. 21/40, 8 P.L.R., page 181. I read page 185.

The effect of this judgment is to make it clear that there is nothing conclusive about the Kushan. If it was issued by mistake, it can be replaced, and in determining this, you are entitled to look at all evidence. Respondents were wrong in saying that we have nothing but oral evidence against their kushan. I have not only an earlier and better registration showing the area to be 34 dunams, I have as much registration as they have. In support of this I submit my witnesses as well. We have one kushan of 1882 which has certain boundaries, and the area is 34 dunams. We have another, with the same boundaries, which names an area of 3650 dunams. Clearly they are not both correct, they may both be wrong.

The intention was to grant only 34 dunams, the boundaries indicated only the situation of the land. If I am wrong, then it should be 625 dunams. They have urged Your Lordships to find that the boundaries included an area of 3650 dunams. Where you are to find such boundaries, I do not know. Mr. Jardine did not find them. He never saw the land. There

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is no reference to any plan in the kushan. It is true that in the file in which the application for a correction of area was made, a plan was sent in, but if one looks at the plan, one can clearly see that the boundaries named in this kushan are not the boundaries shown in the plan. Mr. Jaouni went out to check the technical features of the plan. That did not establish that the Bank owned the 3650 dunams nor did it establish that the place names were written on the right points. But in the belief that there was such a plan, Mr. Jardine apparently decided that we will correct our registers, and we will say that the kushan included 3500 dunams. How Mr. Jardine could have made that correction with that plan before him, 10 is difficult to see.

It has never been established that because a locality is named in the heading of your kushan, you own the whole of the locality.

Mr. Goitein stated that we could not come and make this claim, but that if the Director of Land Registration gave away other people's land, then they can come and battle for it. Although 99% was Government land, there was a portion which belonged to a man called Abdel Rahman, who has for many years cultivated a patch. That has been swept into the registration of the Kupat Am. My friends have told you that Kupat Am have paid taxes. Well, up to 1937 Kupat Am paid no taxes at all 20 and they have never paid for more than 20 dunams. C.A. 227/40, 8 P. L.R., page 107, known as Abu Ghosh case. In that case the payment of taxes was not relied on alone. There were other entries. They did also rely on the fact that Werko has been paid. As a result of that case the law was amended. No payment of taxes can now be evidence against the Government of Palestine. Sec. 43 of the Rural Property Tax, March 1942. That was the law that was in force when this case came to be heard.

Then we come to the Town Planning Scheme. I never heard that a Town Planning Scheme conferred title on anybody. It has absolutely nothing to do with title. The Town Planning Scheme does not purport 30 to give title to anybody for the land with which it deals.

Then I turn to the difficult and important question of custom on which my friends have relied. Before dealing with this point I would refer to C.A. 131/42, 9 P.L.R., page 756. That is a correct statement of the law. If you have a Statute and it is doubtful, then you follow the customary interpretation, but where the Statute is clear, it has never been held that practice can override a Statute. What exactly is the custom? It is the custom to make alteration in figures, but never the custom to say I have given you a good title. We do not bother because it can be put right at Settlement. We correct without prejudice. 40

COURT: Do you share the apprehension of the other side that if we found in your favour that would cause uncertainty to people?

HOGAN: It has been urged against me that there is this practice and it has set up an estoppel against this Government. This is not correct. If officials go outside their power, it has no more effect than if an outsider would do it. On the question of estoppel the authorities are very clear on our side. You cannot possibly be estopped on the ground that you have done something you had no power to do. Mr. Jardine said in answer to Abcarius Bey that the grant was made by the Turkish Government. He never purported to make a new grant. 50

COURT : Here is a kushan. I go to Jardine and ask him to correct it. That is tantamount to Government giving me a new kushan.

HOGAN : My answer is that Mr. Jardine had no power to give it to you, and did not really give it you. It was never intended. There is no estoppel.

10 Mr. Eliash tried to draw a distinction between public and State lands. The term appearing in the Order in Council is Public Land. See Art. 2 . . . This particular land has come to us by succession to the Turkish Government, which held the earlier title. Mr. Eliash referred you to title to Mahlul land which depends on the cessation of a private individual's right to the land. You do not come into it by virtue of succession.

I want to refer you to a case which is very clear on the point as to there being no estoppel against Government by the unauthorised acts of officers. It is in the Digest, Vol. II, page 530, note 340, *A.G. v. Sydney Municipal Council* . . .

20 A good title cannot be given by the mere fact that Mr. Jardine was sitting in the Land Department, it makes the claim no better than if it were done by somebody in the Health Department. That alone in my submission defeats the claim of estoppel. Another authority is in Vol. 13, Hailsham, page 474, I read para. 542 . . .

COURT : In this case the Appellants are described as the Government of Palestine. Is there any distinction between Government and the High Commissioner.

HOGAN : I submit no.

30 We claim this land. We say this is our land. We have two conflicting claims. If it belongs to us, it belongs to the High Commissioner. They say it has been given to them by the Director of Land Registration. It was not given to them by the Turkish Government. They have no title but to 34 dunams. It was submitted that what is most important is boundaries. You say the boundaries lie in such and such a place. You induced me to make this correction by telling me your boundaries were there. I now see they are not. You induced me to do that, therefore you cannot turn round now and say, Ah, you are estopped. I cannot be estopped as a result of that. False inducement. Hailsham, Vol. 13, p. 476.

40 Question of Mejlis Idara. The particular article under which Mr. Jardine made this correction stated that such correction must be made in pursuance of a decision of the Mejlis Idara. In this case we have no decision of the Mejlis Idara. Mr. Jardine himself admits that it has not been replaced. There is nothing in the place of the Mejlis Idara. The Settlement Officer found to the same effect. How can Mr. Eliash ask you to find that there is a Mejlis Idara embodied in Mr. Jardine.

COURT : The only correction is under article 3. You can either not do it at all, or you have to do it without authority. Wouldn't it be too dangerous if you do not apply for your correction.

WEINSHALL : See page 1823 of Drayton, items 12 and 16.

HOGAN : That merely prescribes a scale of fees. It certainly did not set up a department in the place of the Mejlis Idara. It might have

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been assumed that such existed but these rules had no power to set up a new Statutory body.

COURT : Isn't it too late in the day to come forward with this.

HOGAN : It is never too late. Where the law is clear, it is the law. Because there is no Mejlis Idara, it does not mean that the consent of the Mejlis Idara is no longer necessary.

COURT : As we do not know which way to go, we follow custom. For the last 20 years there have been corrections. Practice should prevail.

HOGAN : I say this is wrong. Art. 3 is binding. If you have to get the consent of somebody, and that person is not there, you cannot do it. 10

COURT : This has gone on for 20 years.

HOGAN : People say there were corrections, but it was never decided by the Court. Mr. Kenyon did not hesitate to say that as there was no Mejlis Idara, therefore there is no correction. Para. 14, page 7. Mr. Eliash directed your attention to the Villayet law. The Villayet law has been repealed in 1934 by the Municipal Corporation Ordinance. Mr. Eliash is asking you to decide that a body which does not exist does exist. He is asking you to hold that somebody can step into the shoes and perform the functions of the Mejlis Idara at will. This is wrong. Mr. Jardine has succeeded to the Daftar Khakani, who cannot make any corrections on their own. The functions of the Mejlis Idara with regard to the protection of State land are now discharged by the Director of Land Settlement, who looks after State domain. 20

I have come to a close. But before I sit down, there is a case referred to by my friend, which I would like to mention. It is a Privy Council judgment which they used to support the argument that a registered title cannot be upset by oral evidence, but in that particular case there was a number of entries. In that case the Privy Council stated that the mere quotation of the earlier entries which differed from the later was not sufficient to show that the later entries were incorrect. 30

COURT : You say they cannot get more than they have in their original Turkish kushan. Mr. Jardine and Stubbs held boundaries as being more important than area. The evidence is against you on that point.

HOGAN : Their view is that the boundaries override everything. I say that is wrong. In this case the cultivation never exceeded 200 dunams and the grant was made on the basis of cultivation. The Settlement Officer found in our favour in this respect. In 1882 there was a grant of 34 dunams, and the Kupat Am are entitled to 63% of 34 dunams, and if I am wrong in this, then they are entitled to 63% of 625 dunams. 40

I therefore ask you to hold that in this case the Government of Palestine are entitled to all the land not included in the old kushan, either 34 dunams or 625 dunams, depending on whether Your Lordships agree with the decision of the Settlement Officer in regard to Art. 47.

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Civil Appeal No. 160/43.

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

Before : Mr. JUSTICE ROSE and Mr. JUSTICE EDWARDS.

In the Appeal of :

THE GOVERNMENT OF PALESTINE

Appellant

v.

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

Respondents

Appeal from the decision of the Land Settlement Officer, Haifa Settlement Area, dated the 15th of March, 1943, in Case No. 2/Tira.

For Appellant : Mr. M. J. P. HOGAN—Crown Counsel.

For Respondents : Nos. 1 & 2—Dr. A. WEINSHALL.

Nos. 9 & 11—Mr. E. D. GOITEIN.

No. 17—deceased.

No. 22—ABCARIUS BEY and Mr. M. ELIASH.

40 No. 23—absent.

The rest—Mr. E. KOUSSA.

JUDGMENT.

EDWARDS J. : This is an appeal by the Government of Palestine from a decision of the Land Settlement Officer, Haifa.

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In 1882 A.D. the Turkish Government made a grant of 34 old dunams, that is 32 new dunams, of land to one, Dirbas and his partners, under Article 103 of the Ottoman Land Code. In 1929 the land in question was proclaimed a Forest Reserve No. 185, Palestine Gazette No. 819 of 16th July 1929, page 819, or, to be more accurate, the proclamation covered the whole of the area except two parcels of ten dunams and five dunams respectively, the latter part being held by the Land Settlement Officer to fall outside the boundaries of the title deed granted to Dirbas. The Government claimed all the land in question except the original 34 Turkish dunams, and seven dunams admitted to have been in the possession of a certain cultivation for a long period, and the two parcels which I have just mentioned. 10

In 1882 only one kushan was granted for the 34 old dunams, and no kushan was granted for any other portion of the land which is known as Khirbet Yunis, a ruined Khirbeh standing on a plateau five kilometres south of Tireh village.

About the year 1926 a certain Mr. Levy, with a view to forming a garden city, commenced buying up shares in this kushan and acquired a 63 per cent. interest in the kushan, the remaining 37 per cent. belonging to a large number of people who were defendants Nos. 1-21 before the Land Settlement Officer, and who are respondents Nos. 1-21 in this Court. 20
In 1937 Mr. Levy transferred his interest to the Kupat Am Bank, who are said to be merely nominal defendants and are respondents No. 22 here.

It is said that this land is not included in the balance sheet of this Bank. In the Land Registry Mr. Levy declared that the consideration for the purchase of his 63 per cent. shares in this kushan was LP.184. In 1937 he opened in the Land Registry, Haifa, a transaction for the "correction of area."

In the result, after certain enquiries by the Acting Director of Land Registration, the Kupat Am Bank were registered as the owners of shares 30
in 3296 dunams and 192 square metres, for which they paid bedl el misl of LP.426.529 mils. The other defendants, who were their co-partners and who were all heirs of the transferees, were not parties to the registration and remained registered as part owners in 34 dunams by separate registration.

In 1940 the Kupat Am Bank promoted a Town Planning scheme, No. 34, which was finally approved by the Haifa District Town Planning Commission on the 2nd December, 1941. I should have said that the application for the correction of area was made on the 24th September, 1937, and was accompanied by a certain plan filed by the Kupat Am Bank. This plan showed the land divided into four parts, a, b, c and d, 40
equal to 3528 dunams, and a fifth part which was not included in the application or considered and dealt with as part of the application.

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 filed its claim to the land as unassigned State Domain and part of Forest Reserve No. 195. The co-partners of the Bank claimed the remaining shares in all the land by registration and possession.

The Government claimed before the Land Settlement Officer that 50
the correction of area had been obtained by gross misrepresentation; that other localities besides Khirbet Yunis were included in the plan;

and that the boundaries were incorrectly shown and that the whole plan was misconceived by both parties. The Government further claimed that there was never in fact any intention to make a grant of fresh rights, and that the original grant was for 34 dunams only, and that that was all to which the respondents were entitled.

After hearing much evidence and addresses by parties advocates, the Land Settlement Officer found against the Government on the question of gross misrepresentation, but found in favour of the Government on all other points of fact, and in particular he found that there was no justification for correcting the area, as no error had been proved. In other words, he found entirely in favour of the Government of Palestine except for the fact that he considered that they were bound by the conduct of their officers in granting the new kushan. He therefore found that, as no fraud had been alleged or proved, the Kupat Am Bank were entitled to have their title confirmed, that is to say, the title deed or kushan which had been issued to them showing that they were the owners of shares in 3296 dunams, 192 square metres. He therefore dismissed the claim of the Government to the shares of the Kupat Am Bank, and he also dismissed the claims of the twenty-one other defendants, with the exception of their claims to the shares in the 34 Turkish dunams. Against this decision the Government have appealed to this Court.

The hearing before us occupied several days. It was not of course necessary for the Kupat Am Bank, as they were successful before the Land Settlement Officer, to lodge any cross-appeal, although their advocate at the Bar attacked and criticised several of the findings of the Land Settlement Officer. I think that it will be well if I now deal with certain findings which were in favour of Government.

The Land Settlement Officer found that the original grant to Dirbas had been made under Article 103 of the Ottoman Land Code. This finding was criticised by the Advocate for the Kupat Am Bank; but, in view of the evidence led before the Land Settlement Officer, I feel that this Court must infer that, prior to 1882, the land of Khirbet Yunis was mewat and subject to the provisions of Article 103. The advocate for the Kupat Am Bank also criticised the Land Settlement Officer's finding that Article 47 of the Ottoman Land Code applied only to sales between private persons and not to an original grant by the State. Crown Counsel (Mr. Hogan) on the other hand supported this finding, relying on Land Appeal No. 15/28 Rotenberg's "Collection of Judgments," Vol. 4, page 1475. The Kupat Am Bank, however, say that the present case is one of private sale. It is clear that there was a sale, at any rate to Mr. Levy.

The point is a difficult one, but I think that it should be resolved in favour of the Bank, and I therefore, for the purpose of this case, assume that Article 47 does apply.

The advocate for the Bank also criticised the Land Settlement Officers decision as to the boundaries and as to what was contained in the original kushan. The Land Settlement Officer heard evidence at great length, and in his decision exhaustively reviewed this evidence and gave ample reasons, which seem to me to be satisfactory, for his conclusions. This matter was eminently a matter for the Land Settlement Officer to decide, and I think that it is impossible for this Court to interfere with his conclusions. I would merely say that strong criticism was advanced by the advocate for the Bank against the last sub-paragraph of paragraph 8 of the decision,

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where the Settlement Officer said that he considered that the evidence of both parties concerning their "jurn" (that is a hole or bowl in the rocks) was partisan and biased, and that the witnesses had freely drawn upon their imagination. He therefore held that the only evidence which could be accepted was that of his own eyes. The advocate for the Bank has said that it was improper of the Land Settlement Officer to rely on his own eyes. Now, if the Land Settlement Officer had perversely refused to believe the evidence of any particular witness without any reason for so disbelieving it, the matter might be different, but that is not the case here, nor is that the complaint of the Respondents. 10

This Court has frequently held that a Land Settlement Officer is entitled to inspect the land and to draw his own conclusions from what he sees. This is precisely what the Land Settlement Officer did in this case. He went on to say that he was satisfied from numerous inspections that the "jurn" of the defendants was a cave in the cliffs, and never a hole in the shape of a flask as the defendants tried to make him believe. He therefore decided that the "jurn" of the Government is the Journ en Nassura of the entry. He also found that the entry under discussion was a record that the transferees had cleared and opened a field of 34 Turkish dunams and paid the bedl misl as required. There is no other entry in any land book for Ard Khirbet Yunis, and this fact shows that the whole of Khirbet Yunis was covered by the entry. The area actually under cultivation had never exceeded 200 dunams. The land books of Tireh were registers of land transactions, in sequence as they came to be registered, and were not registers of land in which every parcel in the village was recorded. He found that it was clear that other localities, that is to say, localities other than those in the original kushan, were included in the plan which the Bank submitted at the time when they applied for a correction of area. 20

In view of my finding that article 47 of the Ottoman Land Code 30 applies, the sole question is whether the Bank are entitled to any more than was contained within the boundaries of the original kushan.

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. 40 The area found to be within the kushan was 625 dunams. 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 dunams and no more.

The only remaining questions therefore are: (1) what is the nature and effect of this proceeding known as "correction of area"?; and (2) what is the effect of the grant by the Acting Director of Land Registration to the Kupat Am Bank of the new kushan? 50

The Land Settlement Officer held that the only authority for correction of area of boundaries was Article 5 of the Provisional Law regulating the right to dispose of immovable property, of 5th Jumad il Awwal, 1331 (Sir R. Tute's book on Ottoman Land Laws, pp. 169 & 170). The Land Settlement Officer held that there was nothing to be corrected and that the whole proceedings were misconceived. If the Land Settlement Officer were right in holding that Article 47 did not apply, then it would seem that his reasoning was sound. But what this Court has to face is this problem of correction of area.

10 The Advocate for the Kupat Am Bank has strenuously argued that this process of correction of area has been followed in Palestine for over twenty years, and has now the sanction of authority and must be recognised by this Court. I think that this contention is sound and must be upheld. The process has been recognised by this Court in several cases, in particular in Civil Appeal No. 206/40, P.L.R. Vol. 8, page 30 at page 32, where it is said that a certain person "opened a file in the Land Registry Haifa, for the correction of the boundaries and area of his property, and obtained a fresh kushan." It is clear, therefore, that this Court has recognised the practice of fresh kushans being issued after a correction of boundaries
20 and area.

The question, however, is, "what is the Land Registrar expected to do when a file is opened for the correction of area, and what should a fresh kushan contain?" In my opinion, it is not unreasonable to assume that the sole purpose and object of this process was to enable holders of old Turkish kushans to have the area, as found by modern methods of survey to be the correct area within the boundaries which the Turkish Government meant them to be, corrected accordingly. It is well known that, in Turkish times, kushans sometimes showed fewer numbers of dunums than the number actually within the boundary intended to be
30 granted, the reason for this being to escape taxation on a large amount. It has, however, been argued that, as the Land Settlement Officer found that there was an absence of bad faith or gross misrepresentation, Government are estopped from withdrawing the title which they are alleged to have given to the Bank when they issued the kushan showing 3296 dunams and 192 square metres, and it is also argued on behalf of the Bank that the Land Settlement Officer was entitled to hold that Government was bound by the actions of its officers.

It is unnecessary to go into the question of whether the Acting Director of Land Registration and other officers of Government were careless or
40 perfunctory when they made the correction and grant of a new kushan. It is common knowledge that at the time when the Acting Director of Land Registration sent out surveyors and land officers and agricultural inspectors and so on, to inspect the land, the country was in a disturbed condition, and it is no doubt true that the inspections made were perfunctory. This, however, seems to me to be irrelevant, because I agree with Mr. Hogan when he says that, if the Director of Land Registration had no power to make a grant greater than what was found to be actually within the boundaries of the original kushan, then the Bank cannot get more.

50 I now wish to deal with the question of whether an Acting Director of Land Registration, or any other officer of Government, can make a grant of land.

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1944,
continued.

The respective advocates who argued the matter on behalf of the respondents cited many authorities and tried to show that, since the British Occupation, several specified Government officials have been performing duties which in Turkish times were performed by specified Turkish officials, e.g. Ma'mur Tabu, etc. This, however, seems to me to be entirely irrelevant and to carry matters no further. In the absence of specific statutory provision enabling a particular specified official of the Palestine Government to perform the duties formerly undertaken by a specified Turkish official. I am of opinion that no amount of evidence as to practice which has prevailed over a number of years can assist the 10 defendants. In other words, they must prove that there is statutory authority for the grant, by a particular Government official, of land. If they cannot do so, then it is idle to suggest that Government were holding out the Acting Director of Land Registration or any other official as a person competent to make a grant of land. Ignorance of the law cannot avail the respondents. They, that is the respondents, were in as good a position as anyone else to know who was the proper authority to make a grant, and if they went to the wrong person and obtained something from that person, they cannot expect to be any better off.

Who is the Government of Palestine? My own view is that, with 20 regard to grants of public lands, it is the High Commissioner. It is clear from Articles 12 and 13 of the Palestine Order-in-Council, 1922, that the High Commissioner alone can make grants. I refer also to Articles 4, 5, 6 and 7 of the Palestine Order-in-Council, 1922, and to the Royal Instructions of 1st January, 1932, Laws of Palestine, Revised Edition, Vol. III, page 2659, and to High Court No. 7/42 Palestine Law Reports, Vol. 9, page 126.

The respondents argue that this was not public land, but the answer to this is that they themselves have constantly, and even before us, said that they rely on the original grant. The original grant was under 30 Article 103, and the land was therefore clearly public land. The 34 Turkish dunams have now, in my view, been extended to 625 new dunams. This is clearly an extension of the original land which was certainly public land. If it had not been public land the area in question could not have been declared a Forest Reserve. If, then, the defendants wish to prove that they are entitled to more than 625 dunams, they can only do so by proving a grant by the High Commissioner. No question of estoppel can arise. It was the Kupat Am Bank or Mr. Levy, or both of them, and they only, who started the "ball rolling" by asking for this correction. It is obvious that they were only too glad to induce the Acting Director 40 of Land Registration to make this grant and to obtain a new kushan, which they doubtless hoped would never be attacked.

The Public Lands Ordinance, 1942, does not help the respondents, because there is no question here of licence to occupy, nor is there any question of purchase by or on behalf of the Government of His Majesty's Forces. In my view, the very fact that the Public Land Ordinance, 1942, had to be passed so recently, is clear evidence that the High Commissioner alone can make grants of public land. Moreover, the fact, that an Ordinance had to be passed to enable the High Commissioner to delegate his powers to some particular named official to grant licences, is clear 50 proof of the fact that the right to make grants of land is still vested solely in the High Commissioner.

The only question which remains is whether a kushan is so sacrosanct as not to be able to be attacked. It is true that in Privy Council Appeal 56/38, P.L.R. Vol. 7, page 113, Sir George Rankin, when delivering the judgment of the Board, said that the latest tapou register is competent evidence as to the character of the land in question, and that the strictest proof should be required before holding that on such a matter the subsisting entries are incorrect. Apart from the fact that that judgment referred only to the character of the land, it would seem that, far from affirming the proposition that a kushan is sacrosanct, the judgment seems to indicate that if there *is* strict proof the kushan may be attacked.

No. 41.
Judgments,
27th July
1944,
continued.

It is clear from the evidence of Mr. Jardine, the then Acting Director of Land Registration, and of Mr. Stubbs, the substantive Director of Land Registration, that Mr. Jardine never intended or purported to make any grant of land when the new kushan was issued.

Mr. Hogan referred to Sections 43 and 45 of the Land (Settlement of Title) Ordinance in support of the proposition that before a Settlement Officer a kushan, or at any rate what is in a kushan, can be questioned. In my view, this contention is sound. It is to be remembered that the Government are not attacking the kushan or the title of the Kupat Am Bank to land at Khirbet Yunis. What is being attacked is the number of dunams which the title deed should show the Kupat Am Bank as owning.

It has been argued on behalf of the respondents that a registered plan is as sacrosanct as the kushan itself. This may well be after land settlement, but, until land settlement, I think that the plan also can be attacked. I think that Government are perfectly entitled to question a kushan at land settlement under the provisions of Section 29 of the Land (Settlement of Title) Ordinance, as amended in 1939 and 1942.

I do not think it necessary to deal with some of the other points raised in the judgment, e.g., as to who succeeded the Mejlis Idara. In any event, there is no proof that any statutory authority has succeeded the Mejlis Idara, and there is certainly no proof that it was succeeded by the Director of Land Settlement. Nor do I think it necessary to discuss the law with regard to mistake, or the authorities cited by Mr. Hogan, namely, Hailsham, Vol. 23, pages 142 and 145, or the case of *Anglo-Scottish Beet Sugar Corporation Ltd.* [1937] 2 K.B. 607.

I decide the matter on the footing that, whatever was done in this matter by the various Government officials concerned, these officials could not grant and did not purport to grant any fresh land or additional land other than that which they were entitled to grant by reason of a proper correction of area. If they exceeded their powers, then that cannot help the respondents, whose title to this land was liable to come under the scrutiny of the Land Settlement Officer when land settlement came to this area.

For these reasons I would allow the appeal and I would direct the Land Settlement Officer to order registration of the land in question in the name of the Government of Palestine, except the land comprised in the original kushan, which should now be recorded as containing 625 dunams, of which 63 per cent. will be registered in the name of the Kupat Am Bank.

The 22nd respondents must pay the appellant's costs of this appeal to be taxed on the lower scale to include an advocate's attendance fee at the hearing of LP.15.

Delivered this 27th day of July, 1944.

D. EDWARDS,
British Puisne Judge.

No. 41.
Judgments,
27th July
1944,
continued.

ROSE J. : I agree and would only add this. As my brother Edwards points out, it would now seem to be too late to challenge the practice of correcting areas, as this practice has been recognised by the Courts of Palestine, at least by implication, for many years. The question to be decided, therefore, is what is the effect of such a correction. It is, of course, true that the registered holder of a kushan is *prima facie* entitled to the land covered by that kushan, but it seems to me, as my brother intimates, that at settlement the question of what area is included within the boundaries mentioned in the kushan is one for the decision of the Settlement Officer, and his discretion should not be fettered by the fact, if such be the case, that the area is inaccurately set out in the kushan. And this position, in my opinion, should not be affected by the fact that the kushan in question is a fresh kushan issued in substitution of the original as a result of a correction of area. 10

It may then, perhaps, be asked what is the purpose of such a correction, if it is not to be treated by the Settlement Officer as conclusive? The answer would seem to be that the holder of a kushan, in which the area is manifestly underestimated, may well desire either to satisfy himself or a prospective purchaser, to bring his area into apparent conformity with his boundaries. This, however, as already stated, would not seem to affect the duty of the Settlement Officer to determine, in case of dispute, whether the corrected area accurately represents the land contained within the boundaries. 20

ALAN ROSE,
British Puisne Judge.

No. 42.

No. 42.

ORDER granting conditional leave to appeal to His Majesty in Council, dated 12th September 1944 (not printed).

No. 43.

APPLICATION by the first Respondent, the Government of Palestine, for conditional leave to cross-appeal to His Majesty in Council, and Order refusing leave.

PRIVY COUNCIL LEAVE APPLICATION No. 12/44.
IN THE SUPREME COURT SITTING AS A COURT OF
CIVIL APPEAL.

Before : Mr. Justice EDWARDS.

In the Application of :

10 THE PALESTINE KUPAT AM BANK
CO-OPERATIVE SOCIETY LTD.

Applicants

V.

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
- 20 9. THURAIYA AHMAD ES SARWA
10. DHIB ABDEL QADIR HASSAN ALLU
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'AD MUHAMMAD HASSAN ALLU
18. RAUZA SAID MUHAMMAD HASSAN ALLU
- 30 19. MAS'ADA SA'ADA MUHAMMAD HASSAN ALLU
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.)

Respondents.

For Applicants : N. ABCARIUS BEY.

For Respondents : No. 1—Mr. M. J. HOGAN, Acting Solicitor-General.

The rest—absent, served.

ORDER.

40 As to the application by the Government of Palestine for conditional leave to cross-appeal, there appears to be no provision for cross-appeal in the Palestine (Appeal to Privy Council) Order-in-Council, 1924. I therefore think that this Court cannot entertain such an application. This view seems to be supported by the statement at page 173 of the

No. 43.
Application
by Govern-
ment of
Palestine,
and Order
refusing
leave for
leave to
cross appeal
12th
September
1944.

No. 43.
Application
by Govern-
ment of
Palestine,
and Order
refusing
leave for
leave to
cross appeal
12th
September
1944,
continued.

3rd (1937) Edition of Mr. Norman Bentwich's book on the "Practice of the Privy Council." "A petition for leave to enter a cross-appeal is addressed to His Majesty-in-Council," so I shall make no order on this application.

Given this 12th day of September, 1944.

Sgd. D. EDWARDS,
British Puisne Judge.

No. 44.
Order
granting
final leave
to appeal
to His
Majesty in
Council,
1st
November
1944.

No. 44.
ORDER granting final leave to appeal to His Majesty in Council.

PRIVY COUNCIL LEAVE APPLICATION No. 12/44. 10
IN THE SUPREME COURT SITTING AS A COURT OF
CIVIL APPEAL.

Before : Mr. Justice EDWARDS.

In the Application of :

THE PALESTINE KUPAT AM BANK
CO-OPERATIVE SOCIETY LTD.

Applicants

V.

- | | |
|---|------------------------|
| 1. THE GOVERNMENT OF PALESTINE | |
| 2. AYISHA MUSTAFA DIRBAS | |
| 3. LABIBA MUSTAFA DIRBAS | 20 |
| 4. ASSAD MUHAMMAD HASSAN ALLU | |
| 5. ALLU AHMAD MUHAMMAD ALLU | |
| 6. AHMAD MUHAMMAD HASSAN ALLU | |
| 7. SUKKARA MUHAMMAD HASSAN ALLU | |
| 8. WATEFA SAID MUHAMMAD HASSAN ALLU | |
| 9. THURAIYA AHMAD ES SARWA | |
| 10. DHIB ABDEL QADIR HASSAN ALLU | |
| 11. DHIBA ABDEL QADIR HASSAN ALLU | |
| 12. DHIYAB ABDEL QADIR HASSAN ALLU | |
| 13. KAMILA ABDEL QADIR HASSAN ALLU | 30 |
| 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 | |
| 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.) | <i>Respondents. 40</i> |

Application for final leave to appeal to His Majesty in Council from the judgment of the Supreme Court sitting as a Court of Civil Appeal dated 27th July, 1944, in Civil Appeal No. 160/43.

For Applicants : ABCARIUS BEY.

For Respondent : No. 1—Mr. HOGAN.

Rest—Absent.

No. 44.
Order
granting
final leave
to appeal
to His
Majesty in
Council,
1st
November
1944,
continued.

ORDER.

WHEREAS by Order of this Court dated the 12th day of September, 1944, the applicants were granted conditional leave to appeal to His Majesty in Council subject to the following conditions :

10 (i) That the appellants do enter within one month of the date of this order into a bank guarantee from one of the three banks, Barclays, Ottoman or Anglo Palestine, in a sum of LP.300 effective for three 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 him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellants to pay the respondents' costs of the appeal (as the case may be) ;

20 (ii) That the appellants do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within one month of the date of this order.

AND WHEREAS the applicants have fulfilled the above conditions in that they have filed a bank guarantee in the sum of LP.300 duly executed by the Anglo Palestine Bank Ltd., Tel-Aviv, and also filed a list of documents which they propose should constitute the file to be despatched to the Privy Council.

The Court therefore 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.

Given this 1st day of November, 1944.

30

D. EDWARDS,

British Puisne Judge.

No. 45.
Order as to
Exhibits,
13th
November
1944.

No. 45.
ORDER as to Exhibits.

PRIVY COUNCIL LEAVE APPLICATION No. 12/44
IN THE SUPREME COURT SITTING AS A COURT OF CIVIL APPEAL.

Before : THE CHIEF REGISTRAR (in Chambers).

In the Application of :

THE PALESTINE KUPAT AM BANK LTD. - *Applicants*

v.

THE GOVERNMENT OF PALESTINE and Others *Respondents*

Application for settlement of record.

10

For Applicants : N. ABCARIUS BEY.

For Respondents : Mr. M. J. HOGAN.

Adjourn to 8.11.44 for agreed list of exhibits.

1.11.44

For Applicants : N. ABCARIUS BEY.

For Respondents : Mr. M. J. HOGAN.

8.11.45. By consent adjourn to 13.11.45.

For Applicants : N. ABCARIUS BEY.

For Respondents : Mr. M. J. HOGAN.

By consent and with approval of the Judges, their notes of the hearings before the Court of Appeal to be included in the record. 20

ORDER.

Abcarius Bey and Mr. Hogan agree to exhibits set out in list No. 2 submitted by Mr. Hogan, but Abcarius Bey asks for inclusion of three certified copies of entries in the Land Registry which he states he produced to the Court of Appeal. Mr. Hogan states that these documents were "handed in," and that the Court looked at them. It is admitted that these documents were not exhibits before the Settlement Officer. As Registrar, I must exclude from the record irrelevant or unnecessary documents. I am at a loss with regard to these documents, as it appears that they were not properly exhibited before the Court of Appeal but were to quote Mr. Hogan, "handed in." It seems to me that it would be proper for Abcarius Bey to move the Court under Article 8 of the Palestine (Appeals to Privy Council) Order-in-Council, for a ruling by the Court as to whether these documents are or are not exhibits. Without such a ruling, I cannot admit them to the record as exhibits. It appears that Mr. Hogan also "handed in" a document to the Court of Appeal; this was a translation of a Turkish document known as Fiscal Direction No. 431 of 29th October, 1331 (Fiscal). It seems to me that it would be proper for Mr. Hogan to obtain the direction of the Court with regard to this document. I adjourn this matter to the 29th November to allow the parties to obtain the directions of the Court. 30 40

Sgd. L. A. W. ORR,

Chief Registrar.

13/11/44

PART II.
EXHIBITS.

Exhibit 1.
Folio 7.
Schedule,
5th
February
1937.

Exhibit 1, Folio 7.
SCHEDULE.

Name of area :	Khirbet Yunis.
Approximate area in metric dunams :	150.
10 Position :	A part of At Tira Forest Reserve No. 195, declared in Palestine Gazette No. 239 of the 16th July, 1929, within the boundaries of At-Tira village, Haifa Sub District.
Boundaries :	
North :	Starting from Rock Mark 630 situated at the ruin known as Khirbet Yunis, the boundary proceeds north eastwards through Trig. Point 731/S as far as Rock Mark 209.
East :	From Rock Mark 209 the boundary proceeds south eastwards through Rock Marks 208, 207 and 206 as far as Rock Mark 205.
20 South :	From Rock Mark 205 the boundary proceeds westwards in a straight line as far as Trig. Point 371/Z.
West :	From Trig. Point 371/Z the boundary proceeds north eastwards through Rock Mark 629 as far as Rock Mark 630.

By His Excellency's Command,

J. HATHORN HALL,

Chief Secretary.

5th February, 1937.

Exhibit 1.
Folio 16.
Certificate
of
Mukhtar,
5th
October
1937.

Exhibit 1, Folio 16.

CERTIFICATE of Mukhtar in case of change in boundaries.

File No. 3016/37.	
District : Haifa.	Block No. 28.
Town or Village : Tireh.	Parcel No. 25.
The area under the registration -	34 dunams.
The area under the plan -	3611 dunams—224 sq. m.
The area as recorded in the werko—	3313 dunams.
Names of reputed owners -	The Palestine Kupat Am Bank Ltd. and partners.
	10
The boundaries under old Registration	
The actual boundaries.	
N. Rus el Shamas with Ashlul el Khouzurka.	N. Rus el Shamas with Ashlul el Khouzurka.
S. Kitf el Jabal.	S. Kitf el Jabal.
E. do.	E. do.
W. Jurn el Nasourah and El Nazzazeh.	W. Jurn el Nazourah and El Nazzazeh.

DECLARATION AND TESTIMONY

We, the undersigned, the Mukhtar and notables of Tireh Village, 20 testify that the plot of land, the boundaries and area of which are shown hereabove and known as Khirbet Yunis is the property and in the possession of the present owners and was as such with their predecessor in title from its original registration in the year 1298 without any dispute or interruption by way of cultivation. That the area mentioned above is the same original area without any change or alteration and without any encroachment on others' land nor on Government's lands.

The land of Khirbet Yunis is comprised within its original boundaries as shown above without any change. That the real area mentioned above is comprised within the real boundaries and does not form part 30 of the Khirbeh (ruins) lands.

In witness whereof this certificate was made and signed.

5.10.1937.

MUKHTAR ISSA EL NAJI.

(Seal)

Signatures.

Notables.

1. AHMAD BAKIR EL HUSSEIN.
2. NINAER AHMAD IDRIS.
3. TEWFIK ASKOUL.
4. SUBHI BAKIR EL HUSSEIN.
5. TEWFIK YUNESS.

40

The Attorney for all Vendors,
MAHMOUD HASSAN GABER.

Exhibit 1, Folio 6.
REPORT of Haifa Land Registry Surveyor and Plan.

Exhibit 1.
Folio 6.
Report of
Haifa Land
Registry
Surveyor
and Plan,
24th
October
1937.

NATURE OF THE LAND.

1.Z

A.2—Cultivated and cultivable & rocky.

A.1. & D.2—Full of wild trees { A1—Path Cultivable
1.Z. { D2—Rocky uncultivable.

B—Patch cultivable and rocky (closed Forest Reserve—re O.G. No. 66)
Folio 7–11.

10 C—Patch Cultivable, rocky uncultivable.

DI—slopy, rocky, wild trees (uncultivable).

E—very rocky, wild trees (uncultivable) should be excluded.

Note : D1 and D2 = $\frac{\text{Area}}{D 187, 419}$ m² is all slopy.

Rocky with wild trees (uncultivable) should be excluded.

(Sgd.)

A part of C—South Western Corner—is included in the Wady Falah Forest Reserved area.

20 P. No.	Nett Area M ²	P. No.	Closed Forest Reserve.	Total.
A2	1862.969	1.Z. A.1.	127.608	1990.577
B	479.329			479.329
C	870.780			870.780
D1	158.623	D2	28.796	187.419
E	83.119			83.119
Grand Total	3454.820		156.404	3611.224

The Closed Forest Reserved area is 156.404 m. after the plan has been amended. See Folio 11 of the Forest Ranger.

(Sgd.)

Exhibit 1.
Folio 1.
Examina-
tion Sheet.

Exhibit 1, Folio 1.
EXAMINATION SHEET.

Land Registry of Haifa.
Nature of Transaction : Correction.
Village : Haifa (Tireh) Quarter : Khirbet Yunis.
Nature of Property : Miri.
Grantor : Kupat Am Bank Ltd. & Partners.
Shares Registered : 73%.

Remarks :

.....

10

Exhibit 1.
Folio 3.
Certificate
of
Mukhtar,
20th
October
1937.

Exhibit 1, Folio 3.
CERTIFICATE of Mukhtar.

Land Registry of Haifa.
Certificate of Mukhtar & Notables.

Sub-District : Haifa. Village or Town : Tireh.

I, Kupat Am Bank Ltd. for myself declare that I am the person in whose name the immovable property described in Kushan is registered in the books of the Land Registry of Haifa as Miri lands, and that I am the owners of the said property by virtue of the said Kushan and my title is derived by way of purchase, and I declare that the said property comprises 34 old dunams (i.e. 31 new dunams and 256 sq. m.), and known as the locality of Ard Khirbet Yunis, bounded : N. Rous esh Shammas & Ashlul el Khazraka, S. Kitf el Jabal, E. Kitf el Jabal, W. Jurn en Nessura or Nazazeh. 20

Sgd. BANK KUPAT AM.

We, the Mukhtars of Tireh Village, Issa el Naji, and Notables of the said Village, Tewfik Askul and Niner Ahmad Idriss, certify that we know the a/m and that they signed the above statement and that from our own knowledge the statement is correct.

Dated : 20.10.37.

30

(Sgd.) TEWFIK ASKUL.

(Sgd.) NIMER AHMAD IDRIS.

(Sgd.)
ISSA NAJI.
Mukhtar.

Exhibit 1, Folio 5.
APPLICATION for Correction of Area.

Haifa, 24.10.37.

The Registrar of Lands,
 Haifa.

Exhibit 1.
 Folio 5.
 Application
 for
 correction
 of area,
 24th
 October
 1937.

APPLICATION FOR CORRECTION OF AREA.

Applicant : Palestine Kupat Am Bank.

District : Haifa.

Village : Tireh.

10 Locality : Khirbet Yunis.

Deed 3470/71/73/75 Volume 7, 13, Folio 11, 101
 78 3980/5311
 1345

Registered Area 31^d 256^m

Area as per Plan 3528^d 105^m

Shares of Applicant 63^o/_o.

Applicant is the registered owner of the plot of land described above as per Title Deed produced herewith. Petition is made that the area of the said plot be corrected in accordance with the plan attached.

20 (Sgd.)

PALESTINE KUPAT AM BANK
 COOPERATIVE SOCIETY LTD.

Applicant.

Enclosures.

1. Kushan.
2. Plan and two copies.
3. Computations of the said plan.

Exhibit 1.
Folio 17.
Letter,
Appellants
to
Treasury
Depart-
ment,
Haifa,
12th
January
1938.

Exhibit 1, Folio 17.

LETTER, Appellants to Treasury Department, Haifa.

The Palestine Kupat-Am Bank,
Tel-Aviv.

Treasury Department,
Haifa.

12th January, 1938.

A.38/160-

Sir,

Subject : " *Khirbet-Younis* " Block 28 Parcel 25.

In the Land Registry of Haifa are registered in our name the 10
following deeds :

3470/34, 3473/34, 3478/34, 5711/35

3471/34, 3475/34, 3980/34, 1745/35

pertaining to Block 28 Parcel 25 Khirbet Younis.

You will oblige us by stating on this petition :

- 1) the area of this plot,
- 2) since what date, according to your books, is the Werko of
" Khirbet-Younis " being paid.

Thanking you, we remain,

Sir, Yours faithfully,

20

(Sgd.) PALESTINE KUPAT AM BANK.

REPLY by Werko Clerk.

Reply by
Werko
Clerk,
18th
January
1938.

Upon perusing the registers of distribution of Rural Property Tax for the year 1935 in Tireh Village in Block No. 28 Parcel No. 25, it was found that a land in the locality of Khirbet Younis of 3313 dunams in area is registered in the name of Kupat-Am Bank Cooperative Society Limited.

But in respect of the Werko payments on the Khirbet Younis Lands it was found upon perusing the Turkish Werko Registers which were in use before the year 1922, and page 285 of the said register that a land 30
in Khirbet Younis locality is registered in the names of Ahmad Mohammad Alloueh, Suleiman Dirbas, Hassan Alloueh and Mustafa Mahmoud Dirbas by virtue of a Title deed No. 140 dated December, 1928.

(Sgd.) MUDIR EL MAL

(Sgd.) WERKO CLERK.

18.1.1938.

Exhibit 1, Folio 8.
LETTER to Forest Ranger, Haifa.

Survey of Palestine
 Survey Section—Land Registry
 P. O. B. 567, Haifa.

Exhibit 1.
 Folio 8.
 Letter to
 Forest
 Ranger,
 Haifa,
 28th
 January
 1938.

28.1.38.

To Forest Ranger,
 Haifa.

Subject : File 3016/37.

- 10 Please find attached a print of a plan submitted by the Palestine Kupat Am Bank in a.m. file for Khirbet Yunis lands—Tireh village for an area of 3528 d.m. 105 m².

I shall be obliged if you kindly show on the attached print the area declared as Closed Forest from your Tireh Forest Reserve No. 195 vide the notice in Official Gazette 666 of 11.2.27 and please let me know whether there is another site in Khirbet Yunis declared as Closed Forest area besides the 150 dunams mentioned in the said Official Gazette 666 of 11.2.27.

(Sgd.) Y. ATLAS.

20

Exhibit 1, Folio 9.
LETTER, Forest Ranger to Land Surveyor.

Forestry Office
 Haifa.

No. 33/1.

Land Registry Surveyor,
 Haifa.

Haifa 3rd February, 1938.

Exhibit 1.
 Folio 9.
 Letter,
 Forest
 Ranger
 to Land
 Surveyor.
 3rd
 February
 1938.

Subject : File No. 3016/37

Refe'ce : Your letter dated 28.1.38.

- 30 I am returning to you herewith the Plan Ser. No. 33/SM/37 of the above lands and have shown in red colour the part of Tireh Forest Reserve No. 195 declared as Closed Forest Area 150 DMS. re Official Gazette No. 666 of 11.2.37 as requested.

There are no other Closed Forest Areas with the boundaries of the said plan, please.

(Sgd.)

Forest Ranger, Haifa.

Exhibit 1.
Folio 10.
Letter,
Survey
Section
Registry
to Forest
Ranger,
17th March
1938.

Exhibit 1, Folio 10.

LETTER, Survey Section Registry to Forest Ranger.

Survey of Palestine.

Survey Section—Land Registry,
P.O.B. 567, Haifa.

17.3.38.

To Forest Ranger,
Haifa.

Subject : File 3016/37.

Reference : Your 33/1 of 3.2.38.

10

I have found on base of the computation made upon the area coloured by you in red on the attached print that the area of Closed Forest Reserve is not 150 Dunams but 142.876 m².

Kindly let me know if the newly computed area is in confirmation with the area allotted for Closed Forest Reserve as mentioned in your letter referred above or otherwise.

(Sgd.) H. L. R. S.

Exhibit 1.
Folio 11.
Letter,
Forest
Ranger to
Land
Surveyor,
25th March
1938.

Exhibit 1, Folio 11.

LETTER, Forest Ranger to Land Surveyor.

33/1.

FORESTRY OFFICE

20

HAIFA.

Haifa, 25.3.38.

Haifa Land Registry Surveyor,
Haifa,

Subject : Plan No. 3016/37.

Reference : Your letter of 17.3.38.

The boundaries of the Plots A1-D2 shown on the attached Map Ser. No. 33/SM/37 in red, corresponds generally with the boundaries of the Khirbet Yuness Closed Forest Area, there must however apparently be some slight difference between the boundaries on your Map and the boundaries of the Closed Forest Area, as the extent of the closed Forest Area is declared to 150 Dms. 30

(Sgd.)

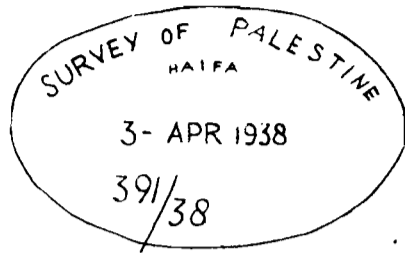
Forest Ranger,
Haifa.

DISTRICT NORTHERN
 SUB-DISTRICT HAIFA
 TOWN ET TIRA
 LOCALITY KHIRBAT YUNIS
 OWNER BANK KUPAT AM COOP SOCIETY LD

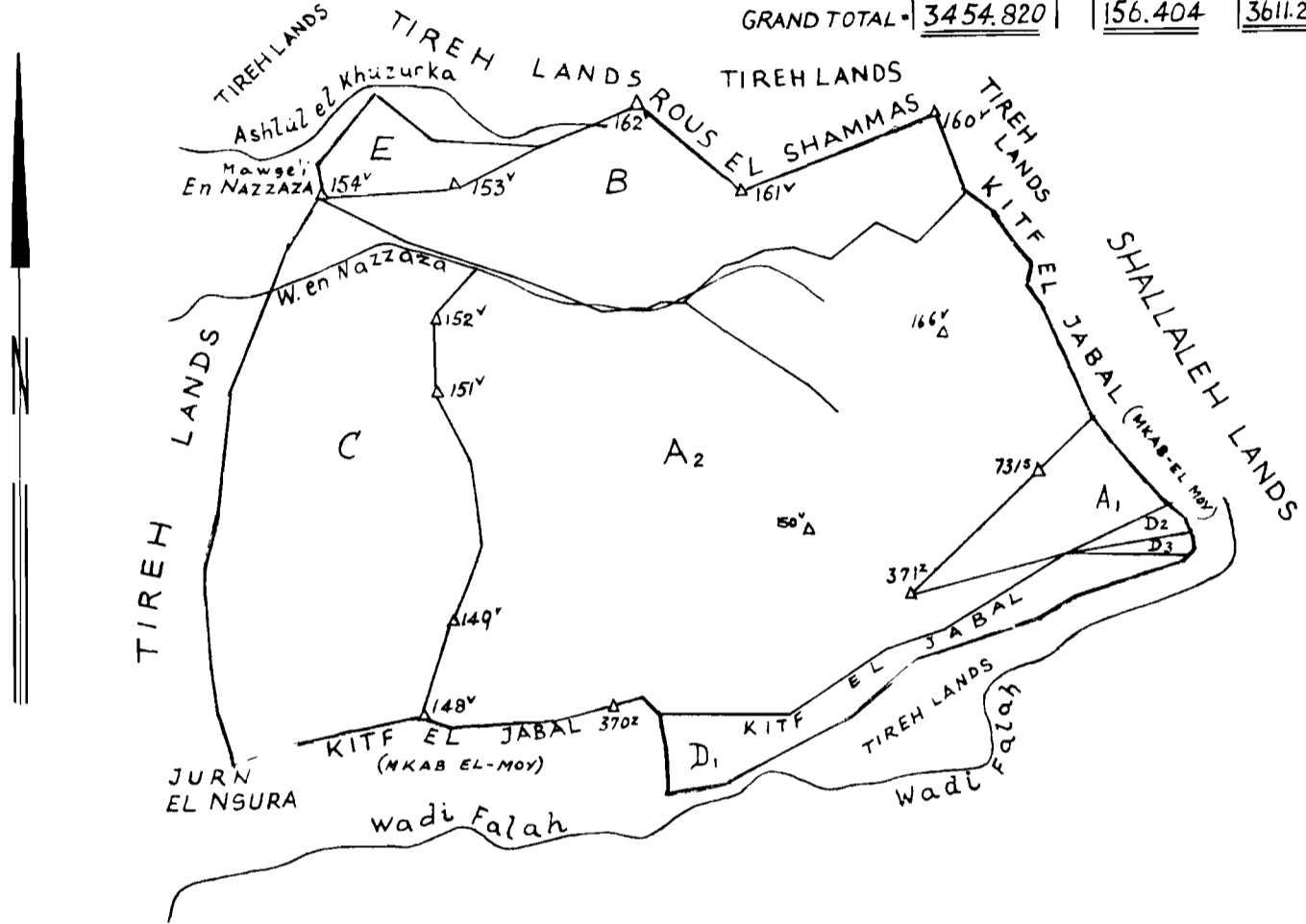
SER. No 33/SM/37

FILE No. 3016/37
 OFF. SER. No. 1287/37

This is a certified copy from the map
 produced in File No. 3016/37 folio 20
 SCALE 1:5000 reduced
 to SCALE 1:20,000



PN ^o	NETT AREA m ²	PN ^o	CLOSED FOREST RESERVE	TOTAL
A ₂	1862.969	A ₁	127.608	
B	479.329			
C	870.780			
D ₁	158.623	D ₂	28.796	
E	83.119			
GRAND TOTAL			156.404	3611.224



NOTE: All boundaries undefined
 All points not otherwise marked are R.M.

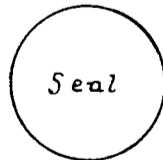
"We, Mukhtar and Elders of Tireh village confirm this plan which relates to "ARD KHIRBET YUNIS"

Notables

Sgd. Ahmad Abu Gheida
 Mahmoud Hassan Ghaben

MUKHTAR

Sgd. Issa En-Naji



"I, Mahmoud Hassan Ghaben in my capacity as agent for the previous sellers, heirs of Ahmad Mohamad Allou, heirs of Suleiman Ed-Dirbas, heirs of Hassan Allou and Mustafa Mahamad Ed-Dirbas, do hereby confirm this plan.

Notables

Sgd. Ahmad Abu Gheida
 Issa En-Naji
 Nimer Ahmad Ed-Dris.

SEAL
 ACCEPTABLE FOR REGISTRATION
 Date: 5.3.38. Signature
 Date: 22.5.38. Signature

I hereby certify that this is a true copy of the plan of the survey executed by me on 15.VI.1937 in the year 1937 and that it correctly represents the positions and boundaries of immovable property at the aforesaid date as pointed out and claimed on the ground.
 TEL-AVIV 6 JULY 1937 Sgd. Jng. Steinherz
 Licensed Surveyor.

Exhibit 1, Folio 13.
LETTER, Forest Ranger to Land Surveyor.

Haifa, 3.IV.38.

Mr. Atlas,
Land Registry Surveyor,
Haifa.

Dear Sir,

I hereby ask you to transfer file No. 3016/37 which is in your office to the Registrar of Land Mr. Moussa.

Yours faithfully,

(Sgd.) E. N. LEVY.

10

Exhibit 1.
Folio 13.
Letter,
Forest
Ranger to
Land
Surveyor,
3rd April
1938.

Exhibit 1, Folio 14.

LETTER, Land Surveyor to Land Registrar.

Survey of Palestine.

Survey Section—Land Registry.

P. O. B. 567, Haifa.

4.IV.38.

Registrar of Lands,
Haifa.

Subject : File No. 3016/37.

20

Upon request of the applicant the file is passed herewith to you for perusal.

Please note that the plan and computations have been passed to Survey H.Q's for approval.

I beg to draw your attention to the Palestine Gazette No. 66 of 11.2.37, and the correspondence with the Forest Ranger, Haifa, in connection with the plan of the file 3016/37, attached to the file in Folios 7-11.

Please see the particulars in the L.R. 27 (F.6) and the print attached.

(Sgd.) H. L. R. S.

30

Exhibit 1, Folio 19.

LETTER, Registrar of Lands to Inspector of Agriculture.

HLR/3016/37-480.

Land Registry Office,
Haifa, 9.4.1938.

Inspector of Agriculture,
Haifa.

Subject :—The Palestine Kapat Am Bank Cooperative Society Ltd.

Enclosed please find a copy of a plan No. Ser. No. 33/SM/37.

I shall be grateful if you would kindly inspect this land thoroughly and favour me with your opinion about the state of cultivation separately in respect of every plot shown on the said plan.

40

(Sgd.)

Registrar of Lands.

Exhibit 1.
Folio 14.
Letter,
Land
Surveyor
to Land
Registrar,
4th April
1938.

Exhibit 1.
Folio 19.
Letter,
Registrar
of Lands
to Inspector
of
Agriculture,
9th April
1938.

Exhibit 1.
Folio 21.
Report of
Agricultural
Inspector
to
Registrar
of Lands
and 2 Plans
of Area,
15th May
1938.

Exhibit 1, Folio 21.

REPORT of Agricultural Inspector to Registrar of Lands.

Department of Agriculture and Fisheries.

No. AH/104.

Agricultural Offices,

Northern District Haifa.

15th May, 1938.

Registrar of Lands,
Haifa.

Subject : Inspection of Land, The Palestine Kupat Am
Bank Cooperative Society Ltd.

10

Refe'ce : Your HLR/3016/37-480 of 9.4.38.

In accordance with your request, I have inspected on the 8th instant the area under consideration as shown on the plan Ser. No. 33/SM/37, attached to your letter under reference and known as Khirbet-Younis within Tireh village.

2. For convenience and easy reference, I have marked every plot with a special colour, and beg to state the following :

The greater part of the area is situated on a plateau with slopes to the West and to the North-West and is cut by two shallow " wadies."

3. Hereunder is a description of the area with regard to the state 20
of cultivation in respect of every plot.

(a) Plot A2 (marked yellow). This plot is a plateau, cultivable and a great part of it was sown this year under cereals. Excellent Agricultural land, suited for cereals, tobacco and fruit trees and can be cultivated by tractor power.

(b) Plots B and CI (marked yellow). These 2 plots are cultivable but cultivated at present only in parts. Although there are small out crops of rocks and trees scattered here and there over the area it may be regarded as good Agricultural land, suited for cereals and fruit trees.

(c) Plot E (marked green). This plot as plots B and Ci is also 30
cultivable and of the same nature but not cultivated at present.

(d) Plot AI (marked red). This plot as I understand declared "Closed Forest Reserved area" and is covered with about 50% to 60% various forest trees (Pines, Carobs, Syria etc.). The land in this plot is not cultivated at present but may be rendered cultivable.

(e) Plots D2 and D3 (marked also in red). This plot as the plot AI is also declared " Closed Forest Reserved area " is very slopy (the slope is about 40 to 50%) and runs towards " Wadi Falah " and is covered entirely with forest trees such as Pines, Carobs, oaks and Syria.

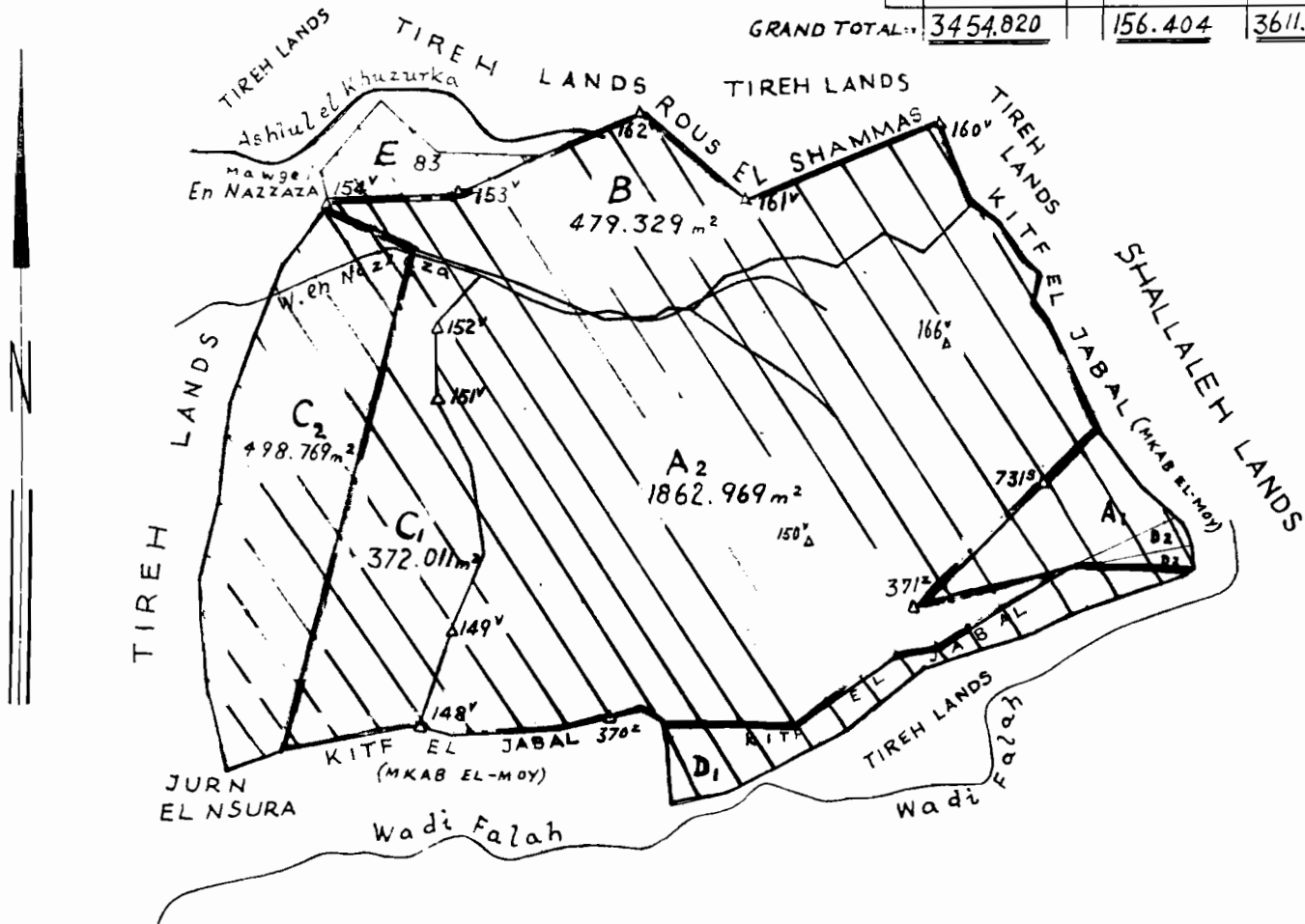
(f) Plot C2 (marked green). This plot has a very steep slope to the 40
West and on the western boundary the slope is in places about 100%.

DISTRICT NORTHERN
 SUB-DISTRICT HAIFA
 TOWN ET TIRA
 LOCALITY KHIRBAT YUNIS
 OWNER BANK KUPAT AM COOP SOCIETY LTD

SER No 33/SM/37

FILE No 3016/37
 OFF. SER. No 1287/37

PN ₀	NETT AREA M ²	PN ₀	CLOSED FOREST RESERVE	TOTAL
A ₂	1862.969	A ₁	127.608	
B	479.329			
C	870.780			
D ₁	158.623	D ₂	28.796	
E	83.119			
GRAND TOTAL:			<u>156.404</u>	<u>3611.224</u>



This is a certified copy from the map
 produced in FILE No. 3016/37 FOLIO
 SCALE 1:5000 reduced to SCALE 1:20,000

Closed Forest Reserve	
A ₁	127.608
D ₂ D ₃	28.796
TOTAL =	<u>156.404</u>

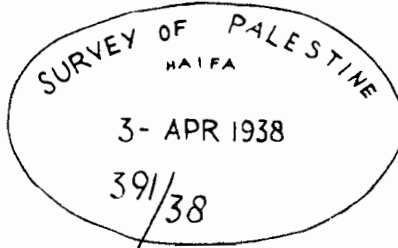
I hereby certify that this is a true copy of the plan of the survey executed by me on 15. VII in the year 1937 and that it correctly represents the positions and boundaries of immovable property at the aforesaid date as pointed out and claimed on the ground.
 TEL-AVIV. 6 July 1937 Spd. Ing. Steinerz.
 Licensed Surveyor.

SER. No 33/SM/37

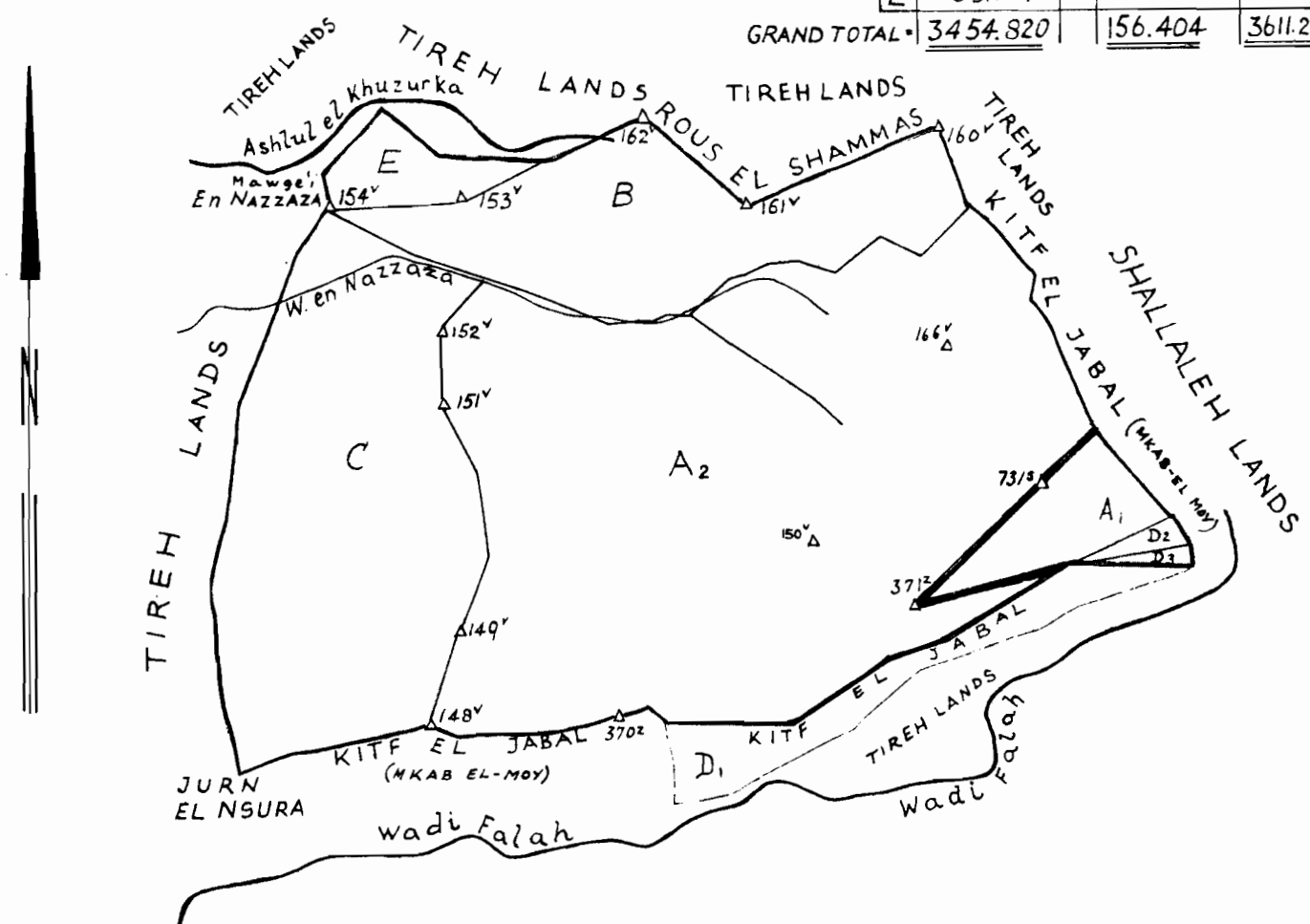
DISTRICT NORTHERN
 SUB-DISTRICT HAIFA
 TOWN ET TIRA
 LOCALITY KHIRBAT YUNIS
 OWNER BANK KUPAT AM COOP SOCIETY LD

FILE No. 3016/37
 OFF. SER. No. 1287/37

This is a certified copy from the map produced in File No. 3016/37 folio 20
 SCALE 1:5000 reduced to SCALE 1:20,000



PN ^o	NETT AREA m ²	PN ^o	CLOSED FOREST RESERVE	TOTAL
A ₂	1862.909	A ₁	127.608	
B	479.329			
C	870.780			
D ₁	158.623	D ₂	28.796	
E	83.119			
GRAND TOTAL			156.404	3611.224



NOTE. All boundaries undefined
 All points not otherwise marked are R.M.

'We, Mukhtar and Elders of Tireh village confirm this plan wich relates to "ARD KHIRBET YUNIS"

Notables

Sgd. Ahmad Abu Gheida
 Mahmoud Hassan Ghaben

MUKHTAR
 Sgd: Issa En-Naji



" I, Mahmoud Hassan Ghaben in my capacity as agent for the previous sellers, heirs of Ahmad Mo hamad Allou, heirs of Suleiman Ed-Dirbas, heirs of Hassan Allou and Mustafa Mahamad Ed-Dirbas, do hereby confirm this plan.

Notables

Sgd: Ahmad Abu Gheida
 Issa En-Naji
 Nimer Ahmad Ed-Dris.

Sgd: Mahmoud Hassan Ghaben

SEAL
 ACCEPTABLE FOR REGISTRATION
 Date: 5.3.38. Signature
 Date: 22.5.38. Signature

I hereby certify that this is a true copy of the plan of the survey executed by me on... 15. VI ... in the year... 1937... and that it correctly represents the positions and boundaries of immovable property at the aforesaid date as pointed out and claimed on the ground.
 TEL-AVIV 6 July 1937 Sgd. Jng. Steinhertz
 Licensed Surveyor.

This plot may be regarded as unfit for any cultivation. In the Southern part of this plot there are several stone quarries.

(g) Plot DI (marked blue). This plot is sloping to the West (the slope is about 30 to 35%) is as rocky as plot C2 and although it contains small pockets of land which might be converted into cultivation it can be described as uncultivable land.

4. For your kind information please.

(Sgd.) J. GOTTLIEB,

Agricultural Inspector Haifa.

10 Copy to : Agr. Officer,
Northern District, Haifa.

Exhibit 1.
Folio 21.
Report of
Agricultural
Inspector
to
Registrar
of Lands
and 2 plans
of Area,
15th May
1938,
continued.

Exhibit 1, Folio 27.

LETTER from Appellants' Advocate to Registrar of Lands.

Joseph Bernblum,
Advocate,
Haifa.

Ref. No. L/7/38.

Registrar of Lands,
Haifa.

Haifa, 28/5/38.

Exhibit 1.
Folio 27.
Letter,
Appellants'
Advocate
to
Registrar
of Lands,
28th May
1938.

20 Sir,

Subject : Kupa Am Bank Cooperative Society Ltd. Khirbet Yunes
Lands.

Reference : Your File No. 3016/37.

I have the honour to refer to the a/m file dealing with the correction of the area of the property known as Khirbet Yunes registered in the name of the Palestine Kupa Am Bank Cooperative Society Ltd. and derived to the said Society by way of purchase from the original owners.

2. The land was originally registered in the year 1298 under No. 140 in the name of the predecessors in title of my clients on payment of Badl
30 missl as it will appear to you from the enclosed certified copy of registration.

3. The boundaries of the property as shown in the original Koushan and which are as follows :

North : Rous el Shammas with Ashloul el Khazraka.

South : Kitf el Jabal.

East : Kitf el Jabal.

West : Jurn el Nesoura and El Nazazeh

40 have not been changed since and remained the same as it will clearly appear to you from the enclosed Certificate of Mukhtar and the plan prepared by a Licensed Surveyor and approved by the Director of Surveys

Exhibit 1.
Folio 27.
Letter,
Appellants'
Advocate
to
Registrar
of Lands,
28th May
1938,
continued.

after a proper check by your Surveyor on the ground. The plan is properly certified and signed by the Mukhtars and Elders and all the adjoining owners and neighbours.

4. The whole property as shown on map is under actual cultivation and in the undisputed and undisturbed possession of my clients and their predecessors in title for a period over 50 years, who regularly pay and paid the Werko Taxes. The Certificate issued by the Revenue Office enclosed in your file and from which it will also appear that the area recorded therein is 3313 Dunums is a confirmation to the A/m statement.

5. As it would appear from the Reports of Inspection submitted 10 to you by your *Surveyor* and by the *Agricultural Inspector*, certain parts of the property are reported not to be under effective cultivation. It is admitted that those parts are not as well cultivated as the main plateau, but it is well known that considering the nature of those parts and the way of agricultural labour in the country certain patches and slopes are usually left out owing to their nature but it is not a fact that these parts are outside the boundaries nor reason to exclude them from the property of my clients.

6. The *Forest Inspector* states in his report to you that a portion of about 150 Dunums is declared forest area in accordance with a notice 20 published in the Gazette on the 5th day of February, 1937. I do not make any comment on this and leave to your discretion to grant it to my clients as a closed forest area, who are always ready and prepared to help in planting and aforestations.

7. From the topographical plans prepared by the Department of Surveys and attached to your file certain boundaries which appear on the original Koushan can be traced and identified without difficulty. In addition the southern and eastern boundaries are very natural being the saddle of the hills abutting the property, only one of the western boundary known as Jurn el Nesoura, forming the south-eastern corner of the property 30 could not be traced on those plans of the Survey of Palestine, while they clearly appear on the plan checked by your Surveyor as in fact they do exist on the ground. The remaining western boundary is clearly to be traced and identified on the said topographical plan. These facts will bring the question of boundaries in a very clear light and will satisfy you that the land as shown on plan is within the original boundaries stated in the Koushan of my clients and that no encroachment was made in either private or Government land. This land known as Khirbet Yunes is and always was a separate unit within its own boundaries.

8. In view of the above and in view of the fact that most of the 40 land is under effective and proper cultivation,

It is hereby prayed that the Koushan of my clients be corrected in accordance with the enclosed plan and a new and up-to-date Koushan be issued accordingly.

I have the honour to be,

Sir,

Yours faithfully,

Sgd. JOSEPH BERNBLUM, Advocate.

Exhibit 1, Folio 26.**LETTERS, Land Registry Surveyor and Registrar of Lands, Haifa.**

Mr. Jaouni,
Land Registry Surveyor,
Haifa.

28.5.38.

10 On the 1/20000 Topocadastral plan of Daliel el Karmel (locality of Khirbet Younis) attached to the plan submitted by the applicants in file No. 3016/37 two localities i.e. Mouka' el Nazzazeh and Jurn el Nassoura are shown on the north east and south west respectively. Please let me know how you came to show these localities on the said plan and who pointed them out to you.

(Sgd.)

Registrar of Lands,
Haifa.

These two localities which are situated in the southern and northern corners of the property were exactly located on the plan as they exist on the ground and which were shown to me by the persons present during the checking as stated in my report.

20

(Sgd.) JAOUNI

Land Registry Surveyor.

Exhibit 1, Folio 28.**REPORT, Registrar of Lands, Haifa, to Director of Land Registration, Jerusalem.**

HLR/3016/37-779

Registrar of Lands,
Haifa.

30th May, 1938.

Director of Land Registration,
Jerusalem.

Subject : Bank Kupat Am Coop. Society Ltd.

30 The above mentioned applicants own the greater part of the shares in the locality called Khirbet Yunis of Tireh Village. The remaining shares which are roughly calculated to be about 27/100 are still registered in the names of some of the heirs of the original owners.

2. According to the registers the area is 31.265.20m. i.e. 34 old dunams and according to the plan submitted in the file the total area of the several plots is 3611.244 sq. m.

3. The boundaries according to the kushan are :

North : Rous el Shammas and Ashloul el Khuzurka.

South : Kitf el Jabal.

40

East : " " "

West : Jurn en Nasoura and el Nazzazeh.

According to the plan the boundaries are still the same.

Exhibit 1.
Folio 26.
Letter,
Land
Registry
Surveyor
and
Registrar
of Lands,
Haifa,
28th May
1938.

Exhibit 1.
Folio 28.
Registrar
of Lands,
Haifa, to
Director
of Lands,
Jerusalem,
30th May
1938.

Exhibit 1.
Folio 28.
Registrar
of Lands,
Haifa, to
Director
of Lands,
Jerusalem,
30th May
1938,
continued.

On the 1 : 200000 Topocadastral survey plan of this part of the district locality of el Khuzurka and Wadi en Nazzazeh are shown. The localities of Rous el Shammas and Jurn en Nassoura do not appear on the said plan.

The Surveyor who checked the plan on the ground has shown the said localities on the copy of the above mentioned Topocadastral 1 : 20000 sheet. The surveyor states that the said two localities were shown to him by those who were present at the time of the checking of the plan i.e. the Mukhtar of Tireh, Mohammad Abdel Eter and Mahmud Ghaben of Tireh, and that he showed them on the said plans on the strength of their declaration. Folios 26 and 26a refer. Applicants inform me that they are prepared to submit a mukhtar's certificate confirming this statement. 10

4. The Northern boundary given as Rous el Shammas and Ashloul el Khuzurka. This boundary is partly identified on the said 1 : 200000 plan. Likewise part of the western boundary which is el Nazzazeh.

5. The Southern and Eastern boundaries are described in the kushan and on the plan as Kitf el Jabal i.e. the slope of the mountain. From the said Topocadastral plan it appears that the plateau (shown on the plan of the applicant as A2) extends from the south and from the East to the mountain. Both the surveyor and the Agricultural Inspector described this Plateau as a cultivable and cultivated area as may be seen from the reports enclosed in the file. 20

Thus the contention of the applicants that the Kitf el Jabal is as shown on their plan, is supported by both the surveyors and the Agricultural Inspectors reports.

6. The werko office informs me that in the Rural Taxation records of 1935, Block No. 38 parcel 25 of an area of 3313 dunams is recorded in the name of the Kapat Am Bank.

The Mudir el Mal informs me, further, that in the old Kholassa book used prior to 1922 land at Khirbet Yunis is registered in the names of the original owners as per kushan of 1928. (Please see folios 17 and 18.) 30

7. According to the Surveyor's report the property applied for is described as follows :

A2 : Cultivated, cultivable and rocky.

A1 } Full of wild trees and rocky with patches of cultivation
D2 } in A.2.

B : Rocky with patches of cultivation.

C : Rocky uncultivated with patches of cultivation.

D1 : Slopy, with trees uncultivable.

E : Very rocky with wild trees uncultivable and should be excluded. 40

That D1 and D2 of an area of 187.419 sq. m. should be excluded.

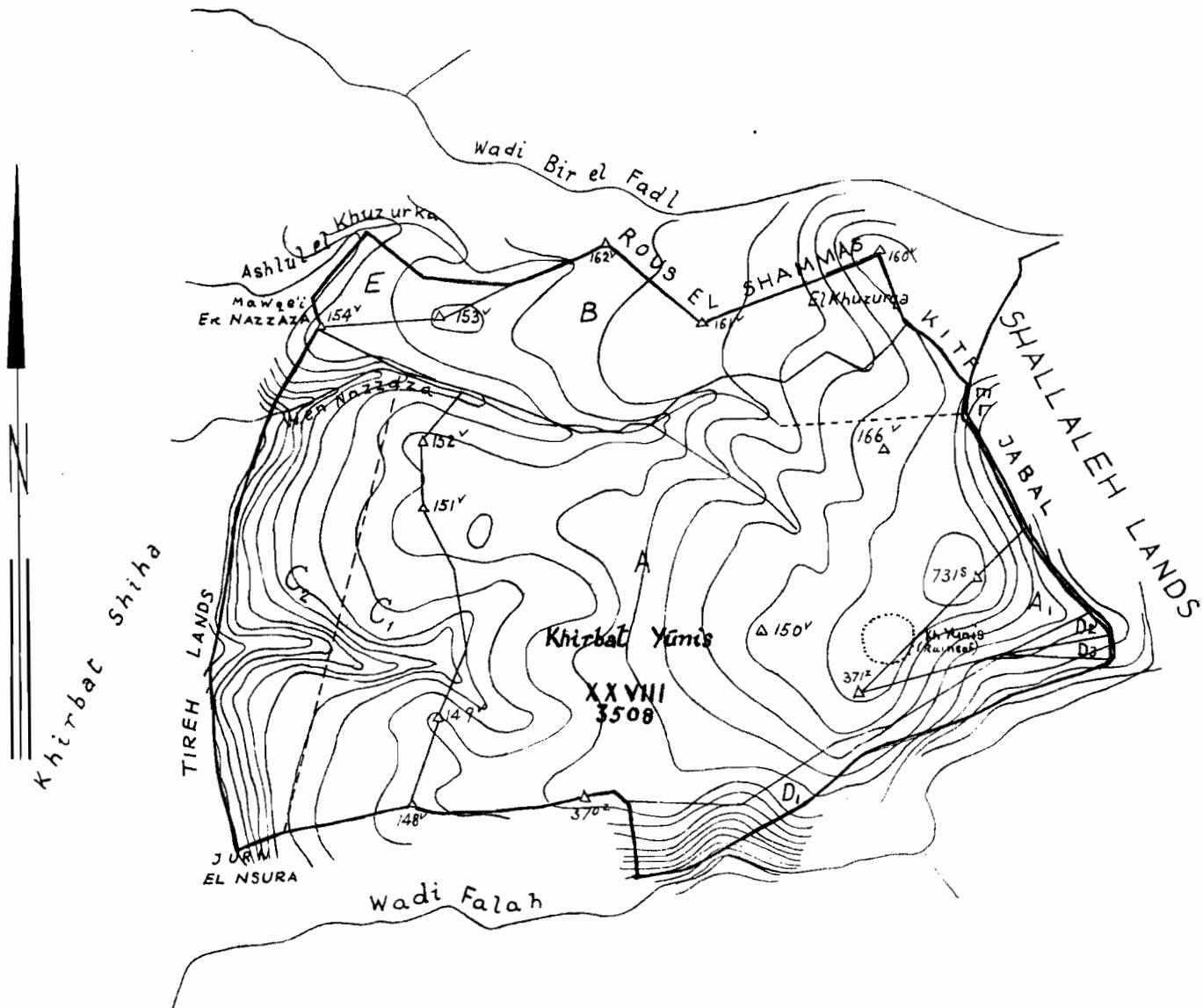
The surveyor also states that a part of plot C on the South Western Corner is included in the Wadi Falah water area reserved for the Haifa Water Scheme.

AT L I T

DISTRICT NORTHERN
SUB-DISTR. HAIFA

DALIAT EL KARMEL

1:20.000 SERIES TOPOCADASTRAL SHEET 14-23



*This is a certified copy from the map
produced in FILE N° 3016/37 FOLIO 26a*

He also states that A1 and D2 are forest reserves as per Palestine Gazette No. 66 Fols. 7 to 11 in this file.

8. The Forest Ranger in his letter dated 3.2.38 states that only an area of 150 dunams is declared as Forest Reserve under P.G. No. 666 of 11.2.37 and that there are no other closed forest areas within the boundaries of the said plan. (please see Fol. 9.)

9. The Agricultural Inspector in his letter dated 15.5.38 folio 21 and 21A and a copy of the plan attached to it describes the property as follows :

- 10 A2 : Marked yellow on the plan. A plateau cultivable and a great part of it sown this year with cereals, excellent agricultural and suitable for cereals, tobacco and fruit cultivation, and that the land may be cultivated by tractor power.
- B) (marked in yellow) cultivable but part cultivated at present.
- C1) Although there are some rocks and trees scattered here and there may be regarded as good Agricultural land suitable for cereals and fruit trees.
- E : (marked in green) Like B & C1 above. Being of the same nature but not cultivated at present.
- 20 A1 : (marked in red) Declared Forest Reserve.
- D2) (marked in red) Declared Forest Reserve, D2 and D3 appear D3) on the plan of the applicants under D2 only.
- C2 : (marked in green) very steep slopy to the west in some places about 100% may be regarded as unfit for any cultivation in the southern part of this plot there are several stone quarries.
- D1 : (marked in blue) slopy to the west 30 to 35%. Rocky like C2 although contains small pockets of land which might be converted into cultivation. Can be described as uncultivable land.

- 30 10. Owing to the present conditions it is not possible to carry out an inspection of the land in the presence of the registered owners, the mukhtars and adjoining of the kushan with the plan. On the other hand it does not appear that such an inspection might be of any help in this connection. Applicants state that the whole plateau is in their undisputed possession in accordance with the kushan and the plan and submit folio 16 in support of their claim. This is signed by Issa el Naji as Mukhtar on 26.10.37.

This Mukhtar was dismissed and Mohammad Askoul the third Mukhtar is now responsible for Tireh.

- 40 11. The land was originally granted on payment of Bedl el Misl, see folio 15.

File No. 3016/37 is herewith forwarded for the favour of your consideration and instructions.

(Sgd.)

Registrar of Lands.

Exhibit 1.
Folio 28.
Registrar
of Lands,
Haifa, to
Director
of Lands,
Jerusalem,
30th May
1938,
continued.

Exhibit 1.
Folio 29.
Letter,
Director
of Lands,
Jerusalem,
to
Registrar
of Lands,
Haifa,
(Undated).

Exhibit 1, Folio 29.

LETTER, Director of Lands, Registration, Jerusalem, to Registrar of Land, Haifa.

GOVERNMENT OF PALESTINE.

Ref. R/4695/4304.

Director of Land Registration,

Jerusalem.

Registrar of Lands,
Haifa.

Subject : Bank Kupat Am Co-operative Society Ltd.

Reference : Your HLR/3016/37 of 1.6.38.

The application submitted by the above quoted Society is for 10
the correction of area from 31.256 dunams into 3611 dunams.

This is a very considerable increase and before conveying to you
any decision on this application, I should like to have further information
on the following points.

(A) The locality, referred to in the Kushan No. 140 Kanun Awal 1298,
is described as Ard Khirbet Yunis, in Tireh village. I should, therefore,
like to know, in the first place, whether a search was made in your registra-
tion with a view of ascertaining whether any other registration exists
in the locality known as Khirbet Yunis except the entries deriving from
the entry Number 140 referred to above. 20

(B) It appears from the extract of registration that the Western
boundary is described as Jurn el Nassoura and Nazzazeh whereas in the
copy of the Turkish entry the said boundary is described as Khirbet
el Nasurah and Nazzazeh ; will you please verify which is the correct
version by comparing the said extracts with the Register.

Does a Khirbet known as Khirbet el Nassoura exist or did it originally
exist ?

(C) The Mukhtars and elders should confirm in writing the fact that
the two points mentioned above (jurn or Khirbet Nassoura and Nazzazeh)
are generally known and constantly described under the above quoted 30
names and should, if possible, submit any proof they may have to this
effect.

(D) It appears that applicants own only 63% of the lands subject
matter of this transaction and that the remaining shares are owned by
the original owners, if so I should like to have an extract of registration
in respect of the remaining shares and a list showing exactly the share
owned and whether the total registered shares form a complete whole.
Are the remaining owners in this country and still alive, and if so, do they
object to the correction of area ?

(E) It appears that the registration in the old Khullassa books is 40
in conformity with the Turkish Kushan, in as far as the area is concerned,
but that Block No. 38 parcel No. 25, with an area of 3313 dunams is regis-
tered in the name of Kupat Am Bank. I should like to have a copy of
the rural Taxation Block plan, on the file.

(F) The statement made by your surveyor about the Haifa Water scheme is not sufficiently clear.

(G) Was the Mukhtar's dismissal caused in connection with this transaction ?

3. A commission to be appointed in accordance with the provisions of the Land Law Amendment Ordinance should be constituted to assess Bedl Misl.

Please return file for further instructions.

Your file is returned herewith.

10

Sgd.

A/Director of Land Registration.

Exhibit 1.
Folio 29.
Letter,
Director
of Lands,
Jerusalem,
to
Registrar
of Lands,
Haifa,
(Undated),
continued'

Exhibit 1, Folio 34.

CERTIFICATE of Mukhtar and Notables.

CERTIFICATE OF MUKHTAR AND NOTABLES

District : Haifa.

Village : El Tireh.

Locality : Land of Khirbet Younis.

Landlord : Bank Kupat Am & Co.

Boundaries :

20

North : Rous el Shammas and Ashloul el Khuzurka.

South : Kitf el Jabal.

East : Kitf el Jabal.

West : Journ en Nassoura and el Nazzazeh.

We, the Mukhtars and Committee of Elders of Tireh village, hereby certify that the two points Journ en Nassoura and el Nazzazeh which are shown above, are known localities in our village and their names are famous to all as a natural and fixed point for this plot of land known as the land of Khirbet Yunis the description of which is given above.

Dated this 11.6.38.

30

Mukhtar of Tireh village.

MOHAMMAD ASKOUL

(Stamp of the Mukhtar) Seal.

Notable.

Notable.

Notable.

Notable.

LUTUF YOUNIS

HASSAN SHIBLI

NIMER AHMAD

TEWFIK

IDREIS

ASKOUL.

Exhibit 1.
Folio 34.
Certificate
of
Mukhtar
and
Notables,
11th June
1938.

Exhibit 1.
Copy
Register
of Deeds,
13th June
1938.

Exhibit 1.
COPY REGISTER OF DEEDS.

LAND REGISTRY OF HAIFA
REGISTER OF DEEDS

No. of Deed	Date of Registration	Description of property	Boundaries	AREA Dunum	Nature of Transaction	Name of Grantor	Village	Locality	YOQLAMA Shares	Consideration of value LP.	Remarks
140	Decem. '98	Land—Miri	E : Katf El Jabal W : Jurnat al Nufara & El Nazzaza N : Rosh Sharmani & Itihl El Khazraqa S : Katf El-Jabal	34 In-Whole	On payment of Bedl El Mithl	Ahmad Mohammad Alawi Salman Dirbas Hassan Alawi- Mustafa Mohammad Dirbas	TIRA	Ard Khir bet Younis	Vol. 10 —	Bedl Mithl 612	Transferred to Vol. 2. Fol.65

The above is a true copy of the Register and is given against payment of LP..... as per receipt No.....

Date : 13.6.38

REGISTRAR OF LANDS

SIGNATURE ? The seal of the Department

DISTRICT .

Exhibit 1, Folio 30.**LETTER to Registrar of Lands, Haifa.**

Exhibit 1.
Folio 30.
Letter to
Registrar
of Lands,
Haifa,
14th June
1938.

To Registrar of Lands,
Haifa.

Subject : File 3016/37.

With reference to your note on the Director of Land Registration's letter of 8.6.38, please find attached a print from the Rural Taxation Block 28 as requested.

Re para. f.

10 The South Western corner forms an area of about 2000 metres square as shown in pencil on the map, is a part of Public Water Supply Area within the meaning of the safeguarding of the Public Water Supplies Ordinance 1937, as published in Palestine Gazette No. 738 of 18.XI.37 Supplement No. 2 page 1150—Survey H.Q., Map S.H.Q. 12/37 refers.

Sgd.

14.6.38.

Exhibit 1, Folio 32.**LETTER, Registrar of Lands to District Officer, Haifa.**

Exhibit 1.
Folio 32.
Letter,
Registrar
of Lands
to District
Officer,
Haifa,
14th June
1938.

HLR/3016/37.

20

Registrar of Lands,
Haifa,

14th June, 1938.

District Officer,
Haifa.

Subject : Eissa el Naji—Ex Mukhtar of Tireh.

I shall be grateful if you would kindly inform me whether the dismissal of the above mentioned Mukhtar of Tireh village was in connection with land transactions or otherwise.

Sgd.

30

Registrar of Lands.

Exhibit 1.
Folio 38.
Letter,
Registrar
of Lands to
District
Officer,
Haifa,
14th June
1938.

Exhibit 1, Folio 38.

LETTER, Registrar of Lands to District Officer, Haifa.

HLR/3016/37—848.

Registrar of Lands,
Haifa,

14th June, 1938.

District Officer,
Haifa.

Subject : Bank Kupat Am Cooperative Society Ltd.

In accordance with para. 3 of the letter of the A/Director of Land 10
Registration No. R.4695—4304 dated 8th June, 1938, I shall be grateful
if you would kindly appoint a commission for assessment of the Bedl Misl.

My file No. 3016/37 is herewith forwarded.

Sgd. Registrar of Lands.

Exhibit 1, Folio 33.

LETTER, District Officer, Haifa, to Registrar of Lands.

Exhibit 1.
Folio 33.
Letter,
District
Officer,
Haifa, to
Registrar
of Lands,
15th June
1938.

GOVERNMENT OF PALESTINE.

Ref. No. HA/13/10/1.

District Offices,
Haifa,

15th June, 1938. 20

Registrar of Lands,
Haifa.

Subject : Eissa el Naji—Ex Mukhtar of Tireh.

Reference : Your HLR/31/37 of 14.6.38.

The reply to your letter is in the negative. The dismissal of Issa
El Naji, Ex Mukhtar of Tira was not in connection with land transactions.

Sgd. R. BEYDOUN

District Officer.

Exhibit 1, Folio 35.

CERTIFICATE of Mukhtar and Notables.

Exhibit 1.
Folio 35.
Certificate
of
Mukhtar
and
Notables,
(Undated).

30

We, the undersigned, Mukhtar and Notables of Tireh Village, hereby
certify that there not, in our village, a place called Khirbet Nessoura but
the real name is Journ en Nessoura.

In witness whereof we give this certificate, duly signed by us as
required.

Sgd. Notable. Notable. Mukhtar.

Exhibit 1, Folio 37.**LETTER, Appellants' Advocate to Registrar of Lands, Haifa.**

Joseph Bernblum,
Advocate.
Haifa, 15.6.38.

Ref. No.L/7/38.

Registrar of Lands,
Haifa.

Exhibit 1.
Folio 37.
Letter,
Appellants'
Advocate
to
Registrar
of Lands,
Haifa,
15th June
1938.

10 Sir,
Subject : The Palestine Kupat Am Bank Cooperative
Society Ltd.

Reference : Your File No. 3016/37.

As requested I have the honour to enclose herewith a Certificate signed by the actual Mukhtar and Elders of Tireh confirming the fact that the two fixed boundary points of my client's lands, namely Joron El Nissourah and Nazazeh are well and publicly known and actually exist on the ground forming the natural boundary marks of my client's land ever since.

20 2. I also enclose an additional Extract of Registration for the remain-
ing shares, adding up one total whole (24/24 shares) of the property.
In addition I also enclose a certified extract from the Rural Property Tax
Registers showing the shares and shareholders of the property as actually
recorded therein under Block 28. On comparing both records will be
found corroborative.

30 3. All the remaining shareholders are of Tireh village, none of them
object to the correction but none of them is now prepared, owing to the
actual well known conditions, to corroborate for the time being with
my clients. It is therefore submitted that only the shares of my clients
be now corrected and that the remaining shares be left unchanged until
such time when their respective owners may apply for such corrections.

4. In connection with the small corner which falls within the area
prohibited for digging wells, as published by the High Commissioner,
my clients are willing and prepared to sign a declaration to the effect
that they take full cognisance of the a/m situation as well as an undertaking
to comply fully with the a/m provisions and limitations.

5. I will, therefore, be highly obliged if the matter be considered
at an early date and the correction of area approved.

I have the honour to be,

Sir,

40

Yours faithfully,

Sgd. JOSEPH BERNBLUM, Advocate.

Exhibit 1.
Folio 41.
Particulars
of
Registration.

Exhibit 1, Folio 41.
PARTICULARS OF REGISTRATION.

GOVERNMENT OF PALESTINE.

No. 440085.

Land Registry Office of Haifa.

Name of Payer : J. Bernblum.

Nature of Transaction :

Date : 10/6/38.

Particulars :

61/1317/38.

Fees Payable : 300 mils.

10

Signed & Sealed by the

Land Registry of Haifa.

Exhibit 1.
Folio 42.
Extract of
Registration

Exhibit 1, Folio 42.
EXTRACT OF REGISTRATION.

<i>Block</i>	<i>Parcel</i>	<i>Village</i>	<i>The Name</i>	<i>The Locality</i>	<i>Area</i>
28	25	Tireh	Kupat Am Bank Ltd. and partners.	Khirbet Yunis	3313 Dunams

SPECIFICATION OF SHARES.

Kupat Am Bank Ltd.	11294 shares out of 17280 shares	20
Yuzra d/o Abdallah Saleh Hussein Allou	540	
Aysheh d/o Mustapha Dirbas	1080	
Labibeh "	1080	
Allou d/o Ahmad Mohd. Allou	648	
Asa'ad s/o Mohd. Hassan Allou	186	
Ahmad s/o "	186	
Sukara d/o "	186	
Watfa d/o Saad Mohd. Hassan Allou	180	
Deed s/o Abdel Kader Hassan Allou	216	
Deebah d/o "	216	30
Diab s/o "	216	
Kamileh "	216	
Nimer s/o "	216	
Ahmad s/o Saleh Hassan Allou	270	
Amneh s/o "	270	
Fatmeh s/o Saad Mohd. Hassan Allou	62	
Rauza d/o "	62	
Massadeh d/o Saadeh Mohd. Hassan Allou	37	
Fatmeh d/o "	37	
Amneh d/o "	37	40
	<hr/> 17280	

At the request of Mr. Joseph Bernblum, Advocate, in his capacity as Attorney for the Kupat Am Bank Ltd. by his application dated 10.6.38

the above extract was extracted from the Register of Commuted Titles for the year 1935 in respect of Tireh Village, Vol. 8, Folio 84 and it is a true copy thereof.

Exhibit 1.
Folio 42.
Extract of
Registration,
continued.

50 mils Revenue Stamp.

(Sgd.) SADR ED DIN ASHOUR

(Mudir Mal)

Revenue Officer.

Revenue Clerk
(Sgd.)

(Seal) The Revenue Office.

10

Exhibit 1, Folio 39.

REPORT of Assessment of Badel el Misl.

Exhibit 1.
Folio 39.
Report of
Assessment
of Badel
el Misl,
15th June
1938.

Pursuant to the request of the Registrar of Lands of Haifa, we, the undersigned experts, proceeded to the locality of Khirbet Yunis which is situated in the lands of Tireh village in the North East, for the purpose of assessing the Badel el Misl of the land of known boundaries and description in the plan in file No. 3016/37.

20 Having arrived at the land and made strict enquiry as regards the present prices and the estimated expenses to open the land and improve it and having regard to the locality and the amount of the yield it has been unanimously decided to assess the Badel el Misl at 200 mils per dunam as shown below.

Present Price of a dunam under assessment	LP.2.000
Improvements	LP.1.800
Badel el Misl	LP.0.200

Only two hundred mils being the badel el misl for each dunam.

15.6.38.

For District Officer
(Mudir el Mal)

Expert

Expert

SADER EDDIN ASHOUR

NASRI FIANI

BASILEH JABOUR.

30

No. 16 Haifa

Licensed Land Valuer.

Exhibit 1.
Folio 40.
Letter,
District
Officer to
Registrar
of Lands,
15th June
1938

Exhibit 1, Folio 40.

LETTER, District Officer to Registrar of Lands.

District Offices,
Haifa.

15th June, 1938.

Registrar of Lands,
Haifa.

Subject : Valuation of Badel Misl.

Reference : Your HLR/3016/37 dated 14.6.38.

I transmit herewith in original the report of assessment of value of 10 the land for Badl Misl in respect of the land in question.

2. Your file No. 3016/37 is returned herewith.

(Sgd.)

for District Officer.

Exhibit 1.
Folio 43.
Letter,
Registrar
of Lands
to
A/Director
of Land
Registra-
tion,
Jerusalem,
16th June
1938.

Exhibit 1, Folio 43.

LETTER, Registrar of Lands to A/Director of Land Registration, Jerusalem.

HLR/3016/37-869.

Registrar of Lands,
Haifa,

16th June, 1938.

A/Director of Land Registration,
Jerusalem.

20

Subject : Bank Kupat Am Coop. Society Ltd.

Reference : Your R.4695-4304 of 8th June, 1938.

It appears that there is no other entry in the locality called Khirbet Yuounis except the one referred to in this file. Please see remark of the Turkish Clerk on the file cover and folio 31.

2. Please see the remark of the Turkish Clerk on the file cover regarding the name Jurn el Nassoura. The correct version is therefore

. Please see folio 35.

3. Please see folio 34 regarding the point raised in para. (c) of your 30 above quoted letter.

4. Enclosed please find an extract of the registration showing the ownership of the 24 shares (folios 41 A-c refers).

5. A copy of the Rural Assessment Block plan referring to the locality is attached. Please see folios 30 and 30A in which the surveyor also explains the question of the Haifa Water Supply.

6. The Mukhtar dismissal had nothing to do with land transactions. Please see folio 33.

7. Badl el Misl has been assessed by the District Officer and the report (folios 39 and 40) is herewith forwarded with my file No. 3016/37 40 for the favour of your consideration and instructions.

Sgd. Registrar of Lands.

Exhibit 1, Folio 47.**LETTER, Director of Land Registration, Jerusalem, to Registrar of Lands, Haifa.**

R.4695-4661.

Director of Land Registration,
Jerusalem,

22nd June, 1938.

Registrar of Lands,
Haifa.

Subject : Bank Kupat Am Cooperative Society Ltd.

Reference : Your Pet. No. 3016/37 of 1.6.38.

Exhibit 1.
Folio 47.
Letter,
Director of
Land
Registra-
tion,
Jerusalem,
to
Registrar
of Lands,
Haifa,
22nd June
1938.

10 It appears now from the documents of your above quoted file that the lands of Khirbet Yunis form a separate unit within the lands of Tireh Village and that the Mukhtars and elders of the said village have signed the plan submitted by applicant, stating that the lands as shown on the said plan represent the lands of Khirbet Yunis.

2. It further appears from para. 1 of your above quoted letter that no other entries exist in respect of this land except the entries referred to and dealt with in this file.

3. In view of the proofs submitted by applicants with regard to the boundary points known as "Jurn Nassura" and Nazzazeh, the point
20 known as El Khuzurka (shown on the Topocadastral Survey plan), and to the explanation in para. 5 of your letter dated the 30.5.38 in regard to the points shown as Kitf el Jabal, you may proceed with the correction of area on the following conditions :—

(A) That plots shown on your plan as No. AL and D2 with a total area of 156 dunams 404 sq. metres should be excluded (Forest Reserve area).

(B) That plot No. D1 with a total area of 158 dunams 623 square metres should be excluded.

30 (C) That applicants sign a declaration to the effect that they undertake to comply fully with the provisions of the Public Water Supply Ordinance 1937 in respect of the area of 2 dunams approximately marked on your above quoted plan.

(D) The Badl Misl as assessed by the Commission is paid in respect of the difference in area as between the registered area shown in the Kushan and that actually registered.

40 (E) That a thorough search is made in your Turkish registers with a view of ascertaining that no entry exists either in a Daftar Shamsieh or in the Daftar Bedelat el Mislich or any other book or register which might effect the proofs submitted by applicant or the point in connection with the amount payable as Badl Misl.

4. The correction may be effected in respect of the shares (63% approximately) registered in the name of applicants.

Your file is returned herewith.

A/Director of Land Registration.

Exhibit 1.
Folio 46.
Particulars.

Exhibit 1, Folio 46.

PARTICULARS.

GOVERNMENT OF PALESTINE.

No. 440413.

Land Registry Office of Haifa.

Name of Payer : Bank Kupat Am Ltd.

Nature of Transaction :

Consideration LP. : -

Date : 25.6.38.

Remarks	Particulars	Fees payable LP. Mils.	10
	Bedel Misl	426. 590	
	Forms (2)	- 100	
		<u>426. 690</u>	

3016/37.

Signature of Payer.

Signature of Registry Clerk

Exhibit 1.
Folio 45.
Memoran-
dum of
Survey
Depart-
ment,
25th June
1938.

Exhibit 1, Folio 45.

MEMORANDUM of Survey Department.

Survey Department, 20
Haifa.

25.6.38.

Registrar of Lands,
Haifa.

After excluding plots Nos. A1, D2, D1, the boundaries will be as follows :

North : Rous el Shamma and Ashloul el Khuzurka
(Tireh Lands)

South : Makab el May
Plot D1 and A1 (Closed Forest) 40

East : Shalaleh Lands

West : Journ el Nassura and
el Nazzazeh (Tireh Lands).

(Sgd.) L.R. Surveyor.

Exhibit 1, Folio 58.**LETTER, Registrar of Lands, Haifa, to Director of Land Registration, Jerusalem.**

HLR/3016/37-748.

Registrar of Lands,
Haifa.
P. O. B. 1462.

13th May, 1940.

Director of Land Registration,
Jerusalem.

Subject : Bank Kupat Am Coop. Society Ltd.

Reference : Your R.4695-4553 of 10.3.1940.

File No. 3016/37 is forwarded herewith.

10

I beg to point out that the correction of area was effected in respect of the shares mentioned in para. 4 of your letter No. R.4695-4661 of 22.6.1938.

The present registered area of the property is 3296.197 sq. meters, please.

(Sgd.) A/Registrar of Lands.

AH/AB.

Exhibit 1.
Folio 58.
Letter,
Registrar
of Lands,
Haifa, to
Director of
Land
Registra-
tion
Jerusalem,
13th May
1940.**Exhibit 1, Folio 59.****LETTER, Assistant Conservator of Forests to Department of Forests.**

20

Department of Forests.

Office of the

Assistant Conservator of

Forests Northern Division.

Haifa, 12th May, 1940.

5/T/1.

By hand.

Exhibit 1.
Folio 59.
Letter,
Assistant
Conservator
of Forests
to Depart-
ment of
Forests,
12th May
1940.**Urgent & immediate.**

Subject :—Tireh Forest Reserve No. 195.

I have been directed by the Conservator of Forests to request you to supply him through my office with the following documents :

30

(1) Certified true copy of the registration recorded under the entry :

Village : Tireh, Vol. 13, Folio No. 101, No. of deed 3091, Date of registration, 25.6.38 ; Class of Land Miri, plain ; Area 3296 dunams.

(2) Registration map referring to above registration No. 3091. (2 copies, please).

(3) Copy of original registration.

2. The documents are required immediately, and I shall be obliged if you would inform bearer when they will be ready for collection.

40

Assistant Conservator of Forests,
Northern Division.

Exhibit 4.
Instruc-
tions of
Director
of Land
Registra-
tion *re*
Bedl Misl,
2nd March
1921.

Exhibit 4.

INSTRUCTIONS of Director Land Registration re Bedl Misl.

DLR.344/20.

2.3.1921.

Paragraph 4.

The bedl misl to be paid for the excess in area found to be within the boundaries given in the Kushan, which was originally granted on payment of bedl misl, is the original rate fixed by the Turkish authorities.

F. ONGLEY,

Director of Land Registration. 10

Exhibit 7.

LETTER, Inspector of Agriculture to Ahmad Ibn. Elewa and Others.

No. 1294/102/1

Agricultural & Forestry Office,
Northern Circle,
Haifa,

10th October, 1927.

Exhibit 7.
Letter,
Inspector
of
Agriculture
to Ahmad
Ibn Ahmad
Elewa and
others,
10th
October
1927.

To :
Ahmad Ibn Ahmad Elewa.
Salman el Dirbas.
Hassan Elewa.
Mustafa Mohammad Dirbas.

} Of Tireh.

20

Sirs,

Attached please find the Kushan of locality called Khirbet Yunis. I beg to inform you that Government will not recognise your claim to any land except that actually cultivated by you, namely, the 25 dunams which have already been excluded by my S/Inspector of Agriculture and Forests, Haifa, from the Forest Reserve No. 16.

I have the honour to be

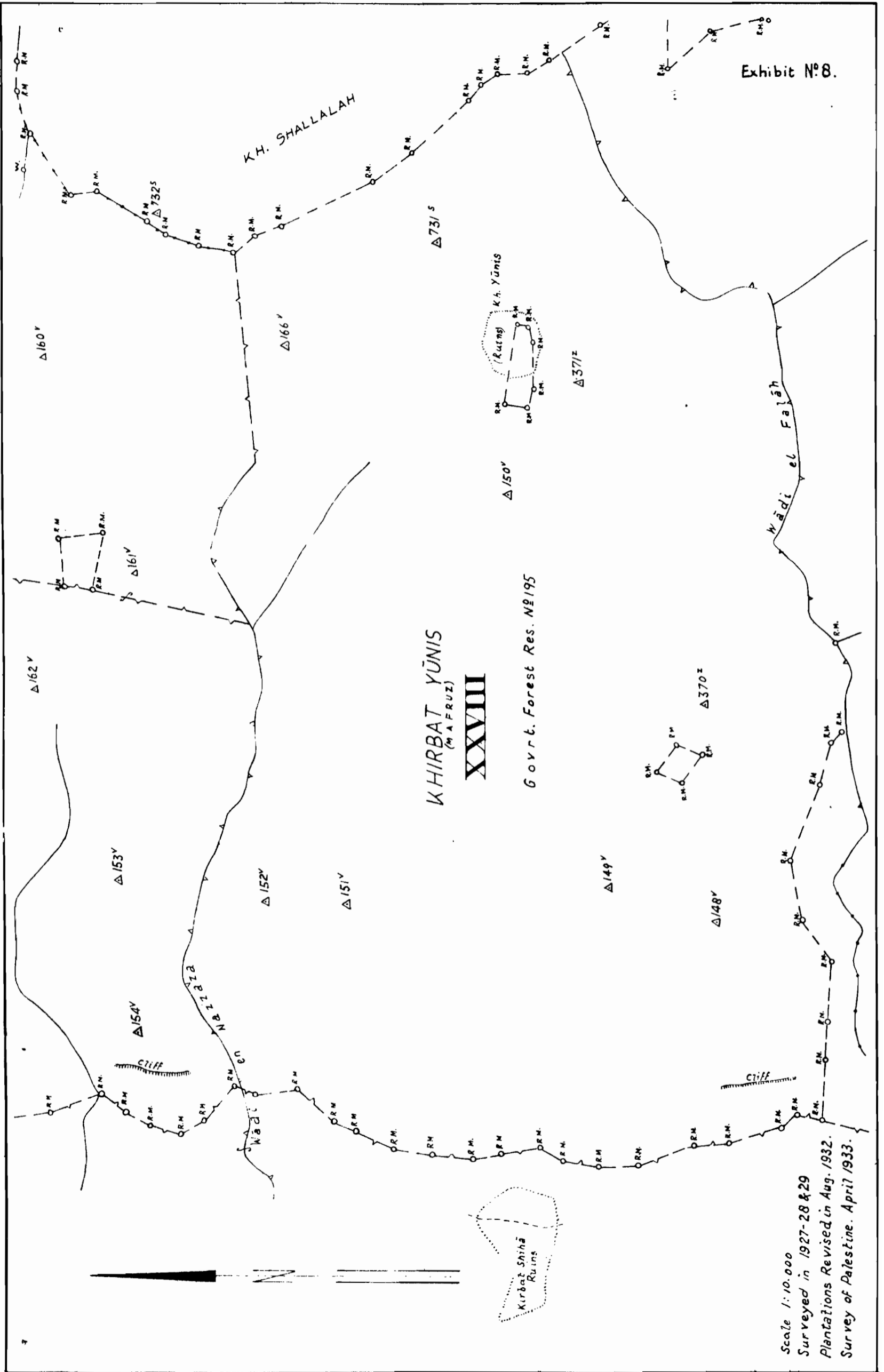
Sirs,

30

Your obedient servant,

Sgd.

Inspector of Agriculture and Forests,
Northern Circle.



Scale 1:10,000
 Surveyed in 1927-28 & 29
 Plantations Revised in Aug. 1932.
 Survey of Palestine. April 1933.

Exhibit 40.**AGREEMENT between Edmond Levy and Gedaliah Stuchiner and Others.**

Exhibit 40.
Agreement
between
Edmond
Levy and
Gedaliah
Stuchiner
and Others,
4th July
1934.

Entered into between Mr. Edmond Levy, of the one part, hereinafter referred to as the Vendors, and Messrs. Gedaliah Stuchiner, Abraham Friedman, Zvi Schechterman and Dov Gotfried of the other part, hereinafter called the Purchasers, as follows :

10 Whereas the vendor and his wife, Mrs. Camille Levy, are the owners of 1/64, 275/17280, 32867/331776 and 24426/51440 shares, which together amount to 60% of the miri land known as Khirbet Yunis, situate at Tireh, and according to the Certificate of Registration is bounded :

North : Rous el Shammas and Ashloul el Khouzuqa.

South : Mountain Slope

East : " "

West : Jurn en Nassura and el Nazzaze

and consists according to the Certificate of Registration, of 34 dunams and

Whereas the Vendor is negotiating with the other owners of the said land with a view to acquiring their shares registered in their names, and

20 Whereas the said land is mortgaged with Dr. Gabriel Abyad of Haifa for LP.1000 (One thousand Palestine Pounds, and

Whereas the Vendor claims that the area of the said land is not the correct area and that in accordance with the plan which is signed by the neighbours and Mukhtars of Tireh village and is dated the 15th Kanun Awal, 1926, the said land contains approximately 2171 dunams of land, and

30 Whereas the Vendor is interested to sell to the Purchasers 5/6 of the shares registered in his name and in the name of his wife in the said land which amount in the aggregate to approximately 60% of the total area of the said land (and he is interested) to agree with the Purchasers that they should sell in accordance with the terms set out in this Agreement all the other shares which the Vendor will succeed in acquiring from the said Arabs, and

Whereas the Purchasers are interested to purchase from the Vendor the shares which are registered in his name and in the name of his wife and also to take over the sale of the other shares which the Vendor has already succeeded or will succeed to acquire from the registered owners in accordance with the terms enumerated in this Agreement,

Wherefor it was agreed between the Parties and declared as follows :—

40 1. The Vendor undertakes to sell to the Purchasers 5/6 of his share and of the share of his wife in the said land which will be referred in the continuation of this contract as the land of the Purchasers at the price of L.P.5.— per dunam metric brutto according to the number of dunams resulting from his share and the share of his wife after survey and after correction of areas and boundaries on the explicit condition that this price is for Mafruz (Parcellated) land free from cultivation rights and from any charge or opposition, Badl Mils and any other disputes or claims and also survey expenses to ascertain the area. And the Purchasers undertake to purchase from the Vendor the above share at the above price.

Exhibit 40.
Agreement
between
Edmond
Levy and
Gedaliah
Stuchiner
and Others,
4th July
1934,
continued.

2. The Vendor undertakes to give a Power of Attorney to the Purchasers to sell on his behalf the shares which will remain to him and his wife and the other shares which he has already succeeded or will succeed to acquire from the other first owners of this land which will be called in the continuation as the lands of the Vendor and the Purchasers undertake to sell for the Vendor the above shares in accordance with the conditions explained in this Agreement.

3. In order to secure the arrangement of the correction of area and boundaries of the said land the Vendor undertakes to transfer to the name of Bank as trustee the shares 10 registered in his name and the name of his wife in the said land namely 1/64, 270/17250, 32867/331776 and 24426/51440 which amount in the aggregate to 60% of the total area of the said land, and also to transfer to the name of the Bank all the other shares which the Vendor has acquired is likely to acquire from the other registered owners of the said land on condition :

(A) Bank will sign an undertaking vis-a-vis the Vendor in the form and in accordance with the conditions explained and set out in addendum (A) to this Agreement ;

(B) The Purchasers will put at the disposal of the Vendor a loan 20 in the amount of LP.1,000 (One thousand Palestine Pounds) against the registration in the name of the Bank of the 60% of the said land and in consideration of every additional registration of 10% of the above land in the name of the Bank they will put at the disposal of the Vendor an additional loan of LP.250 (Two hundred and fifty Palestine Pounds). In order to secure these sums the Vendor will register in the Haifa Land Registry a mortgage or mortgages in favour of the Purchasers or in the name of the Bank if the Purchasers would require so on the land situate in Haifa and known as " Industrial Area " () which is registered in the name of Mrs. Camile Levy in the Haifa Land 30 Registry under Kushans Nos. 470/34 and 474/34 maturity shall be 15 months from the date of registration. The mortgage or mortgages shall contain a stipulation that the Vendor shall be entitled to sell any share of the mortgage property without need to obtain the consent of the Purchasers or of the Bank, on condition that the Purchasers of the said land shall recognise the charge on the land or (?) to partition the mortgaged share from the non-mortgaged part in the said land as he should deem necessary on condition that the mortgage parts after partition shall contain not less than 8 dunams.

The Vendor hereby undertakes to transfer (all the dispositions of) 40 this land to the name of the Bank, free from any servitude, opposition or other claims.

If the Vendor will not effect the transfer of these lands within 4 months of this date, the Purchasers shall be at liberty to withdraw from (to rescind) their obligations under this contract, and the Vendor thereupon shall pay to the Purchasers the sum of LP.2000.- (Two thousand pounds) as liquidated damages. If the Purchasers will fail to fulfill their obligations under this agreement which obligations are conditions precedent to the transfer, or will not accept the transfer, they will be liable to the Vendor for the sum of LP.2000.- (two thousand pounds) as liquidated damages. 50

4. After transferring the land to the name of the Bank the Vendor will commence the arrangement of the Settlement and adjustment of the

area and boundaries of the said land. And if within four months from the date of this agreement the Vendor will not succeed in acquiring from the other registered owners of the said land their shares in the said land, the Vendor will be with the execution of the separation of the shares transferred to the name of the Bank, from the other shares which are registered in the names of the other registered owners (partition—Trans.) so that all this separation (partition—Trans.) will be completed within one year of the date of transferring the kushans to the (name of the) Bank and the Vendor hereby undertakes to give to the person appointed to
 10 execute the adjustment and settlement of the boundaries and the area and the partition, if it will be necessary, an authority to pay on account of the vendor all the expenses incurred thereby.

For the purpose of carrying out these actions, both parties will appoint an advocate, or any other person who can carry out the adjustment of the Area and boundaries and the partition if it will be necessary so to do, and the Vendor hereby undertakes to assist the person so appointed by both parties, by furnishing all the necessary information, all the documents, plans, signature etc. which will be necessary for the execution of these actions, and the Bank will give the person appointed a power of attorney
 20 to appear and act on his behalf.

All the expenses incurred by the execution of the adjustment of the area, boundaries and the separation of the lands which the Vendor will register in the name of the Bank from the lands registered in the name of the other owners and which the Vendor did not succeed in acquiring them, and also all the taxes and Bedl Misl on the land which will be approved by the Government as a part of the land, are payable by the Vendor except the transfer fee at the rate of 3% which is payable by the Purchasers.

5. In case the adjustment of the Area and boundaries will not be completed within one year of the date of the transfer of the first kushans,
 30 or in case the area of the said land, which will be approved by the Government after the adjustment of the area and boundaries will be less than 1000 dunams the Purchasers are (will be) at liberty to withdraw from (annul—trans.) the purchase, and if the area will be less than 500 dunams the Vendor is (will be) at liberty to withdraw from (annul—trans.) the sale, and thereupon the said Bank will transfer to the name of the Vendor or to the name of any other person to whom the Vendor will order, all the lands registered in his name, by virtue of this agreement, against the refund by the Vendor of all the sums advanced to him by the Purchasers
 40 as a loan, or earnest money on account of the sale and the Purchasers or the Bank will discharge the mortgage or mortgages which the Vendor registered for the benefit of the Puchasers or the Bank, but if the area approved will be more than 2171 dunams the Purchasers undertake to buy half of the surplus and to sell the remaining part in accordance with the provisions of the present agreement.

6. After the completion of the adjustment of the Area and the boundaries and the partition if it will be necessary so to do and in case the purchasers will not withdraw from their obligations under this agreement in accordance with article 5 of this agreement, the Bank will deduct the sums which the Purchasers advance as a loan to the Vendor, and the
 50 Purchasers or the Bank will discharge the mortgage or mortgages which the Vendor registered in their name. If the sums which the Purchasers advanced to the Vendor as a loan, will exceed the sum which the Vendor

Exhibit 40.
 Agreement
 between
 Edmond
 Levy and
 Gedaliah
 Stuchiner
 and Others,
 4th July
 1934,
continued.

Exhibit 40.
Agreement
between
Edmond
Levy and
Gedaliah
Stuchiner
and Others,
4th July
1934,
continued.

has to receive in accordance with the rate of LP.2.500 per dunam, then the balance of the debt due from the Vendor will be deducted from the other sums payable to the Vendor under this agreement and in such a case the mortgage will remain in force until the discharge of the debt.

7. After the completion of the (action of the) adjustment of the area and boundaries, and the partition in case it will be necessary so to do, the Purchasers will make parcellation of this land, and the Purchasers will be entitled to sell parcels of, or all, the land which the Vendor transferred to the name of the Bank whether it be the land of the Purchasers or the lands of the Vendor and the Bank will transfer all the sold parcels in accordance with the instructions which he will receive from the purchasers, provided that the Bank will comply with the provisions of Article 12 of this Agreement. 10

8. On each sale and transfer of a dunam (namely on the sale and transfer of each dunam—trans.) which will be made of the lands of the Purchasers the Purchasers will pay to the Vendor the sum of LP.2.500 on each dunam brutto, which will be transferred in accordance with the proviso (?) of Article 6. The Purchasers undertake to pay to the Vendor the surplus of the price at the rate of LP.5 per dunam of land brutto, of the Purchasers' land not later than 18 months after the date of transfer and correction of area in boundaries. 20

9. On each sale from the Vendor's land the Vendor will receive at the time of the transfer to the name of the Purchaser the sum of LP.5.— on each dunam brutto transferred and in addition to that 50 per cent. of the profits which they will have out of these sales. The Vendor will receive this share of his in cash if so received (by the Purchasers) or by promissory notes or by mortgage in accordance with the agreement which will be made between the purchaser of the land and the Purchasers.

10. The expression net dunam means an area in square metres which remains from dunam brutto after the deduction therefrom of area required for roads, and other public sites. 30

11. The term profits in this agreement means the balance remained from the sum received from each sale of lands, after the deduction therefrom of the following sums :—

(A) the sum of LP.5 payable to the Vendor on the sale of dunam brutto.

(B) Expenses incurred by the parcellation and topography.

The expenses of parcellation and topography will be divided between the Vendor and the Purchasers in proportion to the area of land of the Purchasers and Vendor. All the expenses of travelling, advertisement, brokerage and other expenses incidental to the sale of the land of the Vendor or parts thereof, will be incurred by the Purchasers. 40

12. The conditions of the sale shall be laid down by the Purchasers provided that they will not be able to sell any land from that of the Vendor at a price which will leave to the Vendor a sum less than LP.5 for each dunam brutto. The Bank will not effect any transfer of the land whether it be the Purchasers' land or the Vendor's land, and in spite of instructions from the Purchasers' unless it is satisfied that the Vendor received from the sale of a dunam brutto of the Purchasers' lands a sum amounting to

LP.2.500 from every sale of dunam brutto of the Vendor's land—LP.5 in cash.

13. All the lands transferred to the name of the Bank will be considered as Musha lands, and the sites after the parcellation will be registered in the name of the Bank as a Musha land, and the rights of the Purchasers and the Vendor in these lands will be in the proportion of the Purchasers' land to the Vendor's land and each sale made by the Purchasers from the sale land, will be made from the lands of both parties in the same proportions as that between the said lands.

Exhibit 40.
Agreement
between
Edmond
Levy and
Gedaliah
Stuchiner
and Others,
4th July
1934,
continued.

10 14. If within two years of the date of the approval of the parcellation, there will remain unsold lands, each party is (will be entitled) to demand the partition of the remaining land among the parties, and the Bank will be obliged to transfer the partitioned land to the name of the Vendor and the Purchasers at the same proportion as will be between the Vendor's land and the Purchasers' land. The partition shall be effected as follows: The value of the sites will be estimated, either by consent of the parties or by experts and then the partition shall be made either by drawing a lot or by consent in accordance with the value of the sites.

20 15. The road connecting this area with Haifa-Zikhron Road will be paved at the expense of both parties in equal shares.

16. All disputes between the parties arising in connection with, or out of, this agreement will be submitted to arbitrators, each one selected by either party and in case of disagreement between the two arbitrators they will appoint a third one who will cast.

In witness therefor we affixed our signatures.

Haifa the 4th day of July, 1934.

Sgd. ZVI SHECHTERMAN.

„ G. SHUTZINER.

„ A. FRIEDMAN.

„ D. GOTTFRIED.

(on 50 mils stamp)

30

Art. 17 (in handwriting)

For the purposes of this agreement, the following are the addresses of the parties:—

Vendor:

Purchasers: Hachsharah Partnership, 6 Herzl Str., Tel-Aviv.

Sgd. on behalf of ZWI SHECHTERMAN;

A. SCHECHTERMAN; and A. FRIEDMAN.

Exhibit 16.
Circular
letter,
Director
of Lands to
Registrar
of Lands,
5th
December
1934.

Exhibit 16.

CIRCULAR LETTER, Director of Lands to Registrar of Lands.

LD./1-10895.

Department of Lands,
P.O. Box 356,
Jerusalem.

5th December, 1934.

Circular Letter No. 108.

Registrar of Lands,

Acre	Hebron	Nazareth	
Beisan	Jaffa	Safad	10
Gaza	Jerusalem	Tiberias	
Haifa	Nablus	Tulkarm.	

Subject :—Forest Reserves.

I have agreed with the Director, Department of Agriculture, that the following procedure shall be adopted in respect of transactions affecting Forest Reserve :—

(A) If a Registrar of Land desires information regarding the boundaries of a Forest Reserve he will refer to the Forest Ranger of the Range concerned who will :—

(i) show him the plan of the Reserve 20

(ii) Indicate on the ground the boundary and forest demarcation marks.

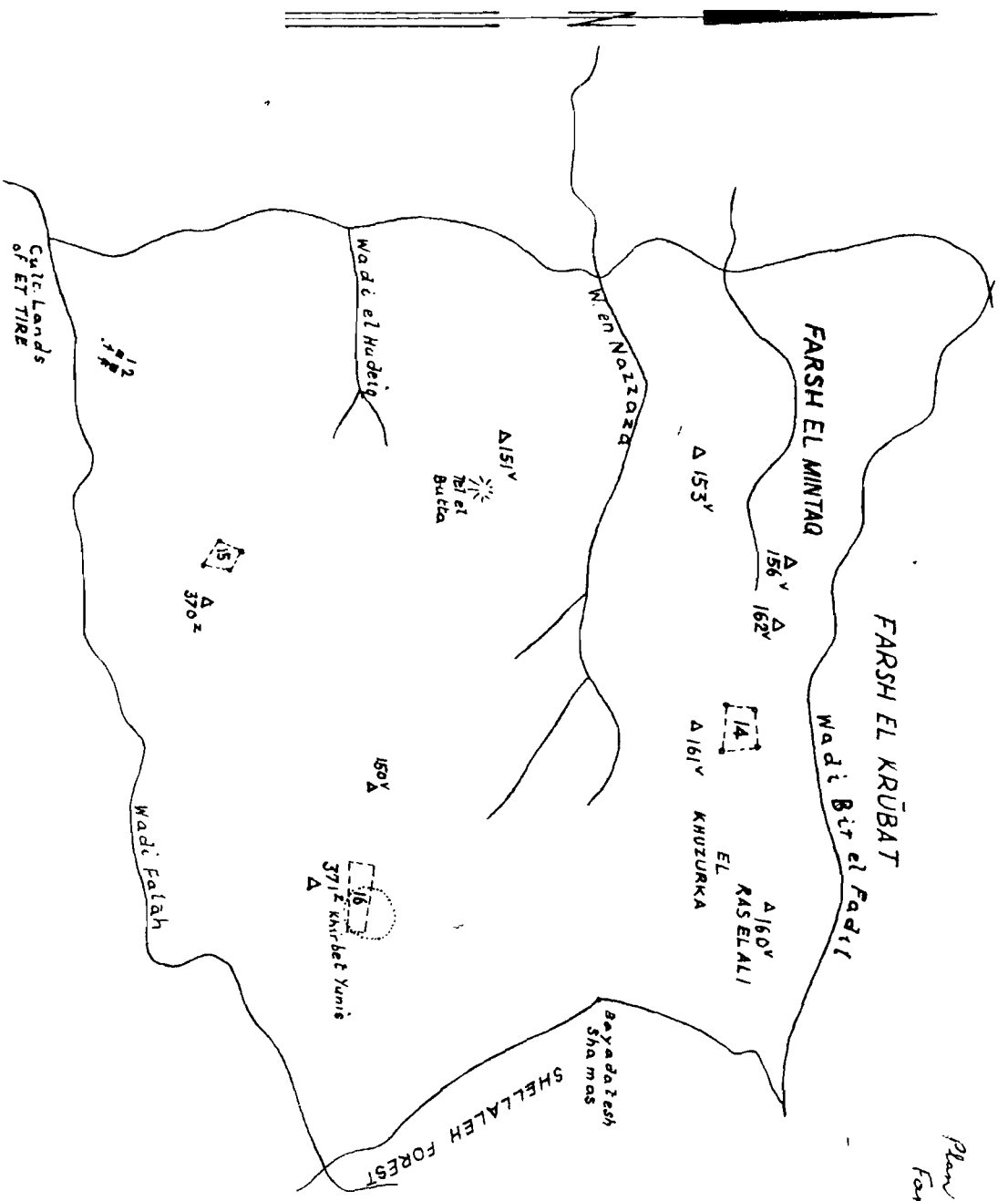
(B) The Registrar will then be responsible for the verification of the plans submitted for registration and the Forest Ranger will be responsible for the prevention of encroachment on the Forest Reserve.

(Sgd.) C. L. HORTON.

for DIRECTOR OF LANDS.

Ex. 18

Plan of Tine Forest Reserve



SCALE 1:10,000 reduced to SCALE 1:20,000

Exhibit 17.

EXTRACT from Register of Deeds.

I

GOVERNMENT OF PALESTINE
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

Transferred from No. 140
of Kanon Awal 1298.

Volume No. 2

Situation or Quarter: Ard Khirbe Younis

Petition No. 767/26
746/26.

Folio No. 65

Town or Village: Haifa

No. of Deed	Date of Registration	Class of Land	Boundaries	Area Dunams	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration	Remarks
140	Kanon Awal 1298	Miri	N. Rous el Shamas & Ashloul el Khazouka, S. Kitf el Jabal E. do. W. Jurn el Nassoura & el Nazzazeh.	34	Registration on payment of Bedl el Misl.	Ahmad ibn Mohd. Alueh Suleim Dirbas Hassan Alueh. Mustafa Mohd. Dirbas.		1/4 1/4 1/4 1/4		See deed 1174 V 2/71 " " 1176 V 2/71 " " 497 V 2/72 " " 1172 below
1172	23.9.926.	do.	do.	34	Succ. vide plan sharia No. 102/26 of 26.8.926	Mustafa Abu Mahmud el Dirbas	Kamil & Aishy & Labibeh ch. of Mustafa el Dirbas	4/64 4/64 4/64	6.250	" " 1173 V 2/71
1173						Hamameh bint Abed el Namrud Saleem & Shareef & Alye ch. of Mahmud Abu Mustafa el Dirbas	1/64 1/64 1/64 1/64		" " 1173 V 2/71 " " do. " " 3474/34 V 2/71 " " 1173 V 2/71	

Exhibit 17.
Extract
from
Register
of Deeds,
Haifa,
continued.

Exhibit 17.
Extract
from
Register
of Deeds,
Haifa,
continued.

No. of Deed	Date of Registration	Class of Land	Boundaries	Area Dunams	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration	Remarks
Vol. 2 Fol. 71.										
1173	23.9.26	do.	do.	34	Sale	Kamil Abu Mustafa Mahmud el Dirbas. Salim & Alya ch. of Mahd. el Dirbas. Hamameh bint el Abed el Namroud. Ahmad Abu Mohd. Aluah	Camie Levy	7/64	46.	See deed 3478/34 V 2 f. 71
1174	do.	do.	do.	34	Succ. vide Ilam Shari No. 7/111 of 9.5.25.		Fatimeh bint Ali el Kartia Deed & Nimer & Deebeh & Alloueh & Naameh ch. of Ahmad Mohd. Alueh.	5/80 3/80 3/80	" " "	1175 below do. 1344/36 V 13/101
								3/80	Sec Pet. 3016/37	1175 below
								3/80	" "	3979/34 V.
									" "	13 f. 101

28.12.42.

Seal of Land Registry of Haifa.

Sgd.

Registrar of Lands.

GOVERNMENT OF PALESTINE
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

Fol. No. 71

Petition No. 746/26

Town or Village : Tireh

Situation or Quarter : Ard Khirbet Younis

Volume No. 2

831/26.

No. of Deed	Date of Registration	Class of Land	Boundaries	Area Dunams	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration	Remarks
1175	do.	do.	do.	34	Sale	Fatimeh bint Ali Katra & Deed & Deebah Awlad Ahd. Mohd. Alueh	Camieh Levy	11/80	L.P.30	See deed 3478/34 V. 7. f. 11.
Vol. 2. Fol. 72.										
1176	do.	do.	do.	34	Succ. vide Ilan Shari No. 23/316 of 17.11.26	Suleiman Abu Ahmad el Dirbas	Ahmad & Fatimeh & Halimeh ch. of Suleiman Ahmad el Dirbas	648/12288 648/12288 384/12288		See deed 1179 V. 2 f. 73 " " 1178 " do.
						Nijneh bint Mansour Raghib & el Abed & Acknou sons of Mohd. Abdul Fattah el Dirbas Labeebeh bint Ali Abu el Tackaly Jameel & Jameeleh & Alya ch. of Mohd. Abu Suleiman Abu Ahmad el Dirbas	177/12288 216/12288 216/12288 216/12288 81/12288 162/12288 162/12288 162/12288			do. do. See deed 497 V. 2 f. 86. do. See deed 270/35 V. 2 f. 86. " 497 V. 2 f. 86 do.

Exhibit 17.
Extract
from
Register
of Heeds,
Haifa,
continued.

Exhibit 17.
Extract
from
Register
of Deeds,
Haifa,
continued.

No. of Deed	Date of Registration	Class of Land	Boundaries	Area Dunams	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration	Remarks
Fol. 73.										
1177	do.	do.	do.	34	Sale	Fatimeh & Halimeh banat Suleiman Abu Abd. el Dirbas and Nijmeh bint Mansour	Camieh Levy	$\frac{1209}{12288}$	L.P.25	See deed 3478/34 V. 7 fol. 11.
1178	do.	do.	do.	34	Sale	Ahmad Abu Suleiman el Dirbas	Mahmoud Hassan el Ghabin	$\frac{648}{12288}$	15	See deed 1179 below.
1179	do.	do.	do.	34	Sale	Mahmoud Hassan el Ghabin	Edmoud Nassim Levy	$\frac{648}{12288}$	15	See deed 3478/34 Vol. 7 fol. 11.

28.12.4a

Seal of Land Registry of Haifa.

Sgd.

Registrar of Lands.

GOVERNMENT OF PALESTINE
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

III.

Folio 83.

24/27

Town or Village : Tireh

Situation or Quarter : Ard Khibbet Younis.

Petition No. 174/27

Volume No. 2.

No. of Deed	Date of Registration	Class of Land	Boundaries	Area Dunams	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Remarks
496	11.5.927	do.	do.	34	Succ. vide Ihan Shari No. 92/15 dated 23/4/27	Hassan Allouh	Assad & Ahmad & Sukkarah Awlad Mohd. Hassan Allouh Watfa bint Said Mohd. Hassan Allouh Toraya bint Ahmad el Sarweh Deed & Deebah & Diyab & Kamleh & Nimer Awlad Abdul Kadir Hassan Allouh Abdul Razik & Ahmad & Hassan and Amneh Awlad Salih Hassan Allouh Mohamad & Fatimeh & Roza Awlad Saad Mohd. Hassan Allouh Massadeh bint Saade Mohd. Hassan Allouh Amneh & Fatimeh banat Saade Mohd. Hassan Allouh & El Abed & Yosra Awlad Abdullah Salah Hassan Allouh	186/17280 186/17280 186/17280 180/17280 45/17280 216/17280 216/17280 216/17280 216/17280 270/17280 270/17280 270/17280 62/17280 62/17280 62/17280 37/17280 37/17280 37/17280 540/17280 540/17280	See deed 129 V. 7 fol. 11 " " 347/34 V. 7 f. 11.

GOVERNMENT OF PALESTINE
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

2365/34

361/27 2366/34

127/35 268/34

Folio No. 86.

Volume No. 2.

Town or Village : Tireh

Situation or Quarter : Khirbet Younis.

Petition No. 26/29 2486/34

No. of Deed	Date of Registration	Class of Land	Boundaries	Area Dunams	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration	Remarks
497	11.5.27	do.	do.	34	Sale	Jamileh & Alyabanat Mohd. Suleiman Ahd. Dirbas & Raghieb & Kanoun Awlad Mohd. Abdul Fattah el Dirbas El Abed Abu Mabdullah, Salih Hassan Allou & Labibeh bint Ali Abu el Takaly	Camieh bint Alber Ardeety (Mrs. Edmond Levy)	32867 331776	27.-	See deed 3471/34 V. 7 f. 11.
2700	8.6.35	do.	do.	31.256 ²⁰	Sale	Jamil Mohd. Suleiman Dirbas	Edmond Nissim Levy	162 12288	8.-	See deed 5311/35 V. 13 f. 101.
129	1.2.29	do.	do.	do.	Sale	Alfred Levy acting on behalf of the purchaser vide P/A dated 8 June, 27 British Consul Alexandria	Camille Levy	20344 552960	16.-	See deed 3470/34 below.

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration	Remarks
3470	25.10.34	Miri	Plain	do.	31.25620	Sale	Camille Levy thro' her Agent Edmond Levy vide P/A dated 25.8.34 made before the British Consul, Beirut	The Palestine Kupat Am Bank Cooperative Society Ltd.	20344/ 552960	58,870	See deed 3006/38 V. 13 f. 101
3471	do.	do.	do.	do.	do.	do.	do.	do.	32867/ 331776	158,500	do.
3472	do.	do.	do.	do.	do.	do.	Hassan Saleh Allou thro' his agent Mohd. Ghabu vide P/A dated 1.1.29 of Haifa Notary Public	Camille Levy	270/ 17280	25.-	See deed 3473/31 below.
3473	do.	do.	do.	do.	do.	do.	Camille Levy thro' her Agent Edmond Levy vide P/A dated 25.8.34 made before the British Consulate Beirut	The Palestine Kupat Am Bank Cooperative Society Ltd.	270/ 17280	25.-	See deed 3006/38 V. 13 f. 101.
3474	do.	do.	do.	do.	do.	do.	Sharif Mahmud Dirbas thro' his Agent Mahmud Ghabu vide P/A dated 19.6.33 of Haifa Notary Public	Camille Levy	1/64	25	See deed 3475 below.

Exhibit 17.
Extract
from
Register
of Deeds,
Haifa,
continued.

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration	Remarks
3175	26.10.34	Miri	Plain	do.	31.25 ^m 20	Sale	Camille Levy thro' her Agent E. Levy vide P/A dated 25.8.34 made before the B.C. at Beirut	The Palestine Kupat Am Bank Coop. Society Ltd.	1/64	25.-	See deed 3006/34 V. 13 f. 101.
3178	do.	do.	do.	do.	do.	do.	Edmond Levy as principal & as Agent of Camille Levy vide P/A dated 25.8.34 made before the British Consul at Beirut	do.	24453 <u>61440</u>	636,800	do.
3979	3.12.34	do.	do.	do.	do.	do.	Na'meh bint Ahmad Alweh thro' her agent Alfred Levy vide P/A dated 16.11.34 made before the Notary Public at Haifa	Edmond Nisim Levy	3/80	60.-	See deed 3980/34 below.
3980	do.	do.	do.	do.	do.	do.	Edmond Nisim Levy	The Palestine Kupat Am Bank Coop. Soty. Ltd.	3/80	60.-	See deed 3006/38 below.
5311	do.	do.	do.	do.	do.	do.	do.	do.	162/ 12288	10.-	do.
1314	3.3.36	do.	do.	do.	do.	do.	Nimer bin Ahmad Mohd. Alweh	Edmond Nisim Levy	3/80	80.-	See deed 1345/36 below.
1345	do.	do.	do.	do.	do.	do.	Edmond Nisim Levy	The Palestine Kupat Am Bank Coop. Society Ltd.	3/80	80	See deed 3006/38 below.
3006	20.6.1938	do.	do.	do.	do.	Agglomeration of shares.			1083721 <u>165880</u>		28.12.42.

GOVERNMENT OF PALESTINE
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

Folio No. 161

Volume No. 13

Town or Village : Tireh

Situation or Quarter : Ard Khirbet Younes

Petition No. 3016 of year 1937.

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Consideration	Remarks
3091	25.6.38	Miri	Plain	N. Rous el Shannas and Ashloul el Khuzurka (Tireh lands) S. Makab el Maa Plot DI and AI (Closed Forest) E. Shalaieh lands. W. Juru el Nasura and el Nazzazeh (Tireh lands)	3296.197	Correction of Area and boundaries on payment of Bedal Misel as per auth. R. 4695/4661 dated 22.6.38		The Palestine Kapat Am Cooperative Society Ltd.	1083724 <u>1658880</u>	426.580	Bedal Misel No transfer in respect of this property should be calculated before referring to D.L.R. R. 4695/7450 of 18.7.42 kept in file 420/11.

28.12.42.

Seal of Land Registry of Haifa.

Exhibit 17.
Extract
from
Register
of Deeds,
Haifa.
continued

Exhibit 19.
Extract
from Tithe
Schedule
1928.
1847-1807.

Exhibit 19.**EXTRACT from the Commuted Tithes Schedule of 1928 for Tira Village, Haifa S D.****SCHEDULE A.**

Serial No.	Locality	Boundaries	Occupier	Seed		Average Produce		Total Produce		Reputed Owner	Tithe
				Mid.	Keil.	Mid.	Keil.	Mid.	Keil.		
1847	Farsh el Kuzla	Jurn, Utl, Utl, Utl	'Abdur Rahman Ibn Ahmad Rashid	—	2	—	3	—	6	Abdur Rahman Ibn Ahmad Abu Rashid	192 Mils

10

SCHEDULE C.

Serial No.	Locality	Boundaries	Occupier	Kind of Tree	Total Produce	Reputed Owner	Tithe
1807	Farsh el Kuzla	Utl, Utl, Utl, Utl	'Abdur Rahman Abu Rashid	Carob	Mils 0.750	Abdur Rahman Abu Rashid	075 mils.

20

Exhibit 20.
Extract
from Tithe
Schedule
1928.
1689-1681.

Exhibit 20.**EXTRACT from the Commuted Tithes Schedule of 1928 for Tireh Village, Haifa S/D.**

Serial No.	Locality	Boundaries	Occupier	Seed	Value of Annual pro.	Reputed Owner	Due Tithes
1689	Tel el Batta	Mountain Plain Khirbet Missleen Ein Had	Mustafa el Zaghel	Carob	0.500	Mustafa el Zaghel	050
1681	,,	,,	Roja Yousef el Hilal	,,	0.500	Roja Yousef el Hillal	050

30

Remark : The boundaries mentioned above are of Tel-el Batta locality and many other localities in the Tireh village lands.

Upon the request of the Land Settlement Office, Haifa, this certified true copy was issued accordingly.

(Sgd.)

Treasurer.

(Sgd.)

Taxes Clerk.

Exhibit 21.
EXTRACT from the Commuted Tithes Schedule of 1928 for Tira Village, Haifa S/D.
SCHEDULE A.

Exhibit 21.
 Schedule
 of Com-
 muned
 Tithes.

Serial No.	Locality	Boundaries	Occupier	Seed		Average produce		Total produce		Reputed Owner	Tithe	
				Mid.	Keil.	Mid.	Keil.	Mid.	Keil.			
	1131	Khirbet Yunis	Utl, Utl, Utl, Utl	Ali Hassan Dirbas	3	—	3	—	3	1	Ali Hassan Dirbas	48
10	1134	do.	do.	Safi Ismail Dirbas	3	—	3	—	3	1	Safi Ismail Dirbas	48
	1140	do.	Makab el Maa Utl, Utl, Utl	Nimer Hassan Dirbas	3	—	3	—	3	1	Nimer Hassan Dirbas	48
	1145	do.	Utl, Utl, Utl, Utl	Farid Dirbas & his brother Muhammad	3	—	3	—	3	1	Farid Dirbas & his brother Muhammad	48
20	1155	do.	Utl, Utl, Dirbas, Uthman	Muhd. Haj Hassan Dirbas	3	—	3	—	3	1	Muhd. Haj Hassan Dirbas	48
	1285	do.	Utl, Utl, Utl, Utl	Dhib Abdul Qadir Allu & bros.	3	—	3	—	3	1	Dhib Abdul Qadir Allu & bros.	48
30	1352	do.	do.	Selim Mahmud Mustafa Dirbas & his brother	3	—	3	—	3	1	Selim Mahmud Mustafa Dirbas & his brother	48
	1551	do.	do.	Dhib & Najib Awlad Rabah	—	1	—	3	—	3	Dhib & Najib Awlad Rabah	96
40	1706	do.	Utl, Ashlul Esh Shamas, Journ	Allu Ahmad Allu	3	—	3	—	3	1	Allu Ahmad Allu	48
	1722	do.	Utl, Utl, Utl, Utl	Haj Muhd. el Bahlul	3	—	3	—	3	1	Haj Mud. el Bahlul	48
	1727	do.	do.	Abder Razaq Allu & bros.	3	—	3	—	3	1	Abder Razaq Allu & bros.	48
	1860	do.	do.	Hamad en Namrud	3	—	3	—	3	1	Hamad en Namrud	48
50	1897	do.	do.	Asad Muhd. Allu	3	—	3	—	3	1	Asad Muhd Allu	48
	2152	do.	do.	Khalidi Asad Dirbas	3	—	4	—	—	2	Khalid Asad Dirbas	64
	2210	do.	do.	Labiba Warad Dirbas	3	—	3	—	3	1	Labiba Warad Dirbas	48
<hr/>												
784												

Exhibit 22.
Extract
of Record
from old
Turkish
Khulassa
(Werko
Tax) of Tira
Village.

Exhibit 22.

EXTRACT of Record from the old Turkish Khulassa (Werko Tax) Folio 285 of Tira Village.

Name.	Locality	Kind of Property	Area Dunams	Value P.T.	Total P.T.	Bara.
Ahmad Muhd. Allu, Suleiman Dirbas, Hassan Allu and Mustafa Mahmud Dir- bas. Tabu Deed No. 140 of Kannun Awwal, 1298	Khirbet Yunis	Land	34	10200	41	—
						10
Succession of Ahmad Fol. 450, year 1342 to Khulasa 285	"	"	"	2550 7650	10 31	—
Succession of Suleiman & Mustafa Fol. 451/452, year 1342 to Kulasa 285	"	"	"	5100 2550	21 10	—
The $\frac{1}{4}$ share of Hassan was transferred to his heirs in 1928 & sale in 1934 to 134 Jews (sic)	"	"	"	2550	10	20
Succession to heirs of Suleiman Dirbas—450 year 1342 from 285. Heirs are : Ahmad, Fatima, Halima, Nijma, Raghib, el Abd,—? Labiba, Jamil, Jamila and Alya	"	"	"	2550	10	5
						30
Sale 450 year 1342 to 283	"	"	"	1550 1000	6 4	5 0
Sale year 1928 — Transfer 579 to 283	"	"	"	500 500	2 2	0 0
Heirs of Mustafa Dir- bas. Succession 452, year 1342 from 285. Heirs are : Kamil, Aiy- she, Labiba, Hammad, Selim, Sharif & Alya	"	"	"	2550	10	5
						40
Sale 452, year 1342 to 283	"	"	"	1550 1000	6 4	5 0
Sale year 1934—Tran- sfer 361 to 134 Jews	"	"	"	1000 000	4 0	0 0

Name.	Locality	Kind of Property	Area Dunams	Value P.T.	Total P.T.	Bara.	Exhibit 22. Extract of Record from old Turkish Khulassa (Werko Tax) of Tira Village, <i>continued.</i>
Heirs of Ahmad Allu. Succession from year 1342, 450	Khirbet Yunis	Land	34	2550	10	5	
			$\frac{20}{80}$				
Sale year 1342 to 283	..	..	..	$\frac{1550}{1000}$	6 4	5 0	
Sale of Naama's share in 1934, 458 to 1 Jew.	..	..	..	$\frac{330}{670}$	1 3	0 0	
10 Heirs are : Fatima, Dhib, Nimer, Dhiba & Naama to Daoud							
Folio 283 for the locality of Khirbet Yunis.							
Madam Camia Levy Purchase year 1343. 450 from 285	Khirbet Yunis	Land	34	3000	12	0	
			$\frac{11}{80}$				
..	..	..	..	3000	12	0	
			$\frac{1857}{12288}$				
20 Purchase year 1343, 452 from 285	..	..	..	4600	18	5	
			$\frac{7}{64}$				
Purchase year 1929, 579, from 285	..	..	..	2700	11		
			$\frac{32867}{331776}$				
Purchase year 1929, 776 from 285	..	..	..	1600	6	5	
			$\frac{20344}{552960}$		59	10	

All these records were transferred to the new Khulasa of Alizuza, Folio 15.

EXTRACT OF RECORD FROM THE KHULASA OF TIRA & AHUZA (JEWS) FOLIO 1 FOR THE LOCALITY OF KHIRBET YUNIS.

Transfers	Locality	Kind	Dum	Value	P.T.	Bara
Edmond Nasim Levy Purchase year 1935, 458 from 285 old	Khirbet Yunis	Land	31.256	6000	24	0
				$\frac{3}{80}$		
Sale 1934, 458 to 134	..	..	31.256	$\frac{6000}{000}$	24 00	0 0
				$\frac{3}{80}$		

Exhibit 22. EXTRACT OF RECORD FROM THE KULASA OF TIRA VILLAGE AND AHUZA (JEWS)
 Extract of Record
 of Record
 from old
 Turkish
 Khulassa
 (Werko
 Tax) of Tira
 Village,
continued.

Transactions	Area	Locality	Kind	Value	Amount of Werko
	D.M.C. 31,256,20	Khirbet Yunis	Land	LP. mls. 58.870	LP. mls. 235
Palestine Kupat Am Bank Ltd. Purchase year 1935, 358 from Fol. 15		share <u>20344</u> 552960			
1935, 359 „ „ 15	„	„ <u>32867</u> 331776	„	158.500	634
1935, 360 „ „ 285 old	„	„ <u>270</u> 17280	„	25.000	100
	D.M.C. 31,256,20	Khirbet Yunis	Land	LP. mls. 25.000	LP. mls. 100
Palestine Kupat Am Bank Ltd. Purchase year 1935, 361 from fol. 285 old		share <u>1/64</u>			
1935, 362 „ „ 15	„	„ <u>24453</u> 61440	„	636.800	2.547
1935, 458 „ „ 1	„	„ <u>3/80</u>	„	<u>60.000</u> <u>964.170</u>	<u>240</u> <u>3.856</u>

10

20

Exhibit 23.

LETTERS, Tira Mukhtar to District Officer, Haifa, and to the Mudir Mal.

District Officer,
Haifa.

Exhibit 23.
Letters,
Tira
Mukhtar
to District
Officer,
Haifa, and
to the
Mudir el
Mal,
9th & 11th
October
1935.

Attached is an extract from the Tabu of Haifa, which shows, under Vol. 2, folios 86, 85 and 65, all the owners of Khirbet Yunis, the boundaries of which are shown in accordance with the attached extract, as Edmond Levy and Partners, whose names are given in the said extract. As so far we have not become aware of a transfer of any part of the land of Khirbet Yunis, we recorded it in the name of the Mukhtar—Block 28, folio 84, Khirbet Yunis locality, 3,313 dunams. As nothing was recorded in the names of the persons registered in the attached extract dated 4.10.35, under 319555, we therefore request that the name of Edmond Levy and Partners as shown in the Kushan may be inserted instead of the name of the Mukhtar.

9.10.35. Seal of TIRA MUKHTAR.

Issa en Naji.

Notables.

YUSEF ABD EL FATTAH SALLUM.

NAJAT EL ABD EL AMIN.

MAHMUD ET TAHIR.

To the Mudir el Mal for observations.

10.10.35.

Sgd. RAFIQ BEIDUN,
District Officer.

Exhibit 23.
Letters,
Tira
Mukhtar to
District
Officer,
Haifa, and
to the
Mudir el
Mal,
9th & 11th
October
1935,
continued.

10 I think there is no objection to the correction of the name in accordance with the Tabu extract so long as the Mukhtar and the notables ask for effecting it. If you deem it fit, please instruct that the name of the Kupat Am Bank Ltd. and Partners be inserted instead of the name of Mukhtar of the village.

Sgd. SADR ED DIN ASHUR,
Mudir el Mal.

11.10.35.

To the Mudir Mal.

I agree to this.

Sgd. RAFIQ BEIDUN,
District Officer.

20

18.10.35.

Exhibit 6.

REQUEST by E. Levy's Surveyor for permission to survey land.

To the Forest Department,
Haifa.

Haifa, 3rd August, 1936.

Sirs,

I beg you for the special permission to survey a certain plot of land in the "Government Forest Reserved Area," situated as follows:—

30 District : Northern, Sub District : Haifa, Locality : Khirbet Yunis and El Khuzurqa.

Boundaries : North : Wadi Bir el Fadil
West : El Qaranif and Khirbet Shiba
South : Wadi el Falah
East : Kh. Shallala.

The reasons for that application are:—

(i) That our client, Mr. E. Levy claims this plot of land, as his own,

Exhibit 6.
Request by
E. Levy's
Surveyor
for
permission
to survey
land,
3rd
August
1936.

Exhibit 6.
Request by
E. Levy's
Surveyor
for
permission
to survey
land,
3rd
August
1936,
continued.

- (ii) That he hold an old Kushan about that plot of land,
(iii) That he needs a survey map of a Licenced Surveyor of
that plot of land to prove his claim, which cannot be executed
without the above applied special permission.

Expecting soon your favourable answer.

I am, Sir,

Yours faithfully,

Sgd. SKALL STEINBERG, Haifa.

Licensed Surveyor,
Engineers, Haifa. 10

Certified True Copy.

ASSISTANT CONSERVATOR OF
FORESTS NORTHERN DIVISION.

Exhibit 6b.
Letter,
Conservator
of Lands to
Conservator
of Forests,
10th
December
1936.

Exhibit 6b.

LETTER, Conservator of Lands to Conservator of Forests.

D/Hai/213

10th December, 1936.

Conservator of Forests.

Subject : Forest Reserve—Tireh Village,
Haifa S/D. 20

Reference : Your 8/T/4 of 5.12.36.

It is not possible for Government to prevent a survey being made.
I am afraid that the decision of Government in connection with the
Khreibe Lands on Mount Carmel will encourage similar claims.

(Sgd.) F. J. SALMON,

Commissioner for Lands and Surveys.

Exhibit 38.
Letter,
Assistant
Con-
servator
of Forests
to Skall-
Steinberg,
25th
August
1936.

Exhibit 38.

LETTER, Assistant Conservator of Forests to Skall Steinberg.

Department of Forests

Office of the

30

In reply please quote

Assistant Conservator of Forests

No. FND 5/22.

Northern Division

Haifa, 25th August, 1936.

Gentlemen,

I beg to inform you that your application dated the 3rd August, 1936, is under consideration. A further communication will be addressed to you in due course.

I have the honour to be,

Gentlemen,

Your obedient servant,

Sgd. B. YAUD,

F/Assistant Conservator of Forests
Northern Division.

10

Messrs. Skall-Steinberg,
Engineers,
Haifa.

Exhibit 6a.

LETTER, Conservator of Forests to E. Levy's Surveyor.

23rd December, 1936.

FND/5/22.

Exhibit 6a.
Letter,
Conservator
of Forests
to
E. Levy's
Surveyor,
23rd
December
1936.

Gentlemen,

20 In continuation of my letter of FND/5/22 of 25.8.36, I am directed to inform you that this Department will not prevent a survey being made of the area mentioned in your letter dated 3rd August, 1936. I am, however, to draw your attention to the contents of the Forests Ordinance, 1926, and in particular to part III para. 5 to which the area in question is subject. It being understood that the permission to survey will not be construed as this Department's admission to any claim of yours to land surveyed.

I have the honour to be,

Gentlemen,

Your obedient Servant,

Sgd. A. LAHAV,

Assistant Conservator of Forests
Northern Division.

30

Messrs. Skall-Steinberg,
Engineers,
Haifa.

Exhibit 39.
Letter,
Assistant
Con-
servator of
Forests to
Mr.
Steinberg,
11th
September
1936.

Exhibit 39.

LETTER, Assistant Conservator of Forests to Mr. Steinberg.

GOVERNMENT OF PALESTINE

Department of Forests
Office of the
Assistant Conservator of Forests
Northern Division.

P.O. Box 499.

Haifa, 11th September, 1936.

In reply please quote
No. FND/5/22.

Sir,

10

Referring to your application dated 3rd August, 1936, to permit the survey of a piece of land located in Khirbet Yunis and El Khuzurqa and forming a part of Tireh Forest Reserve No. 195, I shall be obliged if your client would like to call on this office, between the hours 8.00 a.m. to 14.00 a.m. and bring the documentary evidence (i.e. Kushan) with him, claimed to be in his possession.

I have the honour to be,

Sir,

Your obedient servant,

Sgd. N. LAHAV,

20

Assistant Conservator of Forests,

Northern Division.

Mr. Steinherz,
Surveyor,
New Business Centre,
P.O.B. 753,
Haifa.

Exhibit 41.**AGREEMENT between Edmond Levy and Gedaliah Stuchiner and Others.**

Exhibit 41.
Agreement
between
Edmond
Levy and
Gedaliah
Stuchiner
and Others,
24th May
1938.

Made in Haifa, this 24th day of May, 1938, between Mr. EDMOND LEVY of the one part hereafter called the Vendor and Messrs. GEDALIAH STUCHINER, ABRAHAM FRIEDMAN, ZVI SCHECHTERMAN and DOV GOTFRIED of the other part hereafter called the Purchasers :

Whereas on or about the 4th day of July, 1934, the parties hereto entered into an agreement hereafter to be referred to as The Principal Agreement with regard to a plot of land situated in Tireh and known as
10 Khirbet Yunis hereafter called the Property, and

Whereas the parties, in entering into the Principal Agreement, referred to the land described in part I of the plan attached to the present agreement, so that it shall comprise an area of 2171 dunams, and

Whereas on making the appropriate survey it was found out that the said property comprises an area of 3611 dunams as per plan attached, i.e. the part of property described in Part II of the plan attached was not taken into consideration in the Principal Agreement, because only Part I of the plan was referred to as described above, and

Whereas both parties are desirous to reestablish that their liabilities
20 are limited only to that part of property within the boundaries described in Part I of the plan attached hereto and comprising an area of 2171 dunams only and which will be registered after the correction of area and boundaries and/or partition will be effected, and

Whereas the said registration in the name of Bank Kupat Am Ltd. and any additional registration which may from time to time be made in the name of the Bank Kupat Am Ltd., pursuant to these presents is in respect of the whole land described in the plan attached, i.e. the land described in Part I of the plan attached (the subject matter of the transaction between the parties hereto) as well as that part described in Part II of the
30 plan attached (which is not included in this transaction), and

Whereas by reason of these altered conditions both parties are willing to adjust and clarify the terms of the Principal Agreement between them ;

Now therefore this Deed Witnesseth that it has been agreed between the Parties as follows :—

1. These presents together with the plan and the schedule attached hereto form the additional agreement between the parties, which shall constitute an addition to the Principal Agreement. The said Principal Agreement shall remain in full power subject to the alterations and
40 interpretations of these presents.

2. Both parties agree that whereas the said shares in the said land, as at present registered, are registered in the name of the Bank Kupat Am Ltd., by way of trust pursuant to the terms of the Principal Agreement, that same shall remain registered as aforesaid by way of trust to both parties in equal shares pursuant to the terms hereunder. The parties further agree that any other shares bought by the Vendor, shall be

Exhibit 41.
Agreement
between
Edmond
Levy and
Gedaliah
Stuchiner
and Others,
24th May
1938,
continued.

registered in the name of the Bank Kupat Am Ltd., subject to the conditions as aforesaid i.e. in trust for both parties in equal shares.

Whereas those shares registered in the name of the Bank Kupat Ltd. and which will from time to time be registered pursuant to this present are in respect of the whole land i.e. the land comprised in Part I of the plan attached, the estimated area of which is about 2171,198 dunams (which are the subject matter of these presents) and also to the land comprised in Part II of the plan attached i.e. the estimated area of which is 1440.026 dunams (which is without the scope of this present) it is hereby declared by the parties that after correction of area and boundaries and partition is effected, the said Bank shall hold and be deemed always to have held, for and on behalf of the Vendor the whole of that part of the said land which falls within the limits of Part II of the said plan. The Purchasers hereby authorise and irrevocably instruct the said Bank to effect a partition of the whole land, which will ultimately be registered in its name, so as to separate between that part of the land included in Part I of the plan attached and that included in Part II of the plan attached. The Purchasers further irrevocably instruct the said Bank to transfer the said land demarcated as part II of the attached plan free of any charge or cost unto the Vendor or any person or persons designated by him.

3. Should the Vendor fail, within a period of months as from the date hereof, to procure the registration unto the name of the said Bank the remaining shares in the said land, the Vendor shall take such steps as may be necessary for the due execution of the partition of the land in question. Both parties agree to instruct the Bank Kupat Am Ltd. to give the necessary power of attorney to carry out the partition.

All sums, by way of expenses, fees or otherwise in connection with the correction of area and/or boundaries and/or partition shall be borne and paid by the Vendor. Transfer fees of the said land into the name of the Bank shall be paid by the Purchasers.

4. It is hereby agreed that the purchase price of the said land shall be LP.6.- per dunam instead of LP.5.- as fixed in the Principal Agreement. For the purpose of calculation of the total price the registered area shall be deemed to be the area of the land, and further the shares registered to-day or that may be registered in the name of the Bank Kupat Am Ltd. shall be taken into consideration.

5. It is hereby agreed by the parties that the respective clauses of the Principal Agreement shall be altered in the following manner ; The sum of LP.5.- stipulated as purchase price per dunam shall be read as LP.6.- ; the sum of LP.2.500 payable on account of purchase price by Purchaser shall be read LP.3.-

6. After the completion of the correction of area and boundaries and partition, if necessary, the Purchasers shall effect a parcellation of the land then registered in the name of the Bank Kupat Am Ltd. (and situated within the boundaries of Part I of the plan attached) according to plans to be approved by both parties. Both parties agree that the parcellation shall be according to the plots in respect of which there exist agreements of sale made by the purchasers.

7. All plots so obtainable out of the parcellation of the said land i.e. that part demonstrated in Part I of the plan attached, shall remain registered in the name of the Bank Kupat Am Ltd., as trustee for both parties hereunto i.e. one out of two shares for the Vendor and one out of two shares for the Purchasers.

8. The Purchasers shall be entitled to sell the said plot of land, even the shares held for the Vendor, subject to terms and conditions agreed between the parties from time to time, provided that no consent of the vendor will be necessary in case the sale is at a price not less than 10 LP.20.- per dunam netto. The said Bank shall be entitled to effect a transfer of the plots so sold on being instructed to do so by the Purchasers, provided the whole purchase money be deposited into the Bank which will keep same as trustee for both parties and be distributed by it among the parties pursuant to the provisions of the Principal Agreement. All costs and expenses of parcellation, topographical plans and in connection with or in preparation of such sale shall be borne and payable by the Purchasers.

9. Out of the proceeds of such sales the Vendor shall receive the value of part I as demonstrated on the attached plan calculated at a price of 20 LP.6.- per dunam bruto and the balance after deducting the proportionable sum paid out in connection with the parcellation and topographical plans of the land and Bedl Mithel up to 250 mils per dunam shall be divided between both parties in the following manner :

- (A) 75% thereof to the Purchaser ;
- (B) 25% thereof to the Vendor, who also pays balance if any, of the Bedl Mithel ;

For the purpose of this clause the bruto area is according to the number of dunams that will be approved on the correction of area and boundaries.

10. In the event that the total area of the land demarcated in part I of the plan attached shall (after the correction of area will be effected) be less than 1870 dunams, and the vendor will not succeed to acquire it or any part thereof in any way the vendor shall be obliged, at the request of the purchasers to add to the land demarcated in Part I of the plan attached out of the (boundary) land demarcated in Part II of the plan attached a number of dunams sufficient to cover such deficiency having regard to the shares registered in the name of the Bank Kupat Am Ltd. The Purchasers will pay for such additional land LP.10 per dunams bruto plus 25% of the profit.

40 Nothing herein contained shall affect the irrevocable instructions given by this present to the Bank Kupat Am Ltd. to transfer to the Vendor or his order the land demarcated in Plot II of the plan attached.

In witness whereof we set our hands hereunto.

24.5.38.

On revenue stamp of 50 mils.

Sgd. A. FRIEDMAN, Z. SCHECHTERMAN.

D. GOTTFRIED. G. STUCHINER. E. LEVY.

Exhibit 41.
Agreement
between
Edmond
Levy and
Gedaliah
Stuchiner
and Others,
24th May
1938.
continued.

Exhibit 42.
Letter,
E. Levy and
Others to
Appellant
Bank,
24th May
1938

Exhibit 42.

LETTER, E. Levy and Others to Appellant Bank.

The Bank Kupat Am Ltd.
Tel-Aviv.

24.5.38.

Sirs,

Subject : Land of Khirbet Yunis.

Whereas on the 4th day of July, 1934, an agreement was entered into between us the signatories of this present i.e. Mr. Edmond Levy of the one side and Messrs. Gedaliah Stuchiner, Abraham Friedman, Zvi Schechterman and Dov Gotfried of the other side, and 10

Whereas pursuant to the said agreement Mr. Edmond Levy transferred to you the land described in the schedule attached to be held by you in trust on the terms and conditions contained in the said agreement, and

Whereas it has been agreed between us to amend the said agreement by the terms of the additional agreement, a copy of which is hereby attached, and

Whereas pursuant to the terms of the additional agreement the said land will remain registered in your name and you will hold the said land and any further shares in the said land which may from time to time be transferred unto you by way of trust for us pursuant to the terms and conditions contained in the principal agreement as amended of the additional agreement attached : 20

Now therefore kindly confirm to us that you received notice of the said additional agreement and that you will hold the said land in trust for us on the said terms and conditions contained in the principal agreement as amended by the additional agreement and without derogating from the generality of this clause that you have special notice of the following conditions to wit :

(A) That the said agreement is in respect only of the area within the boundaries described in Part I of the plan attached, which will be approved by the authorities in the formality for correction of area and boundaries in the file No. 3016/37 of the Land Registry office of Haifa. 30

(B) The said land, irrespective of its area and the shares registered in your name, shall be held in trust for us in equal shares i.e. one out of two shares for Mr. Edmond Levy and one out of two shares for Messrs. Gedaliah Stuchiner, Abraham Friedman, Zvi Schechterman and Dov Gotfried jointly.

(C) The land which is contained in Part II of the plan attached is excluded from the said agreement and that you hold same exclusively to the order of Mr. Edmond Levy and that you are prepared to transfer same free of charge unto the said Edmond Levy or order as soon as the partition between the lands contained in Part I will be partitioned from the land contained in Part II of the plan attached. 40

(D) That you will act according to the instructions contained in the principal agreement as amended by the said additional agreement.

Yours faithfully,

Sgd. E. N. LEVY. Sgd. ZVI SCHECHTERMAN.
 A. FRIEDMAN.
 D. GOTFRIED.
 G. STUCHINER.

Exhibit 42.
 Letter,
 E. Levy and
 Others to
 Appellant
 Bank,
 24th May
 1938,
continued.

24.5.38.

10

Exhibit 27.

JUDGMENT re Forests Department and Mi'ad Isma'il Dirbas.

Case No. 2055/40.

2054/40	} Consolidated.
2055/40	
2056/40	
2057/40	
2059/40	
2060/40	

Exhibit 27.
 Judgment
 re Forests
 Depart-
 ments and
 Mi'ad
 Isma'il
 Dirbas,
 15th July
 1940.

Complainant : Forests Department.

20 Defendant : Mi'ad Isma'il Dirbas of Tira.

Charge : Opening up an area of 16 dunams of Tira Forest Reserve No. 195.

JUDGMENT.

The prosecution brought an action against the accused Tahir Ismail ed-Dirbas claiming that he had encroached upon the Forest Reserve No. 195 declared by Proclamation issued on 2nd July, 1929, within marks Nos. 204, 205 and 206, and which was declared as Closed by an official proclamation dated 5th February, 1937, and that on 19.1.40 the accused opened up in the said forest an area of 16 dunams by burning the Sarris, Bellan, Qaadol and Carob trees growing naturally on the land and ploughing the land and sowing it with barley contrary to Art. 5 of Part 3 and 17 of Part 7 of the Forests Ordinance Cap. 61. Another case was brought against the accused Hassan Ahmad 'Allu for encroaching on the same forest and for opening up 20 dunams on the said date, and against Allu Ahmad 'Allu with the same charge and opening up 12 dunams on the same date, and against Yusuf Haj Muhammad Abu Hilal of Tira, Haifa S/D., for encroaching on the said forests and opening up 16 dunams. The Prosecution, after proving the charge, applied for the dispossession of the accused from the said forests. The defence of the accused as put forward by their attorney Elias Eff. Kusa was found to the effect that they are in possession of this land by virtue of a kushan, produced to this Court, dated 25th Safar, 1301, in the name of Ahmad ibn Muhd. Allu, Suleiman Dirbas, Hassan Allu and Mustafa Mahmud Dirbas. As the defence of the accused is based

Exhibit 27.
Judgment
re Forests
Depart-
ments and
Mi'ad
Isma'il
Dirbas,
15th July
1940,
continued.

on one kushan, the said deed, and as the alleged encroachments are in one place, it was therefore decided, with the agreement of the prosecution and the accused, to consolidate the cases and hear them together.

After the hearing of the witnesses of the Prosecution, it appeared that the accused Tahir, Mi'ad and Safi Dirbas have opened up 20 dunams, that Yusuf el Haj Muhammad Abu Hilal has opened up 10 dunams, that Hassan Ahmad 'Allu has opened up 14 dunams, and that 'Allu Ahmad Allu has opened up 25 dunams as indicated on the plan produced by the Forest Surveyor. It was proved by the evidence of witnesses that the encroachment which had taken place on these forests is recent and not old as claimed by the accused. 10

The accused refrained from putting forward any defence and they did not even give evidence themselves in rebuttal of the evidence of the Prosecution witnesses. They were satisfied by producing the said kushan and stating that on 15.3.37 this Court gave a judgment in the case brought against the then accused Dhib and Dhiab Abdul Qadir Allu for encroaching on these same forests and that as it was established that the land on which encroachment is claimed to have taken place lies within the kushan produced by them at the time the Court dismissed the case with regard to the encroachment on the land and merely fined them as it was established that they had cut trees without a licence. 20

After perusal of the said case, it appeared that the Court had decided to carry out an inspection of the land. As a result it was found that all that was opened up was fit for cultivation and its area amounts to 40 or 50 dunams approximately although the area indicated on the forest plan in the name of 'Allu and Dirbas is 10 dunams, and 800 metres only. As the area given in the kushan is 34 dunams, and as the boundaries of the kushan are not definite but are merely forest boundaries, this land within the forests, the Court decided then that the accused were not guilty with regard to the encroachment notwithstanding the fact that the area found at the time under the possession of the said Dhib and Dhiab exceeded the area given in the kushan. From this it becomes clear that area of the old revival in these forests did not exceed 50 dunams. If the 10 dunams mentioned in the forest plan are added, then the area of the old revival attributed to the kushan amounts to 60 dunams. This corroborated the contents of the plan which the Forest Surveyor stated in evidence was genuine and in which 62 dunams were found to be in the name of Dhib Ahmad 'Allu, bearing in mind that this Dhib is not accused in this case. If the accused own any share in this land they should refer to Dhib and Dhiab 'Allu who are in possession of the said 60 dunams and they should not encroach upon the forests. 30 40

Now therefore by virtue of Arts. 5 and 17 of the Forests Ordinance (Cap 61) I order that each of the accused, i.e. Mi'ad, Safi and Tahir the sons of Ismail Dirbas, Yusef el Haj Muhd, Abu Hilal, Hassan Ahmad 'Allu and Allu Ahmad Allu, to pay a fine of LP.1 and in case of non-payment to be imprisoned for one week, and I order their dispossession from the lands encroached upon in the said Forest Reserve No. 195 as indicated on the plan produced by the witness of the Prosecution, i.e. all the area encroached upon by the accused in this forest.

Given in presence and subject to appeal.

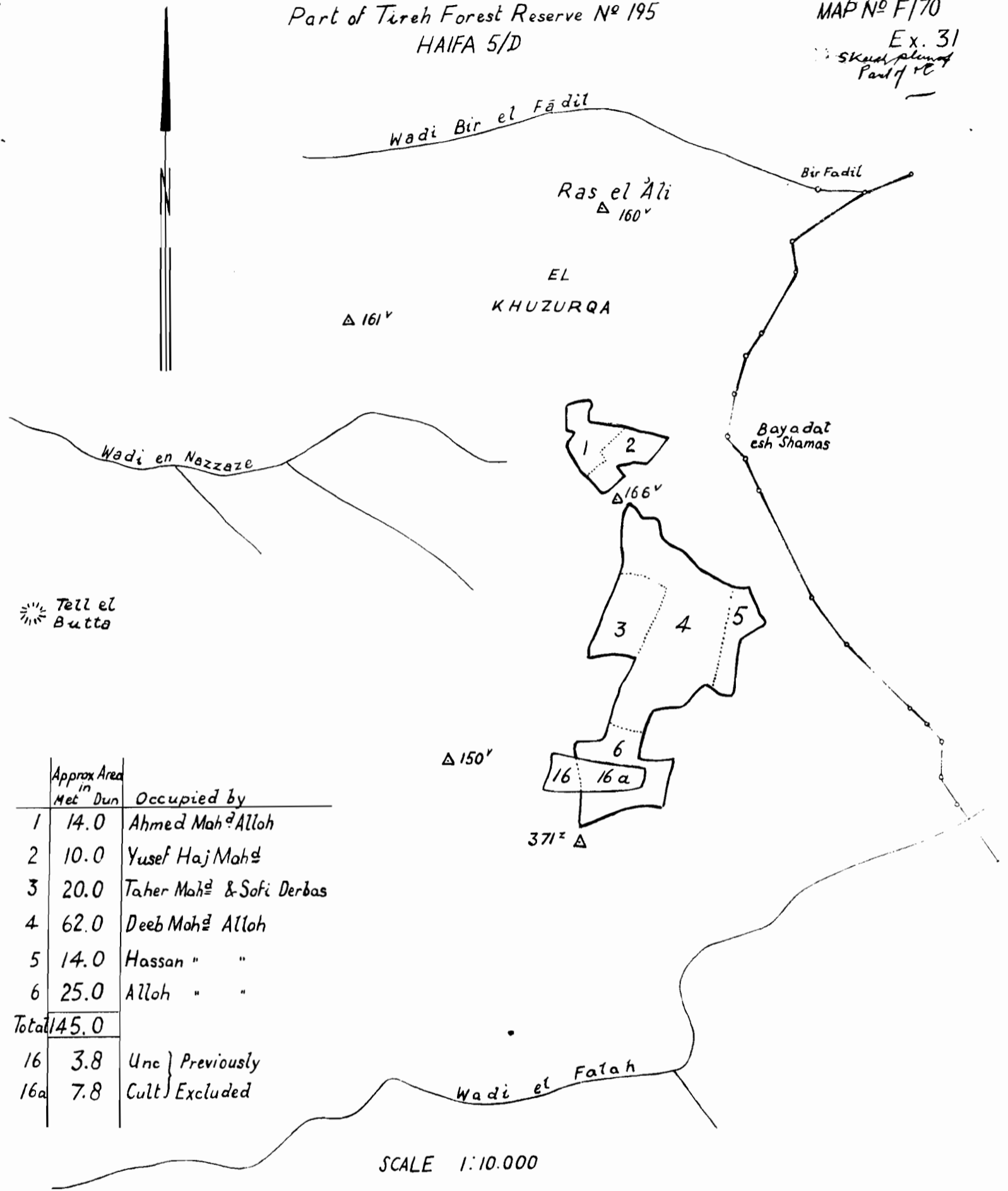
15.7.40.

Magistrate.

50

Part of Tireh Forest Reserve No 195
HAIFA 5/D

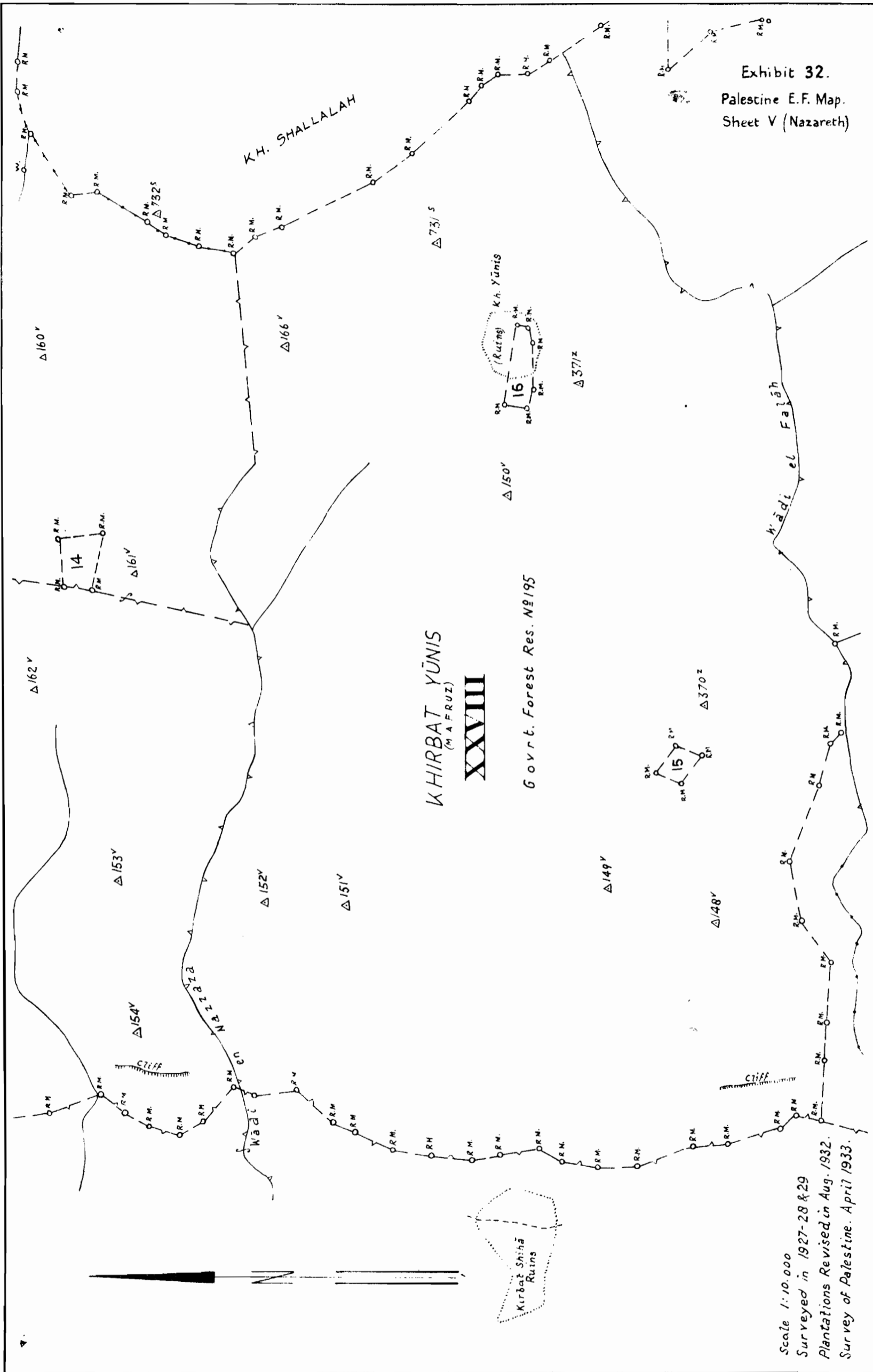
MAP No F/70
Ex. 31
Sketch plan of
Part of it



	Approx Area Met ² Dun	Occupied by
1	14.0	Ahmed Mah ^d Alloh
2	10.0	Yusef Haj Mah ^d
3	20.0	Taher Mah ^d & Sofi Derbas
4	62.0	Deeb Mah ^d Alloh
5	14.0	Hassan " "
6	25.0	Alloh " "
Total	145.0	
16	3.8	Unc } Previously
16a	7.8	Cult } Excluded

SCALE 1:10,000

Exhibit 32.
Palestine E.F. Map.
Sheet V (Nazareth)



Scale 1:10,000
Surveyed in 1927-28 & 29
Plantations Revised in Aug. 1932.
Survey of Palestine. April 1933.

Exhibit 5.
JUDGMENT on Appeal from Order of Magistrate.

Criminal Appeal No. 56/40.

IN THE DISTRICT COURT OF HAIFA (APPELLATE CAPACITY)

Before THEIR HONOURS JUDGE SHEMS and JUDGE ATALLA.

1. HASSAN AHMAD ALLUA

2. ALLUA AHMAD ALLUA

Appellants

V.

THE ATTORNEY GENERAL

Respondent.

10 Appeal from the Judgment of the Magistrate's Court, Haifa, dated 15.7.40.

JUDGMENT.

This is an appeal from the judgment of the Magistrate Court, Haifa dated 15.7.40 whereby the two appellants were sentenced each to a fine of one pound (LP.1) on a charge of trespassing and ploughing in the Tireh forest reserve contrary to Sections 5 (a) and (b) and (f) and 17 (6) of the Forests Ordinance.

Appellants' advocate submitted two grounds of appeal.

20 The first is that the plots ploughed by the two appellants are private property in respect of which the appellants hold kushans which they produced to the Magistrate and that the High Commissioner had no power in accordance with Section 3 of the Forests Ordinance to declare the lands as forest reserves. Ahmad Eff. Shibel who appeared on behalf of the Attorney General admitted before us that the kushans to comprise the plots in question but he maintained that since the plots in question are not cultivable land but forest lands the kushans are of no avail to the appellants and that they are liable to be prosecuted and sentenced so long as the High Commissioner has declared the area to be a forest reserve. Ahmad Eff.'s view of the law is clearly wrong. Section 3 of the Forest Ordinance expressly provides that the High Commissioner may by proclamation 30 bring any forest lands *not being private property*, under the control of the Government as forest reserves.

This Court has held in its judgment No. 50/1940 that if the plot alleged to be trespassed upon is private property a person is entitled to be acquitted notwithstanding that it has been declared a forest reserve. The Supreme Court on appeal upheld this view and further held that it is for the Prosecution to prove that the land is not private property. (136/40).

40 The second ground of appeal is that there was no evidence before the Magistrate to show that the appellants did in fact themselves trespass or plough the lands. Ahmad Eff. says that it was not necessary to prove this in view of the fact that the appellants allege ownership and possession of the land. The appellants pleaded not guilty and it was the duty of the prosecution to prove all the facts constituting the offence. In this case they have failed to do so.

For the foregoing reasons we quash the conviction and sentence of the Magistrate and order the acquittal of the two appellants.

(sgd.) A. SHEMS

Judge.

(Sgd.) A. ATALLA

Judge.

Delivered this 30th day of January, 1941, in present of Mr. E. Koussa for the appellants and Naim Bey Tuqan for respondents.

Exhibit 5.
Judgment
on Appeal
from
Order of
Magistrate,
30th
January
1941.

Exhibit 12.
Letter,
Chief
Secretary
to
Director of
Surveys,
5th
February
1942.

Exhibit 12.

LETTER, Chief Secretary to Director of Surveys.

A/17/26/41.

CONFIDENTIAL.

Director of Surveys.

Chief Secretary's Office,
Jerusalem

5th February, 1942.

I am directed to state that Government has decided to appoint a commission to identify on the ground the boundaries described in a kushan which relates to a piece of land falling within the Tireh Forest Reserve in the Haifa district. The Commission will be composed of :

Mr. Loxton, Survey Department (Chairman).

Mr. Masson, Chief Agricultural Officer, Department of Agriculture.

Mr. Lahav, Forest Officer, Northern Division, Department of Forests.

The terms of reference of the Commission will be "to determine on the ground the boundaries specified in the kushan and to report on the nature of the land contained within those boundaries with reference in particular to its cultivability and whether it has or has not been cultivated during the past ten years."

2. A copy of the kushan and of other material which may be required can be obtained by Mr. Loxton from the Director of Land Registration. Mr. Lahav of the Forests Department is already familiar with the matter, and will be able to provide a quantity of relevant material for the Commission.

3. The Director of Agriculture has agreed to Mr. Masson's serving on the Commission, and the Conservator of Forests has agreed to Mr. Lahav's serving. I understand that you have no objection to Mr. Loxton's acting as Chairman.

4. I attach for the information of Mr. Loxton and the other members of the Commission an extract of paras. 1 to 11 of the notes of a meeting which was held on the 28th January to discuss this matter; the notes will give the members of the Commission an indication of the scope of the enquiry which is desired.

5. I shall be obliged if you will request Mr. Loxton to get into touch with the other members of the Commission, and arrange with them to visit the locality, and make their report to this office at the earliest possible date.

6. Since the area is under settlement at the present time, and it is necessary to make an early decision whether the Government will institute legal steps to have the registration in question set aside, the matter is an urgent one.

Sgd. Chief Secretary.

Exhibit 13.

REPORT of Khirbet Yunis Kushan Commission, 1942.

Exhibit 13.
Report of
Khirbet
Yunis
Kushan
Commis-
sion 1942,
2nd June
1942.

1. Authority : The constitution of the Commission was notified in Chief Secretary's letter A/17/26/41 dated 5th February, 1942, to Director of Surveys.
2. Members : Mr. Loxton—Asst. Supt. of Surveys (Chairman).
Mr. Masson—Chief Agricultural Officer.
Mr. Lahav—Asst. Conservator of Forests.
- 10 3. Terms of Reference : (1) To determine on the ground the boundaries described in a kushan relating to a piece of land falling in the Et Tira Forest Reserve ;
(2) To report on the nature of the land contained within these boundaries with reference in particular to :
(A) its cultivability, and
(B) whether it has or has not been cultivated during the past ten years.
4. Witnesses : The actual inspection on the ground was made on the 14th May, 1942.
- 20 The following witnesses accompanied the Commission for all or part of the inspection and pointed out locality and place names :
 1. Haj Yousef er Raschid President of Et Tira village Settlement Committee during settlement of the plain lands 1938–9, and President of the village young men's association.
 2. Hafiz Nijm el Qubiy'a Member of both above bodies.
 3. Ahmad Mahmud el 'Issa Member of Settlement Committee, who also worked with the fiscal survey party in the village lands in 1927.
 - 30 4. Abder Rahman Abu Rashid Cultivator, for more than 20 years of Farsh el Khuzle lands in western part of disputed area.
 5. Dhiab Abd el Qader Hassan Cultivator, living at Khirbet Yunis and Alawa descendant of one of the original grantees of the kushan.

Et Tira is a large village, and witnesses chosen at random might not know thoroughly the whole of the village lands. We believe, however, that the evidence of all who did know the Khirbet Yunis area would agree with that taken by us ; we believe the first three witnesses to be quite 40 disinterested, while the evidence of the other two, who might have been expected to be biassed, was in accord with the other evidence.

Apparently none of the witnesses was aware of the extended boundaries claimed in the new (1938) kushan, until informed of them by the Commission.

Exhibit 13.
Report of
Khirbet
Yunis
Kushan
Commis-
sion 1942,
2nd June
1942,
continued.

5. General Description : The area under investigation may be described in brief as a plateau tilted to the west, dropping steeply to the coastal plain in the west and to the *Wadi Fallah* in the south and east and drained by several wadis running east to west. The dry stone huts of *Khirbet Yunis* are situated near the summit at the south-eastern corner of the plateau.

An outline map illustrating all names and boundaries mentioned in this report is attached.

6. Original Kushan : This was granted in 1298 A.J. (c.188–A.D.) and the boundaries are described as follows : 10

East & South :	(A) Kitf el Jabal	—shoulder of mountain
West	(B) Journ en Nassoura	—trough of eagle-hawks
	(C) En Nazzazeh	—seepage place
North	(D) Ashlul el Khuzurqa	—Khuzurqa cascades
	(E) Rous esh Shamas	—Summits of Shamas.

When the actual cultivation had no definite boundary marks, it was the usual practice, particularly in hilly regions, to mention instead prominent features on the boundary of the locality in which the cultivation lay, although such boundaries might include large areas of forest and grazing land which were not intended to, and by law could not, become private property. 20
The kushan area of 34 dunams probably referred only to the cultivated land within the boundaries described above.

7. Land Registry Plan : A plan (No. 33/SM/37) which we shall refer to throughout as the L.R. Plan, was prepared by the Land Registry, Haifa, in connection with the issue of the new kushan in 1938 and the names of all the above places are marked on it, but do not represent their positions. We shall deal with each name in turn. The corrected area on the 1938 kushan is 3296 dunams.

8. Boundaries :

(A) Kitf el Jebel (east and south) : 30

By analogy with the human body, the shoulder of the mountain is clearly the area in which the comparatively flat surface of the plateau begins to drop steeply to the *Wadi Falah*. The slope below the kitf is very steep and rocky, covered with trees or bushes, and quite uncultivable. Part of it is a closed forest area (Ref. Gazette 666 of 11.2.37).

The exact position of the “shoulder” line can be seen very clearly on the ground along the eastern boundary. There is an uncertainty in its position of 100–150 m. in the area south-west of the closed forest area : the exact line here might have to be settled by agreement on the spot.

The east and south-east parts of the boundary as shown on the Land Registry plan are too far down the steep slope. 40

(B) Journ en Nassura (west) :

This is a well-known rock bowl about 400 m. south-west of *Khirbet Yunis*, containing water in the rainy season, which the eagle hawks gather round, leaving much excrement and sometimes feathers. All witnesses agreed that there is no other such place in the neighbourhood.

The Land Registry plan shows this point at the Wadi Falah *quarries* some 1½ kms. further west. The area between the Journ and the quarries is known as *Farsh el Khuzle* and contains an enclave cultivated for 20 or 30 years by witness No. 4 and excluded as plot No. 15 from the Forest Reserve in 1927. No notice was taken of his prescriptive right to the ground in the new kushan, and it is significant that no sharers in either kushan have ever questioned his right to be there.

Exhibit 13.
Report of
Khirbet
Yunis
Kushan
Commis-
sion 1942,
2nd June
1942,
continued.

(c) En Nazzaze (west):

- 10 The *Wadi Nazzazeh* (the lower part of which in the plains is called khanuq or Khawaniq) is shown on all survey maps and takes its name from two points about 200 m. apart at which water *seeps* out of the rocks in the bed and starts to trickle down the wadi. The upper (eastern) "*Nazzaze*" is the more important, and there is a pool cut in the rock to collect the water. Three of the original fiscal block boundaries join here so that it is probably an ancient landmark and we consider that it is the point intended by the kushan. The two small wadis entering Wadi Nazaze from the southeast at the two seepage points are called *Ashalil en Nazaze* and there is no other locality of this name. The area shown on the Land Registry plan as "*Mawqei en Nazzaze*" is part of
- 20 *Farsh el Wastani*.

The western boundary of the kushan is therefore a line running from En Nazzaze in the north to Journ en Nassura and thence produce until it reaches the "kitf" above the Wadi Falah in the south.

The area west of this line is not part of Ard Khirbet Yunis but is known as *Farsh el Khuzle* in the south and *Farsh Tel el Batta* in the north, the two parts being roughly divided by the Wadi Hidq or Hudeiq.

(D) Ashlul el Khuzurqa (north):

- 30 The northern branch of Wadi Nazzaze above En Nazzaze is called *Wadi Khuzurqa* or *Ashlul el Khuzurqa* and is part of the southern boundary of the locality *El Khuzurqa*, which is shown on all survey maps.

The place shown as Ashlul el Khuzurqa on the Land Registry plan is actually the *Wadi Qaranif*, north of the locality *Farsh el Wastani*, and drains into the locality of *El Qaranif* on the plain.

(E) Rous esh Shems or Shemas (north):

No hill tops of this name are known, but there is a well-known point on the boundary of Shellala lands: a large patch of white rock called *Bayadat esh Shemas*. The name originates from the former inhabitants of Shellala rather than from Ft Tira, and the adjoining Shellala lands are called *Irbat esh Shems*.

- 40 This rock is on the "kitf" at a point where the Wadi Falah emerges from Shellala lands and swings south along the eastern boundary of Khirbet Yunis. It is reasonable to describe the summit of the ridge a few metres west of the rock as Rouse esh Shems, since "Rous" being plural, a ridge or group of summits rather than a single summit is required.

The only other possible site is in Shellala lands, and is therefore untenable since the kushan specified Tira lands.

The main argument in favour of *Bayadat esh Shems* as the point intended by the old kushan is that it is well known and is the junction point of the boundaries between Shellala lands and the *Khuzurqa* and

Exhibit 13.
Report of
Khirbet
Yunis
Kushan
Commis-
sion 1942,
2nd June
1942,
continued.

Khirbet Yunis localities (fiscal blocks 27 and 28) of Et Tira lands, and has probably been used as a boundary point for many generations.

On the Land Registry plan "Rous esh Shammas" is shown between survey point 160'V (which is on a well-known summit in Khuzurqa locality called *Ras el 'Ali*) and point 162'V in *Farsh el Mantag* locality. The area between these two points is comparatively low ground and there are no summits on it. It is actually known as Um esh Shihade. Some land was cleared here (within the boundary shown on the Land Registry plan) by one Selim Ahmed Mansur Abde Qader in 1938. He was killed during the disturbances before he could raise a crop. 10

We therefore consider that the *northern* boundary of the kushan follows the fiscal block boundary throughout, from En Nazazze along Ashlul el Khuzurqa and then in a straight line to Bayadat esh Shems, where it joins the eastern boundary.

The area north of this line is known as *El Khuzurqa* and is not part of Ard Khirbet Yunis; nor is the area north of Wadi Nazzaze which is called *Farsh el Wastani*.

9. Area and Nature of the Land: The area of the locality of Khirbet Yunis within the boundaries identified by us is about 625 dunams, of which about 125 are now actually under cultivation, the crops being wheat, onions and vegetables. A further area of about 150 dunams is fairly flat and could easily be cultivated as its natural vegetation has been destroyed by forest fires in recent years; it has not been cultivated in recent decades, if ever—certainly not in the last ten years. The remaining 350 dunams is covered by forest vegetation which has suffered various degrees of damage in recent years. 20

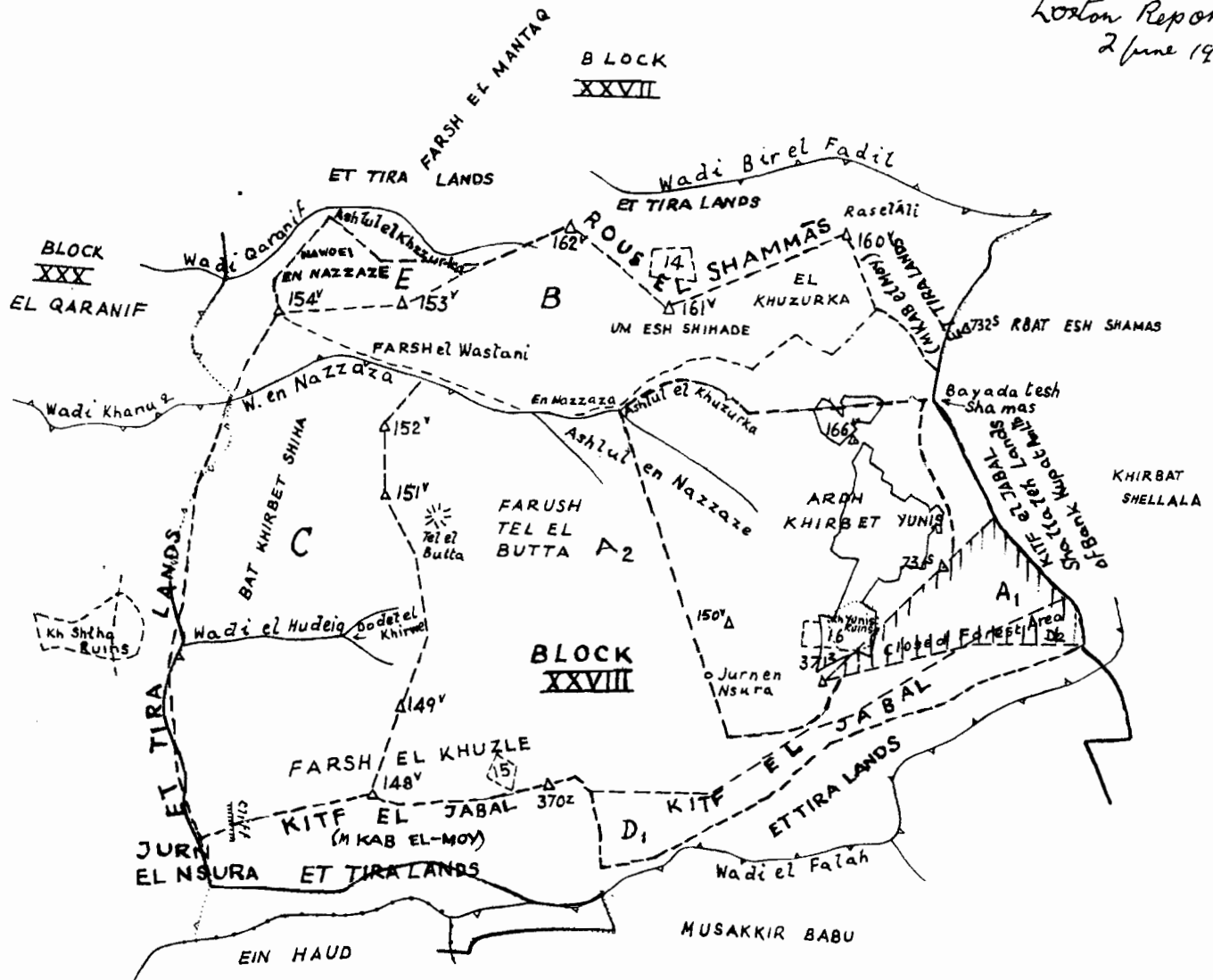
The area of the 1938 kushan is 3296 dunams of which about 2670 are outside Khirbet Yunis locality. Of the latter only 7 dunams are cultivated (plot 15), by witness No. 4 (see para. 8 (B) above) a few dunams have been cleared at Um esh Shihade (para. 8 (C) above) while the remainder is covered with forest vegetation and is almost totally unsuitable for cultivation. 30

10. Period of Cultivation: None of the land not now cultivated shows any sign of having been cultivated in the last ten or even fifty years, and this was corroborated by the witnesses.

With regard to the cultivated land, we have to point out that it is impossible to tell by *inspection* after the first or second year, how long it has been under cultivation. We have, however, the following documentary evidence:—

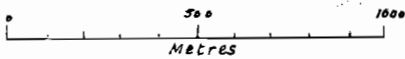
- 1880 Old Kushan issued for 34 dunams which possibly represented the area cultivated at that time. 40
- 1927-9 Forest Reserve demarcation excluded 11 dunams of cultivated land (plot 16) at Khirbet Yunis, and 5 dunams (plot 15) in Farsh El Khuzle (See Gazette 239 dated 16.7.29) which are shown on the Fiscal Survey map of that period.
- 1928-34 Commuted tithes were paid on 14 keil and 3 mid. The area equivalent of this would not exceed 86 dunams.

Exhibit No 14
Plan: Khabet Yunis.
Lorton Report
2 June 1942



Ex No 14
Scale 1:10,000 reduced to Scale 1:20,000

Scale 1:20,000



----- Village boundary.

----- Fiscal block boundary.

△ Survey points.

o Forest boundary marks.

Based on Fiscal Survey Map 1927-29

----- Boundary of Tire Forest Res. No 195

----- Boundaries reduced and inserted from Land Registry Plan Ser. No 33/SM/37. with names as shown thereon.

----- Cultivated plots excluded at the time of Forest reservation, 1927.

▭ Extent of actual cultivation on 14.5.42 at Kh. Yunis. (approx. Area 125 Met. Dun.)

▨ Closed Forest Area

----- Boundary of Ardh Kh. Yunis identified by 1942 Commission.

- 1935 The register of Rural Property Tax shows 70 dunams of taxable cultivated lands of low-grade. Exhibit 13, Report of Khirbet
- 1937 A court inspection was carried out in connection with a forest offence (Haifa Magistrate's Court Case 8953/36) and found that the cultivated area was 40-50 dunams approximately. Yunis Kushan Commission 1942, 2nd June 1942, continued.
- 1940 A forest surveyor prepared a map (dated 15.4.40) to illustrate recent encroachments, which shows a total of 145 dunams either cultivated or recently cleared.
- 10 1942 The survey made at the time of our inspection shows the area now actually cultivated is 125 dunams at Khirbet Yunis and 7 dunams in Farsh el Khuzle.

A careful search of records would doubtless produce additional evidence for various years.

11. Summary of Findings :

(A) The places mentioned in the Kushan as marking the boundaries of Ard Khirbet Yunis can be located on the ground with little margin of doubt.

(B) Their positions are incorrectly shown on the 1937-8 Registration Plan which includes part or all of the localities : Farsh el Khuzle, Farush Tel El Batta, Bat Khirbet Shiha, Farsh el Wastani, Um esh Shihade, and El Khuzurqa, all of which are separate localities well known to the villagers and cannot be considered as part of Khirbet Yunis locality.

(C) The area of the locality of Khirbet Yunis within the boundaries identified by us is 625 dunams. Of this, 125 dunams are now cultivated, 150 dunams are covered with badly damaged forest and are cultivable without great difficulty, while the remainder is uncultivable forest land.

(D) None of the area not now cultivated has been under cultivation during the last ten years, but the area cultivated has extended considerably in those years.

30 (E) With the exception of 7 dunams all the remaining area of 2670 dunams covered by the new Registration Plan is forest which has not been cultivated in the last ten years, if ever.

2nd June, 1942.

Sgd. J. W. LOXTON.

Sgd. G. G. MASSON.

Sgd. V. LAHAV.

Exhibit 10.

STATEMENT by Abdul Rahman Abu Rashed.

I, Abdul Rahman Abu Rashid, do hereby state that the boundaries of the land known as Khirbet Yunis are as follows :

40 South and West : Jurn el Nassura. And this Jurn is situated on the western and southern water fall (Taff) of Khirbet Yunis.

8.6.42.

(Thumbprint) ABDUL RAHMAN ABU RASHED.

Exhibit 10.
Statement
by Abdul
Rahman
Abu
Rashed,
8th June
1942.

Exhibit 24.
Tax
Distribu-
tion List
under
Section 20,
Rural
Property
Tax
Ordinance
1935,
29th
October
1942.

Exhibit 24.

TAX DISTRIBUTION LIST under Section 20, Rural Property Tax Ordinance 1935.

Sub District : Haifa. Village : Tireh. Block No. 28.

Serial No. of Parcel or of Masha share.	Names.	Shares in Parcel or in Masha Qita.	No. in Schedule to the Ordinance.	Area Duns.	Tax per dun.	Total Amount of Tax by category.	Average amount of tax per parcel.	
1.	Nimer Hassan el Dirbas	—	13	4	8 mls.	32 mls.	32 mls.	10
2.	Farid el Dirbas & brother	—	13	4	8 „	32 „	32 „	
3.	Deeb Abdel Kader Allu & bros.	—	13	4	8 „	32 „	32 „	
4.	Selim Dirbas & partners	—	13	4	8 „	32 „	32 „	
5.	Deed & Najib el Dirbas	—	13	4	8 „	32 „	32 „	
6.	Allu Ahmad Allu	—	13	4	8 „	32 „	32 „	
7.	Deeb Ahmad Allu	—	13	4	8 „	32 „	32 „	
8.	Mohamed Abu Helal	—	13	4	8 „	32 „	32 „	
9.	Abdel Razak & Hassan Allu	—	13	4	8 „	32 „	32 „	
10.	Ali Hassan el Dirbas	—	13	4	8 „	32 „	32 „	20
11.	Hamad Hassan el Dirbas	—	13	4	8 „	32 „	32 „	
12.	Khaled Assad Dirbas	—	13	4	8 „	32 „	32 „	
13.	Ahmed Soliman el Dirbas	—	13	4	8 „	32 „	32 „	
14.	Safi el Dirbas & Bros.	—	13	4	8 „	32 „	32 „	
15.	Assad Mohd. Allu & parts.	—	13	4	8 „	32 „	32 „	
16.	Jamil Sliman el Dirbas	—	13	4	8 „	32 „	32 „	
17.	Mrad el Dirbas & parts.	—	13	4	8 „	32 „	32 „	
18.	Hassan Assad el Sarwe	—	13	1	8 „	8 „	8 „	
19.	Mohd. Ahmed el Sarwe	—	13	1	8 „	8 „	8 „	
20.	Abdel Rahman Abu Rashed	—	13	5	8 „	40 „	40 „	30
21.	Allu Ahmed Allu	—	16	30	—	—	—	
22.	Deeb Abdel Kader Allu	—	16	30	—	—	—	
23.	Ali Hassan el Dirbas & partners	—	16	30	—	—	—	
24.	Ragheb el Dirbas & partners	—	16	30	—	—	—	
25.	Village Mukhtar	—	16	3313				
	Kupat Am Bank & partners	11294/17280						40
	Yusra d/o Abdallah Saleh Hussein Allu	- 540/17280						
	Aisheh d/o Mustapha Dirbas	1080/17280						
	Labibeh „ „ „	- 1080/17280						

Serial No. of Parcel or of Masha share.	Names.	Shares in Parcel or in Masha Qita.	No. in Schedule to the Ordinance.	Area Dun.	Tax per dun.	Total Amount of Tax by category.	Average Amount of tax per parcel.	Exhibit 24. Tax Distribution List under Section 20 Rural Property Tax Ordinance 1935, 29th October 1942, <i>continued.</i>						
10	Allou d/o Ahmad Mohd. Allu	648/17280	}											
	Asa'ad s/o Mohd. Hassan Allu	186/17280												
	Ahmad s/o " "	186/17280												
	Sukara d/o " "	186/17280												
	Watfa d/o Saad Mohd. Hassan Allu	180/17280												
	Deed s/o Abdel Kadeer Hassan Allu	216/17280												
20	Deebah d/o " "	216/17280							}					Correction of Registration according to application approved by District Commissioner and shares registered here according to Tabu Registration.
	Diab s/o " "	216/17280												
	Kamileh d/o " "	216/17280												
	Nimer s/o " "	216/17280												
	Ahmad s/o Saleh Hassan Allu	270/17280												
	Amneh d/o " "	270/17280												
30	Fatmeh d/o Saad Mohd. Hassan Allu	62/17280												
	Rosa d/o " "	62/17280												
	Massadeh d/o Saadeh Mohd. Hassan Allu	37/17280												
	Fatneh d/o " "	37/17280												
	Amneh d/o " "	37/17280												

Certified Copy. 29.10.42.

Sealed & Signed. for MUDIR MAL,
Haifa.

Exhibit 11.

MEMORANDUM OF CLAIM by Abdul Rahman Abu Rashed.

Land (Settlement of Title) Ordinance.

Sub-District :

No. of Claim :

Village :

Reg. Block : Name Farsh el
Kuzla.

40

Provisional parcel No.

Final parcel No.

Exhibit 11. Memorandum of Claim by Abdul Rahman Abu Rashed, 1st November 1942.

1. Name of person in whose favour right to registration is claimed.	Full address of same.	Interest or share claimed.
Abdel Rahman Ahmad Abu Rashid.	Tira.	In whole.

Exhibit 11.
Memorandum of
Claim by
Abdul
Rahman
Abu
Rashed,
1st
November
1942,
continued.

2. Category of land : Miri.
3. Nature of right claimed : Right of Tassaruf.
4. How acquired :—

Part or share.	Date.	From whom.	Manner of acquisition.
In whole	Since approximately 40 years.	Cleared from Wa'ar (waste)	

5. Registration in land registry :

Deed No.	Date.	Name and interest of person registered.
Not registered in the Tabu.		

10

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

7. Description of parcel :

Land : Arable. Boundaries : North :
East : } Ahrash.
South : }
West : }

8. Area claimed : The land as cleared.

9. Other rights affecting parce : ————

10. Is partition desired : ————

20

11. Charges on parcel or share : Nil.

12. Supporting documents : ————

13. Additional statement or details : ————

14. I, Abdel Rahman Ahmad Abu Rashid of Tireh, hereby take oath and swear (or solemnly affirm) (or declare) that the particulars stated by me in the memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

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

Thumbprint of AHMAD ABU RASHID.

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

Mukhtars or Members of Village
Settlement Committee or other
responsible persons.

Name : HAFEZ EL LA'IN.	Office or occupation :	Member of Settlement Committee.	Residence : Tireh.
YOUSEF EL RASHID		do.	do.

Date : 1.11.42.

Exhibit 2.**LETTER, Director Land Registration to Appellants.****GOVERNMENT OF PALESTINE.**

Director of Land Registration

Jerusalem,

4th November, 1942.

No. R.4695-10789.

Gentlemen,

I am directed to refer to the payment by you of the sum of LP.426.590 mils on the 25th of June, 1928, as arrears of Bedl Misl in connection with the correction of area of land in the locality of Khirbet Yunis, Tireh village.

From information now in the possession of Government it appears that that correction of area should not have been made and Government has lodged before the Settlement Officer a claim to the area involved.

In the circumstances you would be entitled to the refund of this sum and I should be glad to know how you desire it to be paid.

In return for the repayment you would of course relinquish any rights that may be alleged to have arisen from the correction of area.

I am, Gentlemen,

Your obedient servant,

Sgd. Director of Land Registration.

The Palestine Kupat Am Bank Ltd.
Tel-Aviv.

Exhibit 3.**LETTER, Appellants to Director, Land Registration.**

The Director,
The Land Department,
Jerusalem.

14th November, 1942.

30 Sir,

With reference to your letter of the 4th November, 1942, I am really surprised at your attitude and the attitude of the Government to go back on what it has done over four years ago of its own accord.

We refuse to withdraw or take any money paid by us at your request.

We protest most emphatically against your attitude in this matter and we reserve all our rights to take such action and such representations to His Majesty's Government as we may be advised.

We, Are, Sir,

Yours faithfully,

Sgd. KUPAT AM BANK LTD.

40

Exhibit 2.
Letter,
Director
of Land
Registra-
tion to
Appellants.
4th
November
1942.

Exhibit 37.
Certificate
of Revenue
Section,
Haifa,
22nd
November
1942.

Exhibit 37.
CERTIFICATE of Revenue Section, Haifa.
GOVERNMENT OF PALESTINE.

District Commissioner's Offices,
Haifa District,
Haifa.

Upon the application of the Petitioner Deeb Abdul Kader Allou one of the co-sharers in the land of Khirbet Yunis, situated within the lands of Et Tireh village and on referring to the Turkish Extract of the Werko of the said village, it appeared that in the locality 34 dunams of land of Khirbet Yunis have been registered in the names of Ahmad Mohammad Allou, Suleiman el Dirbas and Hassan Allou and Mustafa Mahmoud el Dirbas by virtue of title deed No. 140 dated December, 1928, and that the shares of Ahmad Allou and Suleiman and Mustafa Dirbas were transferred in 1928, to the names of their heirs and thereafter the shares of some of the heirs were sold to certain known persons. 10

In 1935 when the Rural Property Tax Ordinance was applied, Khirbet Yunis locality was registered comprising an area of 3508 dunams and known on the plan as Block 28. The registration thereof was made in the names of Bank Kupat Am Ltd. and partners. 20

In 1938 and vide deed No. 3091/38 the area of the said land was corrected to 3296 dunams 197 square metres viz.: 11294 out of 17280 shares to the Bank Kupat Am, and 5986 out of 17280 for the remaining co-sharers of the inhabitants of the village whose names are known.

All the Taxes due in respect of the said land such as Werko, Rural property Tax until 1943 were duly paid by Bank Kupat Am Ltd. and partners.

Upon this request a certified copy of the original has been issued.

Dated 22.11.42.

(Stamp of 50)

(Sgd.) SADER ED DIN ASHOUR.
(Office stamp of the Revenue
Section.)

30

Exhibit 25.
Copy of
Extract
from
Ledger
Book of
Tireh
Village,
28th
December
1942.

Exhibit 25.
COPY of an Extract from the Ledger Book of Tireh Village No. 1/71/26.

Upon perusal of the ledger book of Tireh Village mentioned above it was found recorded in the name of Abdul Rahman s/o Ahmad Aby Rashed in Block 28 in the locality of Khirbet Yunis 5 dunams.

The taxes were paid in by Kupat Am Bank through Mr. Edmond Levy vide receipts Nos. 2000/3-14 from the year 1935 up to 1942/43. 40

In witness whereof this certificate was issued.

Sgd.
Revenue Clerk.

28.12.42,
Sgd.
MUDIR EL MAL.

Exhibit 26.

TAX DISTRIBUTION LIST under Section 20, Rural Property Tax Ordinance 1935.

Sub District : Haifa. Village : Tireh. Block No. 28. Page 84.

Exhibit 26.
Tax
Distribu-
tion List
under
Section 20,
Rural
Property
Tax
Ordinance
1935.

Serial No. of Parcel or of Masha share.	Names.	No. in Schedule to the Ordinance.	Area Duns.	Tax per dun.	Total Amount of Tax by category.	Average Amount of Tax per parcel.
10	1. Nimer Hassan el Dirbas	13	4	8 mls.	32 mls.	32 mls.
	2. Farid el Dirbas & brother	13	4	8 „	32 „	32 „
	3. Deed Abdel Kader Allu & bros.	13	4	8 „	32 „	32 „
	4. Selim Dirbas & partners	13	4	8 „	32 „	32 „
	5. Deeb & Najib el Dirbas	13	4	8 „	32 „	32 „
	6. Allu Ahmad Allu	13	4	8 „	32 „	32 „
	7. Deeb Ahmad Allu	13	4	8 „	32 „	32 „
	8. Mohamed Abu Helal	13	4	8 „	32 „	32 „
	9. Abdel Razak & Hassan Allu	13	4	8 „	32 „	32 „
	10. Ali Hassan el Dirbas	13	4	8 „	32 „	32 „
20	11. Hamad Hassan el Dirbas	13	4	8 „	32 „	32 „
	12. Khaled Assad Dirbas	13	4	8 „	32 „	32 „
	13. Ahmed Soliman el Dirbas	13	4	8 „	32 „	32 „
	14. Safi el Dirbas & Bros.	13	4	8 „	32 „	32 „
	15. Assad Mohd. Allu & parts.	13	4	8 „	32 „	32 „
	16. Jamil Sliman el Dirbas	13	4	8 „	32 „	32 „
	17. Mrad el Dirbas & parts.	13	4	8 „	32 „	32 „
	18. Hassan Assad el Sarwe	13	1	8 „	8 „	8 „
	19. Mohd. Ahmed el Sarwe	13	1	8 „	8 „	8 „
	20. Abdel Rahman Abu Rashed	13	5	8 „	40 „	10 „
30	21. Allu Ahmed Allu	16	30	—	—	—
	22. Deeb Abdel Kader Allu	16	30	—	—	—
	23. Ali Hassan el Dirbas & partners	16	30	—	—	—
	24. Ragheb el Dirbas & partners	16	30	—	—	—
	25. Village Mukhtar	16	3313	—	—	—
			3508		600 „	600 „

Exhibit 33.
Extract
from
Register
of Deeds,
Haifa,
Volume
No. 2,
6th
January
1943.

Exhibit 33.
EXTRACT from the Register of Deeds, Haifa.

GOVERNMENT OF PALESTINE.
EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

Transferred from Vol. 1, fol. 75
of Sofar 1284.

Extract No. 154/1/113
Petition No. 619 of 1926.

Folio No. 67

Volume No. 2

Town or Village : Tureh

Situation or Quarter : Ard el Irak

No. of Deed	Date of Registration	Class of Land	Description of Property	Boundaries	Area	Nature of Transaction	Name of Grantor	Name of Grantee	Shares	Remarks
1137	16.9.26	Miri	Planted	N. Wady Amer & Heirs of Hassan Abbas el Zeidan	288.69 ⁵⁰	Correc- tion of area & boundaries vide Auth. of Director of Lands D.R. 4983 of 12.9.926	Ahmad Abu Mustafa Hassoun	Ahmad Abu Mustafa Hassoun	In whole	See Deed 1138/26 below
				E. Mohd. Mustafa Abu Jamous						
				W. Road, Zamil Hajeer & Jabeel el Abbas						

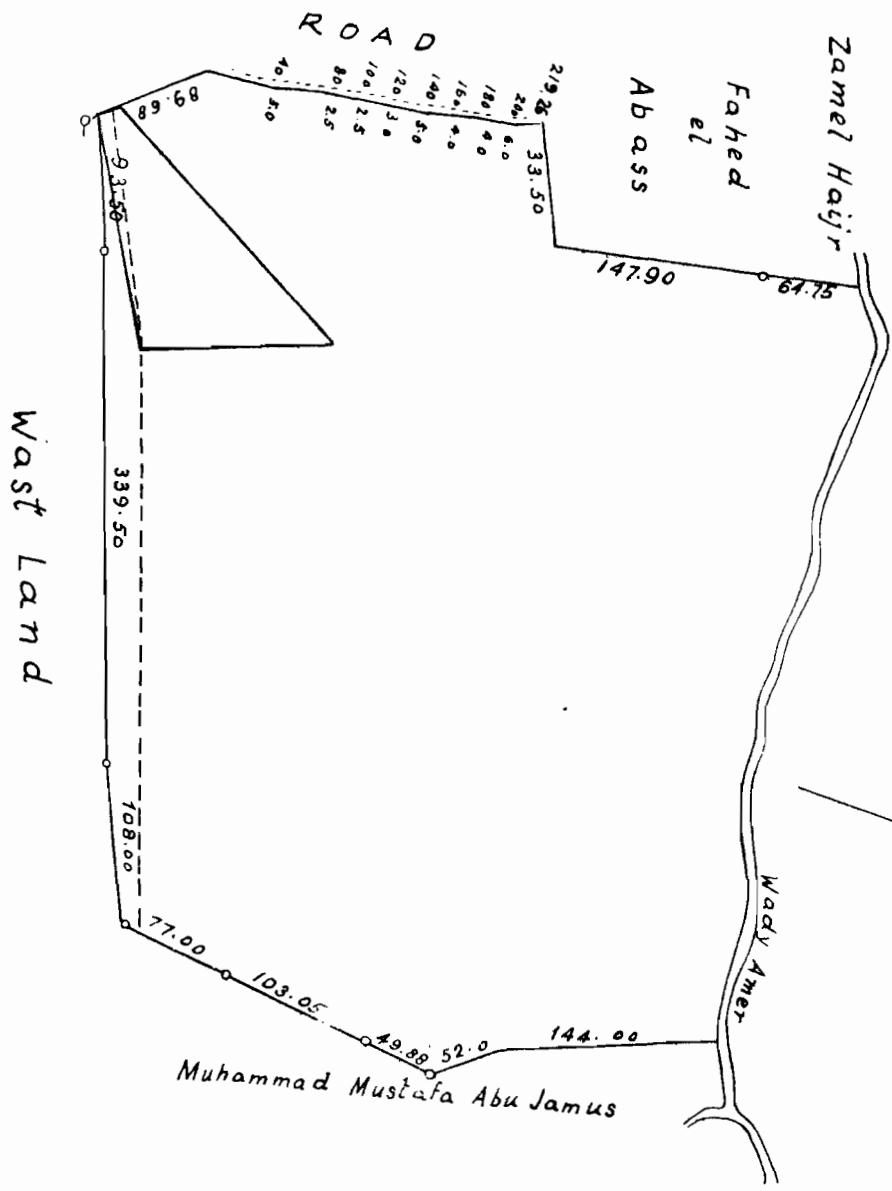
6.1.43 50 mils stam.

Sgd.
for Registrar of Lands.

OWNER Ahmad Mustafa Hassun
LOCALITY FARSH EL IRAQ
AREA : 288 dum 69,50 p²
FILE : 6/9/26

1 : 5000

Exhibit 33
Land of Ahmad
Mustafa



EXTRACT FROM THE REGISTER OF DEEDS
LAND REGISTRY OFFICE OF HAIFA

Vol.	Folio	Date	Village	Locality	Description of property	Class of land	Area Kilo	Shares	Boundaries	Owner	Value of Werko	Observation
1	75	16 Sofar 1284	Tireh	Ard el Irak	Tarla Planted	Miri	1½	In whole	Abbas el Zeidan Kassem Hassun Mohd. el Dirbas Waar (Waste)	Ahmad Hassun son of Mustafa Hassun	75	Transferred to Vol. 2 p. 67.

I Certify that the above is a true extract from the Register of Deeds given against payment of 100 mills as per receipt No. 694080 of Haifa
Date 6.1.43.

Sgd.

Registrar of Lands.

Exhibit 33.
Extract
from
Register
of Deeds,
Haifa,
Volume
No. 2,
6th
January
1943,
continued.

Exhibit 36.
Haifa
District
Regional
Planning
Scheme.

Exhibit 36.

HAIFA DISTRICT REGIONAL PLANNING SCHEME.

No. 34 CALLED NOF HACARMEL AND CARMEL GARDENS SCHEME.

- (A) LOCATION : Khirbet Younes, Tireh.
- (B) AREA OF THE SCHEME : 3296 Dunams and 197 sq. m.
- (C) OWNERS OF THE LAND INCLUDED IN THE SCHEME : Kupat Am Bank
Ltd. & Partners.
- (D) BOUNDED :
- On the North : Rous el Shammas & Ashloul el Khuzurka (Tireh lands).
- On the East : Shallaleh lands. 10
- On the South : Makab el Maa, Plot D & A (closed forests).
- On the West : Jurn el Nassura & Nazzazeh (Tireh lands).

(E) CONDITIONS :

According to the regulations of the Haifa District Outline Regional Planning Scheme and any amendments and additions which have been made thereto and subject to the following :

(1) *Roads* : All roads coloured brown and red on the plan form part of and in all respects be subject to the provisions of this scheme and shall have the widths and building lines shown on the plan.

(2) *Cost of Roads* : The owners of the land included within the area 20 of this scheme shall pay for the construction of all roads, to be made in accordance with the standard specifications of the Responsible Authority and to the full width of carriage way at any time after enactment of the scheme, before any building is allowed to be erected on any of the plots included in this scheme.

Landowners shall be liable for the payment of the cost of construction of roads whether their plots have been built upon or not.

Pavement including kerbstones of approved surfacing shall be provided by each plot owner on his complete frontage.

(3) *Zones* : Residential zone A coloured orange. 30

(4) *Curtelage* : Minim. curtilage of any one plot shall be not less than 2000 sq. metres. The sizes of plots shall be as indicated on the plan.

(5) *Setbacks* : The minimum setbacks shall be as follows :

Front : as specified on plan and not less than 5,0 m.

Side : Not less than 5,0 m. or as specified on plan.

Rear : Not less than 6,0 m. or as specified on plan.

(6) *Percentage of built up area* : The proportion of land of one residential plot which may be occupied by roofed-in buildings (excl. outbuildings) shall not exceed 15% and the dwelling-house shall not exceed 180 m. 40

(7) *Heights of Building* : The height of any building to be erected shall not exceed 2 storeys, exclusive of an elevated roof over the staircase, such roof not to exceed 3,0 m. in height.

(8) *Building Restrictions* : Only one building excl. of outbuildings shall be erected on any one plot. Only public buildings shall be erected on the plots marked as public building plots on the map. Only Hotels, pensions, kindergartens or other buildings for the use of the public shall be erected on the plots marked as "special reserved plots" on the map, these plots and buildings being in private ownership.

Exhibit 36.
Haifa
District
Regional
Planning
Scheme,
continued.

(9) *Outbuildings* : No outbuildings save domestic and agricultural appurtenances shall be erected within the open space of any plot and such appurtenances shall not exceed 5% of the area of the plot and 3,0 m. in height and be erected at the rear of the building only, except garages, which may be erected in front of the building.

F. OPEN SPACES & NATURE RESERVES.

1. *Public Open Spaces.*

(A) All lands coloured green and hatched dark green on the plan are hereby declared to be public open spaces and should be used as sites of playgrounds or recreation grounds or squares or gardens.

These lands may be vested in the name of the owners for the time being but shall be handed over to the Responsible Authority for the area concerned at the request of the District Building and Town Planning Commission when so required. No building whatever shall be erected on these lands.

(B) The cost of construction of gardens shall be borne by the owners of the land contained in the scheme and the work shall not be carried on prior to the authorisation in writing of the Regional Commission.

2. *Private Open Spaces.* All lands coloured light green and edged dark green on the plan are hereby declared to be private open spaces and no development shall take place thereon without the special approval of the District Commission.

3. *Nature Reserves.* All lands coloured green, and cross hatched dark green on the plan are hereby declared to be nature reserves.

G. MISCELLANEOUS.

1. *General Health.* The owners of the lands included in this scheme shall comply with the requirements of the Public Health Authority as to the carrying out of antimalaria measures that may be necessary on their lands in accordance with the Public Health Ordinance, 1940.

2. *Water Supply.* From the local piped water supply approved by the Public Health Authorities.

3. *Preservation of Trees.* If at any time the Responsible Authority having regard to the amenity of any part of the Town Planning Area, is of the opinion that any growing trees or group of trees ought to be preserved, the Responsible Authority may register the tree or group of trees, and shall thereupon notify the owner and occupier of the land upon which the tree or group of trees is growing that the tree or group of trees has been registered and the register of trees so made shall be open to inspection by persons interested at all reasonable times. No person shall

Exhibit 36.
Haifa
District
Regional
Planning
Scheme,
continued.

cut down or wilfully destroy any tree registered by the Responsible Authority under the preceding paragraph except with the consent of the Responsible Authority or upon the grant of an appeal against refusal of the Responsible Authority to give the consent, or where the tree has become dangerous.

4. *Trades and Industries.* No other trades and industries shall be carried out within the area of this scheme other than those normally allowed in a residential zone " A ".

5. *Shops.* Shops shall be allowed only along the frontage of the plots marked as such on the plan.

All shops shall have clear unobstructed area at pavement level, between 10 the shop and the road lines, to be constructed at the owner's expenses.

6. A, B and C shall be continuous shop buildings, the frontage of which shall be uniform and according to special designed plan to be approved by the District Town Planning Commission.

The built up area shall be 40% of each plot.

7. *Electric Transmission Lines.* All Electric Transmission Lines should be located, where possible, within the road lines, and in consultation with the Local Authorities. No building will be permitted by the Local Commission within a reasonable distance from any electric line if the building owner will not undertake the necessary measures for the safety 20 of all concerned.

H. BETTERMENT TAX.

Betterment Tax may be collected in accordance with sections 32 and 33 of the amended Town Planning Ordinance, 1936, from all owners within the area of the scheme who will benefit directly or indirectly by the opening of new roads, widening or construction of roads, sewers or drains, and the construction of open spaces and public gardens by the Responsible Authority.

I. SPECIAL PROVISIONS.

No amendment to the conditions and regulations of this scheme 30 shall be legal unless authorised in writing by the District Town Planning Commission.

Sealed and Stamped.

Haifa District
Town Planning Commission.

Finally Approved Scheme.

Sgd. by Chairman and Members.

NOE HACARMEL AND CARMEL GARDENS

REGIONAL PLANNING BOARD NO. 1

PLAT J-2500



268
Prepared by *Arthur F. Johnson*
January 1955
Page 208 A

SPECIAL CONDITIONS :

No building permit shall be issued in respect of any building zone included within the area of this scheme until

(A) Water supply arrangements, satisfactory to the District Commission or any other competent authority at the time are made by the promoters and the owners for the time being of the land ;

10 (B) a drainage scheme is prepared by the promoters in respect of the land insofar as such scheme shall be required by the District Commission.

(C) *The road* is completed leading from the land comprised in the scheme up to the Haifa-Jaffa Road, subject to gradient and other facilities satisfactory to the District Commission.

Sealed and signed by : Haifa District Town Planning Commission.

Finally Approved Scheme.

Signed by Chairman and Members.

Exhibit 36.
Haifa
District
Regional
Planning
Scheme,
continued.

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
THE GOVERNMENT OF PALESTINE and Others - Respondents.

RECORD OF PROCEEDINGS.

STONEHAM & SONS,
108A CANNON STREET,
LONDON, E.C.4,
for Appellants.

BURCHELLS,
5 OLD QUEEN STREET,
WESTMINSTER, S.W.1,
for Respondents.