

47, 1948

No. 86 of 1946.

**In the Privy Council.**

UNIVERSITY OF LONDON  
W.C.1

-9 OCT 1956

**ON APPEAL**  
*FROM THE SUPREME COURT OF PALESTINE,  
A COURT OF APPEAL, JERUSALEM.*

INSTITUTE OF ADVANCED  
LEGAL STUDIES

44470

**BETWEEN**

**ABDALLAH MUKHLES** - - - - - *Appellant*

**AND**

**KEREN**

**KAREN KAYEMETH LEISRAEL LIMITED** - - - - - *Respondents.*

**RECORD OF PROCEEDINGS.**

**STONEHAM & SONS,**  
108A CANNON STREET,  
LONDON, E.C.4,  
*Solicitors for the Appellant.*

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

**In the Privy Council.****ON APPEAL**

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

BETWEEN

ABDALLAH MUKHLES, as acting Mutawalli of Waqf Qotb ed Din  
el Khudairi - - - - - *Appellant*

AND

KEREN KAYEMETH LEISRAEL LIMITED - - - - - *Respondent.*

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**In the Privy Council.****ON APPEAL**

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

BETWEEN

ABDALLAH MUKHLES, as acting Mutawalli of Waqf  
Qotb ed Din el Khudairi

*Appellant*

AND

10 KEREN KAYEMETH LEISRAEL LTD.

*Respondent.*

**RECORD OF PROCEEDINGS.**

No. 1.

**MEMORANDUM OF CLAIM.**

(Translation from the Arabic.)

(Land Settlement Ordinances, 1928-33.)

*Before the  
Settlement  
Officer,  
Safad.*

No. 1.  
Memoran-  
dum of  
Claim,  
28th  
September  
1940.

PART A. (For official use only.)

Sub-District :	Safad	No. of Claim :	5
Village :	Khiyam el Walid	Reg. Block :	Name
			Provisional Parcel No.
			Final Parcel No.

20

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.
	Zaki Bey er Ricabi in his capacity as a beneficiary and a Mutawalli over the Waqf of his great anceser Qotb ed Din el Khudairi by virtue of Deed of Tawlieh dated 6th March, 1939, attached herewith (see doct. 1 & 2)	Damascus-Syria Zaki Bey Ricabi	In whole.

30 2. Category of Land : True Mulk dedicated by our anceser Qotb ed Din el Khudairi.

Before the  
Settlement  
Officer,  
Safad.

No. 1.

Memoran-  
dum of  
Claim,  
28th  
September  
1940,  
continued.

3. Nature of Right claimed : (State whether ownership, mortgage attachment, lease of more than three years, etc.)  
Ownership of the land with all of its rights.

4. How acquired :—

Part or Share.	Date.	Name and Interest of person registered.
In whole	See additional particulars.	See additional particulars.

5. Registration in Land Registry (if not registered, state so) :

Deed No.	Date.	Name and interest of person registered.
See additional particulars.		

10

6. By whom is House and Land Tax paid : (State annual amount.)

7. Description of Parcel :—

(a) Land.  
Plain land planted with trees.

(b) Building and all constructions both on land and on water.

Boundaries :—

North : Barqiyat & El Muftakhira.  
East : Boundary line between Palestine & Syria.

South : Ghuraba & Hule Con-  
cession.

West : Salhiyeh and Hule Con-  
cession.

8. Area claimed :—4518 dunums.

9. Other Rights affecting Parcel (or share) :—

(a) Servitudes to which the Parcel is subject :— —

(b) Servitudes over other land enjoyed by the Parcel :— —

10. Is Partition desired (in case of a claim to undivided parcel or village Masha') :—

(a) by Government. (b) by agreement.

11. Charges on Parcel or share : (Mortgage, attachment, lease of more than three years, etc.)

Nature of Charge.	In favour of	If registered, Deed No. and Date.	Particulars, where charge is not registered.
-------------------	--------------	-----------------------------------	--

12. Supporting Documents :—

See additional particulars and the documents' file produced therewith.

13. Additional Statement or Details (if any) :—

(If recorded in Unofficial Land Book state also Village Parcel No. and Unofficial Land Book folio No. ).

Further to what was mentioned on the 4th page, I request to register the Waqf right to Ushur (tithes) because the Ottoman 40

Government dedicated the Ushur (tithes) to Qotb ed Din el Khudairi's Waqf; the Mutawallis collect this to this day from the Syrian Government as it is clear from the certificate which will be produced at the trial.

*Before the Settlement Officer, Safad.*

14. I/We, Zaki er Ricabi of Damascus confirm 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.

No. 1. Memorandum of Claim, 28th September 1940, *continued.*

ZAKI ER RICABI,

10

Signature or mark of Claimant.

Read over to signatory(ies) and sworn to and signed by him (her) (them) in my presence.

Name Illegible.  
Settlement Officer, or Assistant Settlement Officer.

Date : 28.9.1940.

Safad Area.

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

Mukhtars or Members of Village Settlement Committee or other responsible person.

20

Name Office or Occupation. Residence.

Date Place

Page 4 of Claim 5.  
(Translation from Arabic.)

1. The village of Khiyam el Walid, with all its lands, esplanades, buildings and forests, is the real property dedicated as Waqf to Ar-Ricabi family by their ancestors, Qotb Ed Din El Khudairi, the owner of the Mosque and the famous memorial school in Damascus, which was erected in 878 A.H., and the description and date of erection of which was mentioned in the works of Sufajiyya and other writers who investigated about the antiquities of Damascus. This mentioned ancestor dedicated it as an eternal waqf in accordance with the Moslem Sharia rites.

2. The Mutawallis of the said Waqf, who were of Ar-Ricabi family, utilised these lands for the benefit of the waqf from 878 A.H. up to this date (see the certificate of the Sharia Qadi dated Muharram, year 1334, document No. 4, to the effect that this village was utilised for the waqf, and leased to Mahmud Buzo and his grandsons, Khalid, Abdul Ghani and partners. See also the document which provides that Khalid Buzo paid the rent of Khiyam el Walid lands to the Awqaf Department of Damascus up to 1357.) From this, it is clear that it is the Waqf who leases the lands, and it is well known that the lessor cannot be but the owner.

3. When Khiyam el Walid was of Quneitra Sub-District, Mahmud Pasha Buzo was a District Officer in Quneitra Sub-District. At that

*Before the  
Settlement  
Officer,  
Safad.*

No. 1.  
Memoran-  
dum of  
Claim,  
28th  
September  
1940,  
*continued.*

time he was the lessee of the village. And if he obtained a sanad in the name of his then minor son, Ali Bey Buzo, using his official influence, then it would have been by trick and agreement with the Land Registry Officer, who was his subordinate. And if there is any value whatsoever to this Sanad, the genuineness of which I do not admit, it gives a very slight title intended to be for plain nude land and not right of its ownership, chiefly because the names of the Waqf and dedicator thereof were always mentioned in the Sanads. The fact about this title, whatever it may be, is that it was for temporary lease, the effect of which vanishes when the date of lease expires. 10

The Certificate of the Moslem Sharia Qadi dated 3rd Muharram, year 1334, attached hereto, quotes this frankly as follows:—

“ The mentioned land with its plantations, buildings, waters, forests, dunghills and lodgings is under the lease of the lessees (see certificate No. 4). Khalid Eff. Buzo has paid the rent of the mentioned land in 1357 A.H. to the Awqaf Department.” (See the certificate which I will produce during trial.)

4. Any right as such in Waqf lands is only a right for using the tool of ploughing, i.e. the right of ploughing. If this right is proved, it secures to the owner thereof the right of priority of lease vis-a-vis the remaining 20 lessees, on condition that he should agree to pay the rent proposed by any other lessee ; and if he refuses, the land will be taken from him. This will be clearly seen from the attached certificate of the Sharia Qadi which includes an increase by an applicant to take the land on lease. Refer also to Section No. 270 of the Awqaf Law.

5. I have understood lately that Khalil Buzo and partners have transferred the mentioned land and registered it in Tabu in their names in May, 1921, No. 7, and 15th Ilul, 1921, Nos. 1 and 2, as shown in the Extract of Tabu (Certificate No. 5). They carried out this transfer 30 according to the provisions of the Law of Disposition of Immovable Property, even though the land is the property of the Waqf, and is not miri land, and there is nothing in the Sanad Tabu to indicate that it is miri land.

If we like to refer to the original papers, by virtue of which the said transaction of transfer was carried out in the Land Registry of Syria, we cannot find them, because the people concerned destroyed them as may be seen from the underlined note at the bottom of certificate No. 5. It was intended by destroying these papers to obliterate the facts and hide their existence.

6. Khalil Buzo and his partners have transferred their alleged 40 right, i.e., right of ploughing the land, to the Keren Kayemeth Leisrael. The Keren Kayemeth Leisrael have undertaken to pay the Waqf what is necessary, i.e., the annual rent of the land. See Certificate No. 7 in Hebrew. All this took place without the knowledge of the Mutawalli or his consent. Refer to Section No. 199 of the Awqaf Law.

7. By referring to the attached present Tabu registrations, it is clearly seen that the category of the land is Waqf Mulhaq. The Waqf Mulhaq is administered by a special Mutawalli. And can the Administrator

remain far away from such Waqf, and the lessee more powerful than the owner, so that he might sell it to the Keren Kayemeth Leisrael! Refer to Section 34 of the Awqaf Law.

*Before the  
Settlement  
Officer,  
Safad.*

8. It cannot be said about the owner, who leases and cashes the rent of his property from the lessee, that he left his property to another, i.e., the lessee, to become an owner. And if this other, i.e., the lessee, has obtained by trick a sanad, it does not mean that the owner is careless, because the owner is not supposed to stand on the illegal acts which are carried out by the lessee without his knowledge.

No. 1.  
Memoran-  
dum of  
Claim,  
28th  
September  
1940.  
*continued.*

10 9. Whereas the said land is Waqf Sahih, both beneficiary and charitable, and whereas Waqf land cannot be sold or bought, because it is eternal Waqf, then every transaction of sale of the Waqf is null and void. Therefore no transaction must have taken place but by the Mutawalli who has been administering it.

For this reason, all the transactions which took place for transferring the said lands first to sons of Buzo and secondly to the Keren Kayemeth Leisrael, are null and void, which transactions no consideration should be given to.

20 10. Supposing that the Settlement Officer holds to the contrary and considers that Ali Buzo and his heirs after him have the right of ploughing the said land, I say that the right of ploughing can neither be owned nor sold or inherited.

For this reason and the other reasons mentioned hereinabove and the different legal texts which I am going to quote in my pleadings, I apply for :—

*First* : Registration of the said land together with the water springs, buildings and plantations on it in the name of my grandfather, the Qadi Qotb Ed Din El Khudairi, as waqf.

30 *Second* : Giving decision to forbid Khalil Buzo and partners and the Keren Kayemeth Leisrael from opposing the Waqf in the lands of Khiyam el Walid and everything thereon, and ordering the Keren Kayemeth Leisrael to hand me over the land together with the water springs, plantations and buildings thereon.

*Third* : Giving decision with all costs, travelling expenses and advocates' fees to be paid by the Keren Kayemeth Leisrael and partners.

(Sgd.) ZAKI ER RICABI.

(Sgd.) J. EZEL,

A.S.O.

28th September, 1940.

Before the  
Settlement  
Officer,  
Safad.

No. 2.

**MEMORANDUM OF CLAIM No. 6, Mahomed Said and 8 others.**  
(Land (Settlement of Title) Ord.)

No. 2.  
Memoran-  
dum of  
Claim  
No. 6,  
Mahomed  
Said and  
8 others,  
2nd  
October  
1940.

## PART A. (For official use only).

Sub-District : Safad

No. of Claim : 6

Village : Khiyam el Walid

Reg. Block : Name No.  
Provisional Parcel No.  
Final Parcel No.

## 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
1.	Mohamed Said	c/o H. C. Weston Sanders, Advocate, P.O.B. 565, Haifa	374,472	20
2.	Mohamed Kamel		260,631	
3.	Hayet el Noufous		187,236	
4.	Fatmeh all children of Mahmoud Pacha Buzo		187,236	
5.	Khalil		72,814	
6.	Hassan		72,814	
7.	Abdul Hamid		72,814	
8.	Zeineb all children of Ahmed Bey Buzo		36,407	
9.	Amine Khanum daughter Abdul Latif Ajlani & wife Achmed Bey Buzo		45,809 shares out of 3,421,440.	
2.	Category of land claimed : Waqf Mulhaq Qotb Ed Din el Khudairi.			
3.	Nature of Right claimed : (State whether ownership, mortgage, attachment, lease of more than three years, etc.)			
4.	How acquired :			

Part or Share.	Date	From whom.	Manner of Acquisition.	30
See above	—	By inheritance from Ali Bey Buzo through his father Mahmoud Pacha Buzo and his wife.		
5. Registration in Land Registry (if not registered state so) :				

Deed No.	Date.	Name and interest of person registered.
See statement of particulars on reverse.		

6. By whom is House and Land Tax paid : (State annual amount.)
7. Description of Parcel : Boundaries :
- (a) Land North :—Lands of Barqiyat & Muftaka
- (b) Building East :—Boundary between Palestine and Syria

(c) Gardens, threshing floors and plantations, springs and wells and all accretions on land. South :—Wadi Ein el Qumran, Ghurabi lands and Huleh Concession  
West :—Salheyr and Huleh Concession.

*Before the Settlement Officer, Safad.*

No. 2. Memorandum of Claim No. 6, Mahomed Said and 8 others, 2nd October 1940, *continued.*

- 8. Area Claimed :—Share in 4,518 donums.
- 9. Other Rights affecting Parcel (or share) :—
  - (a) Servitudes to which the Parcel is subject :—
  - (b) Servitudes over other land enjoyed by the Parcel :—
- 10 10. Is Partition desired (in case of a claim to undivided parcel or village Masha') :—
  - (a) By Government
  - (b) By agreement.
- 11. Charges on Parcel or share : (Mortgage, attachment, lease of more than three years, etc.) :—

Nature of Charge.	In favour of.	If registered, Deed No. and Date.	Particulars, where charge is not registered.
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- 12. Supporting Documents :—P. of A. dated 3.2.40 attached. Re other documents, see statement of particulars.
- 20 13. Additional Statement or Details (if any) :—  
(If recorded in Unofficial Land Book state also Village Parcel No. and Unofficial Land Book folio No. )  
See statement of particulars on reverse.
- 14. I, H. C. Weston Sanders, Advocate of Claimants, hereby take oath and swear (or solemnly affirm) 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.) WESTON SANDERS

30 Read over to signatory(ies) and sworn to and signed by him (her) (them) in my presence.

(Sgd.) Illegible.

Settlement Officer or Assistant Settlement Officer.

Date : 2.X.40.  
Safad Area.

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

Mukhtars or Members of Village Settlement Committee or other responsible person.

40 Name	Office or Occupation	Residence
Date		Place

Before the  
Settlement  
Officer,  
Safad.

## Page 4 of Claim 6.

## Statement of Particulars.

No. 2.  
Memoran-  
dum of  
Claim  
No. 6,  
Mahomed  
Said and  
8 others,  
2nd  
October  
1940,  
*continued.*

The Claimants are the heirs of Ali Bey Buzo, in accordance with Declaration given by Sharia Court of Damascus, registered in Folio 107, hearing 86 before the said Court on 17th February, 1935, copy of which is filed as No. 4 in file of Documents filed in claim made by Mutawalli of Waqf. See also certificate of Sharia Court Damascus Reg. in Folio 123 record of proceedings No. 197, Vol. 10, folio 158, No. 1523, copy of which is filed in said file of documents as No. 5 which states that these shares devolve upon the said heir by Sharia inheritance. 10

2. On May 1921 and Sept. 1921, certain heirs of Ali Bey Buzo (namely Ayesheh Khanoum bint Abdul Latif el Ajlani, Khaled Bey Abdel Ghani Bey, Mohamed Bey, Salma Khanoum, Farija Khanoum, Fayseh Khanoum all children of Mohamad Ali Bey Buzo and Saideh Bint Ahmad Katib) obtained registration of the said lands as is claimed herein, excluding the present claimants. Copy of the said registration in the names of the said heirs is attached to file of documents filed by the Mutawalli under No. 6. The said inheritance was wrongfully made according to the "Miri" succession, and not according to the Sharia succession referred to above, and because the land in question is "Waqf 20 Sahih".

3. On the 14th Feb. 1939, the said heirs (excluding claimants) sold and transferred their said interest in the said lands according to Document No. 6 to Keren Kayemeth Leisrael which is registered under Volume 1, Folio 2, Safad Land Registry, Khiyam al Walid Village.

Up to all times until the said transfer to the Keren Kayemeth Leisrael all the land in question was managed and was in possession of all the heirs of Ali Bey Buzo including the present Claimants. Present Claimants were unaware of the transaction made in 1921 (see para. 7) until after 1935, when they went and registered the succession in accordance with Document 30 No. 4, i.e., about 1939.

## WHEREFORE IT IS PRAYED,

That the said shares claimed may be registered in the names of Claimants and that the title deed of the Keren Kayemeth Leisrael may be amended accordingly.

That any party opposing this claim may pay all costs and advocates' fees herein.

Present Claimants do not dispute the claim of the Mutawalli of the Waqf of Qotb Ed Din Khudairi and pray that this case may be heard after the said claim and in the event of the claim of the Waqf being refused. 40

2nd October, 1946.

(Sgd.) SANDERS

Advocate for Claimants.

No. 3.

**MEMORANDUM OF CLAIM No. 4, Keren Kayemeth Leisrael Limited.**

(Land (Settlement of Title) Ord.)

*Before the  
Settlement  
Officer,  
Safad.***PART A. (For official use only)**

Sub-District : Safad

Village : Khiyam el Walid

No. of Claim : 4

Reg. Block : Name No.

Provisional Parcel No.

Final Parcel No.

No. 3.  
Memoran-  
dum of  
Claim  
No. 4,  
Keren  
Kayemeth  
Leisrael  
Limited.**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.
- 
- Keren Kayemeth Leisrael Ltd. In whole.
- 
2. Category of Land : Waqf Qotb ed Din el Khudairi—Mulhaq
3. Nature of Right claimed : (State whether ownership, mortgage, attachment, lease of more than three years, etc.)  
Ownership.
4. How acquired :—
- | Part or Share. | Date. | From whom. | Manner of Acquisition.                                |
|----------------|-------|------------|---|
| In whole.      |       |            | Registered in Claimants' name<br>See extract attached |
- 20 5. Registration in Land Registry (If not registered, state so) :
- | Deed No. | Date. | Name and interest of person registered. |
|----------|-------|---|
| 12/39    |       | Keren Kayemeth Leisrael Ltd.            |
6. By whom is House and Land Tax paid : (State annual amount.)
7. Description of Parcel :—
- |                      | Boundaries  |
|----------------------|---|
| (A) Land Cerial Land | North :—Lands of Barqiyat & Muftakhira                        |
| (B) Building         | East :—Boundary line between Palestiue and Syria              |
|                      | South :—Wadi Ein el Qumran, Ghurba lands and Huleh Concession |
|                      | West :—Salhiyeh & Huleh Concession                            |
- 30 8. Area claimed :—4518 dunums
9. Other Rights affecting Parcel (or share) :—
- (A) Servitudes to which the Parcel is subject :—
- (B) Servitudes over other land enjoyed by the Parcel :—

Before the  
Settlement  
Officer,  
Safad.

No. 3.  
Memoran-  
dum of  
Claim  
No. 4,  
Keren  
Kayemeth  
Leisrael  
Limited,  
*continued.*

10. Is Partition desired (in case of a claim to undivided parcel or village Masha') :—  
(A) By Government  
(B) By agreement.

11. Charges on Parcel or Share (Mortgage, attachment, lease of more than three years, etc.) :—

Nature of Charge.	In favour of	If registered, Deed No. and Date.	Particulars, where charge is not registered.
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12. Supporting Documents :—

13. Additional Statement or Details (if any) :— 10

(If recorded in Unofficial Land Book state also Village Parcel No. and Unofficial Land Book folio No. )

The following parcels are excluded from this claim :—

3 Moslem cemeteries as demarcated on the ground by A.S.O.—  
Road—Muftakhira—Hule 12 m wide, Road along wadi Ein Qumran 6 m wide.

Road to Jisr Banat Yaqoub 5 m wide.

The residential area allotted to Arabs of an area of one hundred and fifty metric dunums. When Survey of the lands is made by Government, this area should not exceed 150 dunums. If the area as demarcated turns out to be more than 150 dunums, the excess should be added to K.K.L. lands and if, on the other hand, it is less, the difference should be made up by taking from the lands and by adding it to the area allotted. 20

14. I/We of hereby take oath and swear (or solemnly affirm) 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.) Illegible 30

Signature or mark of Claimant.

Read over to signatory(ies) and sworn to and signed by him (her) (them) in my presence.

Name : (Sgd.) Illegible

Settlement Officer, or Assistant Settlement Officer.

Date :

Area

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

Mukhtars or Members of Village Settlement 40

Committee or other responsible person.

Name	Office or Occupation	Residence
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Date	Place
------	-------

No. 4.

LETTER from Advocate Eliash to Settlement Officer.

March 6th, 1941.

Before the  
Settlement  
Officer,  
Safad.

His Worship  
The Settlement Officer,  
Safad Settlement Area,  
Haifa.

No. 4.  
Letter  
from  
Advocate  
Eliash to  
Settlement  
Officer,  
6th March  
1941.

*Subject* : Case No. 1/Khiyam Walid.

Sir,

10 Pursuant to the request contained in your letter of March 4th, 1941, I have the honour to submit herewith on behalf of the Keren Kayemeth Leisrael Ltd. the following statement of claim setting out all the facts and grounds of the claim.

The Keren Kayemeth Leisrael Ltd. claim some 4,500 dunams in the lands of Khiyam el Walid on the basis of a purchase from the rightful owners, implemented by a transfer at the Land Registry and by possession.

20 It is understood that the reference to Waqf in the description of the tenure of this land is interpreted by a person who describes himself as a Mutawalli of that Waqf to mean that the land is Waqf Sahih. It will be shown that this contention is groundless, that the Waqf is of the Takhsisat category, and that the Government of Palestine is paying to the beneficiaries of the Waqf a definite amount, or a Mukataa payment, in lieu of the taxes which Government collects from the land in question. It will be further shown that the expression "Mulhaq" which is applied to this Waqf does not connote its being a Waqf Sahih but merely refers to the method of administering the funds which this Waqf is entitled to receive from Government.

30 A photographic copy of the register kept at Istanbul, certified by the Tabu Headquarters of that city, will be produced, to show that the same land was the subject-matter of a transfer on the 21st Shawal 1307, into the name of Ali Bek Ibn Mahmud Bek Buzo.

The registration which preceded the transfer to the Keren Kayemeth Leisrael Ltd. was as follows :—

19.5/24 shares in the name of 3 sons of the said Ali Bek Buzo, namely Khaled Bek, Abdel Ghani Bek and Mahammad Bek in equal shares, 1.5/24 shares in the name of Aisha Khanum bint Abdul Latif El Amlani, and 3/24 shares in the name of Saadiye bint Ahmad el Khatib.

40 It will be further contended that the person who claims to be a Mutawalli of the Waqf is not in fact clothed with that authority, and that the claim made by him ought to be disregarded also on that ground.

I am, Sir,

Your obedient servant,

(Sgd.) M. ELIASH.

Before the  
Settlement  
Officer,  
Safad.

No. 5.  
Proceedings  
14th May  
1941.

No. 5.  
PROCEEDINGS—14th May, 1941.

Case No. 1/Khiyam el Walid.

Before THE SETTLEMENT OFFICER.  
Safad Settlement Area.

*Plaintiff* :—

Claim No.	P.P. No.		Share.
5	Blocks 1-6 (inc.)	Zaki Bey er Ricabi, in his capacity as beneficiary and as Mutawalli of the Waqf of Qotb Ed Din el Khudairi	10 In whole.
		<i>Defendant</i> :—	
4	„ „	Keren Kayemeth Leisrael Ltd.	In whole.
		<i>Third Party</i> :—	
6	„ „	I. 1. Muhammad Said Mahmud Buzo	374,472
		2. Muhammad Kamel Mahmud Buzo	260,631
		3. Hayat en-Noujous Mahmud Buzo	187,236
		4. Fatma Mahmud Buzo	187,236 20
		5. Khalil Ahmad Buzo	72,814
		6. Hassan Ahmad Buzo	72,814
		7. Abd el Hamid Ahmad Buzo	72,814
		8. Zainab Ahmad Buzo	36,407
		9. Amina Khanum Abd el Latif Ajlani	4,809
			<hr/>
			Out of 3,421,440

*Third Party* :—

Claim No.	P.P. No.		Share.
3	4/3	II 1. Fahd Mustafa Isa el Karmi	1,000 30
		2. Husein Ali Dhiab el Karmi	2,000
		3. Hasan Ali Ismail el Karmi	3,000
		4. Husein „ „ „ „	1,000
		5. Muhd. „ „ „ „	1,000
		6. Awal Hillal Mustafa el Karmi	2,000
		7. Muhawish Ibrahim Isa el Karmi	1,000
		8. Hasan Ibrahim Isa el Karmi	1,000
		9. Mustafa „ „ „ „	1,000
		10. Isa Yasin Isa el Karmi	1,000
		11. Mustafa Isa Yasin el Karmi	1,000 40
		12. Hamdan Yasin Isa el Karmi	2,000
		13. Mustafa Zuyada Mustafa el Karmi	1,000
		14. Musa es-Saleh et-Taha el Karmi	500
		15. Taha Saleh Taha el Karmi	500
		16. Muhammad Husein el Mughrabi	1,000
		17. Ahmad Muhd. Ibrahim Jasbawi	2,000
		18. Jarwan Khalil „ „	1,000
		19. Mahmud „ „ „	1,000

Claim No.	P.P. No.	Share.	<i>Before the Settlement Officer, Safad.</i>
	20. Saleh Iweiad Hasan Jazbawi	1,000	
	21. Musa Isa Yunis Tallawi	1,000	
	22. Saleh " " " "	1,000	
	23. Qasem "Saleh" Faris "	1,000	No. 5.
	24. Muhd. Quteiah Qasem el Karmi	500	Proceedings
	25. Muhd. Awad Ibrahim Suwwan	500	14th May
	26. Suleiman Awad Suleiman el Karmi	1,000	1941,
	27. Ilyas Hasan Ifreija	1,000	<i>continued.</i>

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Out of 31,000

Haifa, May 14, 1941.

Present :—Mr. H. C. Weston Sanders—representing Plaintiff by General Power of Attorney.

(R.No.636254 of 14.5.41) Zaki Bey er Ricabi.

(R.No.636255 of 14.5.41) Ahmad Eff. Shuqeir, representing Plaintiff.

Dr. Eliash, representing the Defendant.

Mr. Ben-Shemesh, representing the Defendant.

20 (R.No.636256 of 14.5.41) Mr. S. Nahmani, agent of the Keren Kayemeth Leisrael Ltd.

Sh. Subhi Eff. Kheizaran, Qadi Sheria Court of Haifa.

3rd party not present.

*Mr. H. C. Weston Sanders* : The details of our case have been filed. I do not think we need repeat them all in detail. I understand defendant has preliminary objection.

*Dr. Eliash* : I have no preliminary objection to raise.

30 *Mr. H. C. Weston Sanders* : The defendants have obtained registration of Khiyam el Walid in their name in accordance with kushans filed. The land is registered as Waqf Qotb Ed Din Khudairi—Mulhaq. Zaki Bey is the Mutawalli duly appointed as appears in Exhibits I and II of his documents filed with his claim. In the last 500 odd years the land has been dedicated for the benefit of the said Waqf and that it is a true Waqf and as such the registration in the name of the K.K.L. is not valid. We submit that an ancient Waqf of this nature dating long before the Land Code was even thought of and in the possession of the Mutawallis for all that period must *prima facie* be Waqf Sahiha of the category found in Art. 2 of the Land Code, para. 3. Tithe paying land distributed by the  
40 conquerors among the victors in full ownership. We have much more recent documents which support the contention that the Waqf is true. The grantors to the K.K.L. were the heirs of Muhammad Bey Buzo. And there is a document No. IV filed by plaintiff which shows conclusively that the then heirs of Muhammad Bey Buzo appeared before the Sharia Court of Damascus as lessees. Mahmud Pasha. Evidence of lease. 3 periods of 3 years. 400 piastres a year. Over bidder's offer rejected. This document shews that the predecessors in title of the K.K.L. appeared before the Sharia Court in their capacity as lessees of the land which is in dispute and that such right as they had in the land was a right of

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Mashad al Maska. 3rd Muharram 1334 A.H. This can be described as a right of cultivation, personal to the holders of the right inalienable, non transmissible by inheritance and an incident of true as distinct from untrue waqf. If that is the right the predecessors of K.K.L. possessed it could not have been transmitted to them. The only meaning of the K.K.L. title deed is that the heirs of Muhammad Buzo have purported to transfer some obscure right of cultivation. Document IV shows that an overbidder could come forward though in this case the overbidder was not found acting in good faith. The principle is established that the Buzo title was a shadowy one and one that could be upset by an overbidder acting in good faith. There are other documents now submitted, file B. Document 2. Application dated February 1941 to the Mamur Awqaf asking certain questions relating to the Waqf. Q.1—Date of building the school in Damascus in order to prove age of Waqf Qotb Ed Din Khudairi. Q.2.—What are the villages dedicated in Palestine. Q.3.—Is Khiyam el Walid a Waqf Sahih. A.1.—878 A.H. A.2.—No answer. A.3.—Yes. Mudir Awqaf Damascus. 10

*Dr. Eliash* : I object to the production of this letter.

*Mr. H. C. W. Sanders* : The Mudir Awqaf is an officer of record and he can issue copies of his records. 20

*S.O. Ruling* : The answers do not purport to be copies of any official records and cannot be accepted as an authoritative copy of any record kept in the office of the Mudir.

(Sgd.) CECIL KENYON.

*Mr. H. C. W. Sanders* : The second document (3) is a copy of an application made by Khalid Buzo dated 13th December 1940 to the Mudir Awqaf enclosing a copy of the title deed and asking whether the rent of 305/4 piastres was paid under receipt No. 232 up to 1357 and if the waqf was capable of Istibdah. The reply is that Khiyam el Walid is Waqf Qotb ed Din—rent was paid—mashad al Miska, the waqf is exchangeable by order of the H.C. 30

*Dr. Eliash* : I object to the reply ; it is not a copy of a record.

*S.O. Ruling* : Objection upheld.

File C. *1st document* : Application by Khalid Buzo—11 March 1939, in his personal capacity and on behalf of his co-heirs, concerning his application for exchange 'Istibdal.' "I apply for the exchange (title 1921) of the land," etc., etc. The request was not granted.

*2nd document* : Application relating to Istibdal, 21st February, 1939—made by Khalid Buzo personally and on behalf of his heirs asking for the appointment of an expert and suggesting himself. 40

*3rd document* : Report by accountant of the Awqaf authority concerning Khalid's application for Istibdal—the application of 21.2.1939.

*6th document* : Application by Zaki Bey to Mudir Awqaf (Director of Waqf) Damascus, dated July 1940 for information concerning whether Khalid Buzo had paid 'equivalent rent' for Khiyam el Walid. Reply from the Accountants Department Waqf Administration that the Syrian Government continues to pay to the Waqf Administration the tithe on Khiyam el Walid lands.

*Dr. Eliash* : I object to the expression of the opinion but not to the facts concerning payment.

*S.O. Ruling* : Expression of opinion rejected as evidence.

(Sgd.) CECIL KENYON.

*Mr. H. C. W. Sanders* : I do not know the defendants claim apart from the very brief statement of claim contained in three letters. I reserve my right to reply to any defence submitted outside the statements contained in the letters. The Waqf is Waqf Sahiha and the K.K.L. bought the land in full knowledge that the land was Waqf : no purchase in good faith. K.K.L. have no title. The claim of the 3rd party is to a great extent dependent upon the settlement of the claim of Waqf Sahiha. I submit the first point should be decided first.

Claim of the Third Party to be dealt with after deciding main issue.

(Sgd.) CECIL KENYON.

*Dr. Eliash* : No cause of action has been shewn by plaintiffs' pleadings : even if they were right in their contentions of fact they would not be entitled to the relief they claim. In accordance with Art. 1630 Majalla no cause of action. Facts alleged are that the right that was registered in the name of the K.K.L. grantor was the right of Mashad al Maska in Waqf lands. Because of that allegation the plaintiff claims the right was personal, inalienable, non-transferable and incapable of sale. His own document No. IV shews that this right was capable of inheritance, as at the end of the document reference is made to a Kushan dated 1303 Maliya and to a certificate of inheritance dated 21 Zilkadi 1327 and the Kadi testifies that all the rights under the Kushan passed to the heirs. Had the right of Mashad al Maska been uninheritable the Kadi would not have confirmed that the persons in whom that right was invested. Nor can it be maintained that the right cannot be sold as the very Kushan referred to shews that Buzo became owner by way of purchase (feragh). Certified true copy of registration submitted, Exhibit D.1. Moreover, by all authorities of Moslem Law, Mashad al Maska is a tenure in Waqf Sahiha and Ghair Sahiha which can be sold. Authorities Ashub and Abdin shew this to be so. Mashad al Maska can be sold. This right cannot be taken away from the owner thereof so long as he pays the rent fixed. The right that existed to increase the rent, which, however, does no longer exist, was to increase the rent up to what a bona fide bidder would make. Ashub, page 247, 2nd Edition, 1935. Abdin, pages 162, 184, 185, 188 and 189, Vol. 2, 1122. It is stated in clear terms that the right can be sold to another. The right was acquired by revivication of the land or making it cultivable and the Hanbali School maintained it was an incident of miri land. Payment of ijara mithl a nominal payment payable on the unimproved value of the land. The question of rent is one for the competent authorities to decide, the question before the Settlement Officer is whether the sale was valid. The Mutawalli does not claim the land, he claims a right to receive payment, and whether the right to pay this amount and enjoy the land could be passed to another. No cause of action therefore exists.

*2nd submission* : Waqf in this case is not a true waqf. Sales and transfer by inheritance in Turkish days is sufficient indication of this. Doc. IV says that a Hanbali judge dealt with a right of Mashad al Maska

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clearly shews he considered it to be miri mevqufe. It is a Hanafi School that holds that mashal al Maska applies to Waqf Sahih. Payment of tithe to Waqf authorities shews the Waqf to be takhsisat. Even if the permission of the Mutawalli was required it is no longer so. Mamur Tabu replaces the Mutawalli. Article 2. Provisional Law 1331, page 163 Tute, Sections 8 and 9, applied to true waqf it were muqata's qadima. Law of Disposition 1331, page 170 Tute, Article 16, also Art. 1, shews that waqf mulhaqa is subject to the law. Since 1331 the Turkish authorities recognized that any person having an ancient right could transfer his right and only transfer his right in the land registry. Tute 153 ff. Waqf properties separately registered. Sec. 4 shewed that hitherto mulhaqa waqfs were separately registered. Tute 148—Law of Inheritance now replaced the special laws of succession. Law of 1292 A.H. There was an increase in the fees payable on transfer to compensate the waqf for the loss of rents. Law of 1331, Article 9, Tute, page 164, Increase of rent owing to extension of succession laws. *Mulhaqa*. The word is used in Tute, page 12, note 2, in connection with Takhsisat. Mutawalli is accountable to Awqaf Dept. for property administration. I produce a receipt for the payment of the LP.3/4 to the Treasury (D.2) and the Treasury pay it to the Waqf "badl maqtu'". 10

It is clear that the main part of this Waqf is in Syria. In Palestine 20 it has not been affected by any Government or waqf payment. Nor does the Palestine Administration know of mashad al maska tenure. Another waqf of Qotb ed Din Khudairi—in Alla village—Tulkarm Sub-District—is treated as a takhsisat waqf, commuted waqf payment of LP.200 odd. The very same waqf has an interest in the Summan, no suggestion that mashad al maska is anything extraordinary. The words "sanad tamleke" is a registration. I submit a photostatic copy of a mashad al maska kushan shewing that the right is saleable. I submit a document loaned to me by the Government of Palestine. It concerns the En Nabi Musa lands in Jericho. A certain man was paying direct to the waqf authorities the ushr. He 30 claimed the ownership and the Majlis Idara gave a decision.

*Mr. W. Sanders* : I ask for the certification of the Majlis Idara report by the Settlement Officer.—Report to be certified.

*Dr. Eliash, cont.* : I also shew how unreliable are the opinions expressed by the Awqaf Authorities in Damascus. In Syria you can make an exchange of waqf sahih and waqf ghair sahih. I have an application submitted by Khalil Buzo in which it is admitted that the lands of Khiyam el Walid are waqf ghair sahiha and were taken over by the Syrian Treasury and the answer was that there was no objection to the exchange.

My case is summarized as follows :—

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(a) It is doubtful if the Settlement Officer has power to deal with the category of land when the ownership is not involved. C.A. 206/40.

(b) If it is decided to register the nature of the tenure more fully, then it is waqf ghair sahiha. L.A. 44/36.

(c) We have a registration antecedent for 60 years or more. P.C. Appeal.

*Mr. W. Sanders* : Ahmad Eff. will reply.

*Ahmad Eff. Shuqeiri* : Before the issue of D.1 a provisional certificate was issued by the Daftar Khani the nature of the waqf is clearly described 50

as Ushrie not muqata'a. Under Article 2 (iii) of the Land Code it is clear that Ushrie lands are defined as mulk lands. If the land is mulk land, whatever dedication was made it must be a true waqf as the raqaba rests in the owner. Omar Hilmi, 125. Arazi ushrie dedicated is true waqf. Art. 136. Probability. As to tithes: the collection of tithes by Government and payment of them to the Awqaf does not prove the waqf is of the takhsisat category. The tithes and the land were dedicated. The dedication of tithe is untrue, but that of the land is true. No question that the tithe was dedicated. The terminology of the waqf as mulhaqa does not help the defendant. 'Mulhaqa' means attached: it can be either true or untrue: it has nothing to do with the category of the waqf, only the administration. Omar Hilmi, Art. 34. Exhibit Doc. 4 shews the nature of the waqf dedicated. The predecessors in title of the K.K.L. are described as lessees and the Mutawalli as lessor. The land that was leased "Bayad" and "kharrar". All the land was waqf sahih. I admit that mashad al maska exists on miri or mulk land, but when it exists on waqf sahiha it is within the exclusive jurisdiction of the Sharia Court to settle any point concerning the right. Sec. 7 (a) of Sharia Court Law invests the Court with authority in the case of true waqf. By this section the Sharia Court of Damascus had jurisdiction to deal with the matter. The fact that transactions took place and were given effect to by a Turkish registrar does not affect the matter either way. The Registrar has not authority to vary the category of the waqf. In C.A. 189/37 it was held that a Settlement Officer could vary a kushan. A takhsisat waqf is an exception to law of waqf, in any other instance the waqf would be stated. The agreed facts are that the tithes were received from the Treasury by the waqf. The predecessors of the K.K.L. paid the rent. The judgment of the Sharia Court refers to lessee and lessor. It is within the jurisdiction of the Settlement Officer to decide the category of the waqf. If the waqf is true, then the last para of Sec. 2 of the Land Code states the law applicable. It is important to decide the category of the waqf as by that decision the law applicable will be determined. Allar and Kh. Summan of no relevance.

Mashad al Maska. Cultivation right. Ibn Abdin, Vol. 4, page 18, incorporeal right. Able elder son could acquire the right. But the right could be dealt with by feragh. Feragh meant surrender of right, not sale, in Islamic Law. Over-bidding. Baz page 247 commentary on the Mejelle, page 271 on Art. 484: no lease for more than three years. Leave of Sharia Judge necessary. Sec. 7 of the Lease of Immovable Property Law is based on this principle. Single lease property. Omar Hilmi Art. 272.

Mashad al maska emanates from a contract of lease and the lessee cannot have any right in the ownership or raqaba in the land. Holder of a right of mashad al maska cannot be evicted but he has no right of determined duration nor is the rent fixed. Land Code 23. Lessee or borrower cannot have a right of haq el qarar. Inheritability. Lease is not inheritable. Omar Hilmi 270. As lease is not heritable, the mashad al maska cannot be so. Sec. 4 of the Law of Inheritance. The defendants' rights are not ijara wadiha qadima. Three leases for three years were concluded. Sharia Court judgment. The commencement of the lease is known. Sec. 8 does not apply. Ashub page 274. Mutawalli's consent not obtained. Mamur Tabu can only act in the absence of the Mutawalli: there is nothing to shew that the Mutawalli was called, and did not appear: no attempt to call the Mutawalli or to obtain his consent in the K.K.L. transaction.

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Consent of Mutawalli is essential in Ijaratain where the rights of the waqf are less than in Ijara Wahida. Omar Hilmi 199. It is against the principles and law concerning waqf. Tute 165 : Article 4 of the Provisional Law, function of Mutawalli. Ali Haidar Art. 1169. Feragh—transfer of offices : consent of the Sharia Judge is essential. Title Deed : mashad al maska, issue by Syrian Authorities does not prove the law in Palestine, nor is it binding on the Settlement Officer. Majalla 1630 no application. Rent : Smallness of the rent has no bearing on the law, probably due to leniency of the Mutawalli. (a) Mulk land waqf sahih. (b) K.K.L. rights are no more than those of a lessee. (c) Non-registerable right indeterminate in 10 period and rent. (d) Non-inheritable. (e) No consent of Mutawalli or other authority, transfer invalid. (f) Determination of all these issues within the jurisdiction of the Settlement Officer.

*Dr. Eliash :* Dafkat Khakani provisional certificate Muqataa or Usheir. Land Code. Art. 32 : also provisional law of 1329. Last sentence of Art. 5. Description of the Waqf. Moustighitat waqf. Tute 169. D (plaintiff's) 1 and 2. The use of the word ' waqf ' does not mean that it is necessarily waqf sahih. Land Code Art. 4, page 11. Omar Hilmi is prior to the secularization of the land. Tabu registrations are valid : cannot be set aside. Abdin page 188. C.A. 189/37 is in my favour. 20

Case adjourned until the 25th of May, 1941, for decision.

14th May, 1941.

(Sgd.) CECIL KENYON.

No. 6.  
Decision of  
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Officer,  
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25th May  
1941.

**No. 6.**

**DECISION of Settlement Officer, Safad Area.**

Case No. 1/Khiyam el Walid.

P.P. No.	<i>Plaintiff</i>	<i>Shares</i>
Blocks 1-6 (incl.)	Zaki Bey er Ricabi in his capacity as beneficiary and as Mutawalli of the Waqf Qotb ed Din el Khudairi	In whole
	<i>Defendant</i>	
do.	Keren Kayemeth Leisrael Ltd.	In whole

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The plaintiff, who is the Mutawalli of the Waqf Qotb ed Din el Khudairi claims the lands of Khiyam el Walid to be of the Waqf Sahiha class and dedicated by his ancestor for the waqf which is reputed to have been created in the year 878 A.H. or more than 470 years ago.

He does not possess the waqfieh by which the land was dedicated but relies upon common knowledge as to the antiquity of the waqf and upon a judgment of the Sharia Court of Damascus dated 3 Muharram 1334 wherein certain facts and particulars are given concerning the tenure of the persons then in possession. The tenure was of the kind known as Mashad al Maska and the differences between the plaintiff and defendant resolve themselves into the question whether the holder of this right of Mashad al Maska has a registrable interest in land and to what extent the full title of the owner is affected. Secondary issues in this particular case concern the class of the land and the manner in which the right of mashad al maska devolves upon the heirs of the holder. 40

The plaintiff has other documents of a subsidiary nature to support his contention that mashad al maska is an incorporeal right of cultivation personal to the holder and is non-transferable, non-heritable and non-registrable and he also claims that as the defendants had purchased for value the title deed he now possesses in the full knowledge that the land was waqf, he has no remedy against the waqf because the kushan he purchased gives him no interest in the land.

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2. Before examining the claim of the plaintiff it is as well to state the defendant's claim. The defendant claims the land is of the ghairi sahiha class and that his kushan which describes the class of the land as ' Waqf Qotb ed Din el Khudairi—Mulhaq ' and states that it is registered in his name, gives him the ownership of the tassaruf of the land and it follows that the raqaba remains vested in the State. The Government of Palestine was invited to join in these proceedings, since the raqaba of the land was in question, but has not seen it necessary to intervene. The defendant claims he purchased a registrable, heritable and transferable interest and that the tenure of mashad al maska imposes on him the burden of paying a fixed annual rent which he has undertaken to pay, and that so long as that condition is fulfilled he is entitled to possession of the land and cannot be dispossessed.

3. Since these conflicting claims involved a question of waqf land a Kadi was appointed and sat with me as an assessor in accordance with section 11 (3) of the Land (Settlement of Title) Ordinance and has advised me on certain points of the law of waqf involved.

The defendant claimed that by Article 1630 of the Majalla there was no cause for action as the Mutawalli did not claim the land but only a right to receive payment and whether the right to enjoy the land could be passed to another. As no question of ownership was involved, the Settlement Officer had no jurisdiction. I found there was a cause for action since the plaintiff denied the defendant's claim to have a registrable interest in the land.

4. The defendant purchased his right to be the holder of the mashad al maska in the land in suit by a transfer registered in the Land Registry at Safad on the 14th of February, 1939, from some of the descendants of a former registered owner, one " 'Ali Bey Mahmud Buzo " who was registered as owner by virtue of a Daimi registration dated the 21st Shawwal 1307. After the death of 'Ali Bey some members of his family purporting to be the sole heirs of the mashad al maska completed a transaction of succession in 1921 and it is these persons who sold their interest to the defendant. Other members of the family of the late 'Ali Bey claim they were improperly excluded from the succession and as they have had no opportunity to prove their claim in these proceedings, this decision is given without prejudice to any claim they may establish in further proceedings to be set for hearing at a later date.

5. The registration in favour of 'Ali Bey was made in 1307 or 27 years before the judgment of the Sharia Court and as the registration is referred to by the Court it is of interest to examine the events leading to this registration, particularly as this examination discloses the true interest that 'Ali Bey acquired and which the defendant now holds.

The entry records the transfer (feragh) of the lands in suit from certain members of the Ricabi family for the sum of 10,000 Turkish piastres

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*continued.*

and the authority for this transfer is shewn by documents filed by the Mutawalli though not specifically referred to during the trial of the claims. His document (D1) is a copy of a power of attorney dated 1298 A.H. by which the attorney was authorized to transfer to 'Ali Bey Mahmud Buzo the right of tessaruf in accordance with the tabu deeds in the mashad al maska of the lands in suit. The second document (D2) is the report of the Majlis Idara dated 29 sefer 1304 recording the transfer of the rights and interests mentioned in the power of attorney and with instructions to issue a provisional kushan pending receipt of the final kushan from the Daftar Khani in accordance with Article 11 of the Law as to Title Deeds for 10 Waqfs 1293 A.H. The third document (D3) is a copy of the provisional kushan and the fourth (D4) is a copy of the final kushan and is the kushan of the Daimi registration of 21st Shawwal 1307 of which a true photostatic copy has been filed by the defendant.

6. These four connected documents shew the history of the transaction and reveal certain facts. The first document states clearly all the particulars of the interest to be transferred and shews that in 1298 A.H. the tessaruf in the mashad al maska was registered in accordance with tabu deeds.

The second document shews that the competent authority to consider the transfer was the Majlis Idara and no exception was taken to the 20 registration of the right in the Tabu. To the contrary, the Majlis instructed the tabu clerk to issue the provisional kushan which he did and the Daftar Khani sanctioned the issue of the final kushan and the transfer was recorded in the registers. Whatever may be the theories of the various schools of Moslem law, the fact is that since 1298 A.H. at the latest, the holder of the mashad al maska has been registered in the tabu and granted a kushan confirming his right.

7. I have now to consider the effect of the judgment of the Sharia Court dated 1334 and the admissions that 'Ali Bey was a lessee. I find there is no inconsistency between this admission and the claim of the 30 defendant to be the holder of the mashad al maska since at all times 'Ali Bey knew he was the holder of the right and was aware that one of the incidents of that tenure was the payment of an annual rent. There is evidence that the rent was paid from the time 'Ali Bey became registered until the judgment of the Sharia Court was given and during the three consecutive periods of three years mentioned in the judgment, and after the expiry of those nine years until 1939 when the defendant made his purchase. The admission of tenancy was not unqualified as the judgment declared that the mashad al maska of the leased property was in the mulk ownership and tessaruf of the lessees and the rent was fixed in the light of this statement. 40 Why did 'Ali Bey's successors appear before the Sharia Court at that particular time and apparently at no other time? The answer is contained in the judgment, for there was an overbidder and 'Ali Bey's successors appeared in order to rebut the contentions of this overbidder and to have their rent fixed for a number of years. The defendant claims that as the same amount was paid annually for 57 years, that the annual payment is fixed but there is no authority to support this assumption. The conclusion to be drawn from the judgment of the Sharia Court is to the contrary for had the rent been fixed, the Court would not have entertained the proposal of the overbidder and 'Ali Bey's successors would have also resisted any 50

attempt to deprive them of their possession on account of a better offer of rent being made if the rent had been one fixed and unalterable. Furthermore, the Court stated the rent fixed was for the period of the lease and the only inference to be drawn from the fact that both before and after the lease the same amount was paid annually is that both parties were satisfied with the assessment. I find that the four connected documents of the plaintiff and the true photostatic copy of the registration of 1307 and the judgment of the Sharia Court of Damascus contain sufficient evidence for me to give a decision on the point whether the defendant has a registrable interest in land. But before recording this decision, I have to decide the question whether the class is sahiha or ghairi sahiha.

*Before the  
Settlement  
Officer,  
Safad.*

No. 6.  
Decision of  
Settlement  
Officer,  
Safad Area,  
25th May  
1941,  
*continued.*

8. The plaintiff has no documentary proof that the land is waqf sahih. He has a number of opinions from officers of the Waqf Administration but these are no more than opinions and founded on no quoted authority. Though the antiquity of the waqf is not disputed, there is no evidence that the lands in suit were ever dedicated in waqf sahih either when the waqf was created or at any time since. I have examined every step in the various transactions connected with this land and in no one step do I find a clear indication that the land is either sahiha or ghairi sahiha for every transaction could, with equal probability, have been made in land of either class.

Assuming the class to be miri mevqufe and since the tithe and tassaruf are both dedicated, then by Article 4 of the Land Code the land was not subject to the provisions of the Code but later enactments have made it so. The earliest time there is indisputable proof that a tabu registration existed is in 1298 when the power of attorney was executed and by that time the scope of the civil law had been widened considerably in regard to waqf land by the enactments of the 4th Rajab 1292, 9th Rabi'ul Awal 1293 and the Instructions of the 6th Rajab 1292. These inroads on the privileges and functions of the Sharia Courts applied equally to waqf sahiha and nothing can be inferred from the mere act of registration as to the class of the land. If the mashad al maska had been improperly registered since it is a form of tassaruf that does not give the holder the full right of possession without the obligation to pay an annual rent the assumption is that the Ottoman authorities when faced with the difficulty of casting this tenure into a registrable form assimilated it to miri incidents as regards transfer but they were unable to state the annual rent. I am advised that title deeds bearing the words "Mashad al Maska" exist and my conclusion is that the holder of such a deed receives written evidence that his right of possession is dependent upon the conditions attached to this form of tenure.

It does not follow that because the title deed of the defendant does not bear these words that the mashad al maska had fallen into abeyance as there is evidence that 'Ali Bey and his successors admitted and acknowledged the existence of the tenure.

The lease executed before the Sharia Court of Damascus in 1334 is also inconclusive as it is my opinion that the matter before the Court was the fixing of the rent for the three consecutive periods of three years and to deciding upon the proposal made by the overbidder. The matter was one of rent and not of tenure and leases for three years are not a peculiarity of either waqf sahiha or waqf ghairi sahiha.

*Before the  
Settlement  
Officer,  
Safad.*

No. 6.  
Decision of  
Settlement  
Officer,  
Safad Area,  
25th May  
1941,  
*continued.*

As to mashad al maska. 'Ashub in his Kitab al Waqf states that the Hanbalite school holds the right is created by private custom in miri land alone, whilst the Hanafite school holds it can be created in both miri and waqf land. Ibn 'Abdin in his Rasail holds the same view and as it is the Hanafite school of moslem jurisprudence that prevails in this country, the authorities do not help to decide the point.

9. I have therefore to decide the question on the evidence before me which consists of the kushan of the defendant which has been shewn to be derived from the registration in favour of 'Ali Bey dated 1307 A.H. This earlier kushan states the land is waqf and also declares it to be ushurlie. The attempt to shew that 'Ushurlie means the land in 'Ushriya and therefore mulk is simply misleading and the only indication in the kushan as to the class of the land is the word " waqf." On the other hand, the defendant has not shewn the class is miri mevqufe and relies upon the statement contained in Article 4 of the Land Code that most of the land in the Ottoman Empire is miri mevqufe. 10

It is not without some doubt that I come to the decision that the word waqf in the kushan means the land is waqf and that of the sahiha class and miri mevqufe as had it been the latter the fact would have been so stated. 20

I therefore find the class of land is waqf sahih and that the defendant has a registrable and transferable right in mashad al maska but I do not find the annual rent is fixed but is one to be decided by agreement between the parties or by the competent court. On the question of inheritance, I decide the mashad al maska is inheritable but without prejudice to the third party to shew the rules of succession to be followed and that the succession is within the jurisdiction of the Settlement Officer to decide.

As both parties have succeeded in part in their claims I make no order as to costs or hearing fees.

Decision written this 25th day of May, 1941, at Haifa and delivered 30 in the presence of the Mutawalli of the Waqf Qotb ed Din el Khudairi, Ahmad Eff. Sheqeiri, Mr. A. Ben Shemesh, Mr. J. Nahmani, with usual notification re appeal.

(Sgd.) CECIL KENYON,

Settlement Officer,

Safad Settlement Area.

Haifa,

25.5.41.

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No. 7.

**ORDER by the Settlement Officer granting leave to appeal.**

Ref. No. 1/Kh. el Walid.

Settlement Officer,  
Safad Settlement Area,  
P.O. Box 395, Haifa.

25th June, 1941.

Sir,

10 With reference to your application dated 24th June, 1941, for  
leave to appeal from my decision in Case No. 1/Khiyam el Walid, delivered  
on 25.5.41, I have the honour to inform you that leave to appeal is hereby  
granted.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd.) CECIL KENYON,

Settlement Officer,

Safad Settlement Area.

20 H. C. Weston Sanders, Esq.,  
Advocate Haifa.

Copy to : M. Eliash, Esq.  
Advocate,  
Jerusalem.

*Before the  
Settlement  
Officer,  
Safad.*

No. 7.  
Order by  
the  
Settlement  
Officer  
granting  
leave to  
Appeal,  
25th June  
1941.

No. 8.

**NOTICE AND MEMORANDUM OF GROUNDS OF APPEAL.**

Civil Appeal No. 133/41.

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

Between

30 ZAKI BEY RICABI in his capacity as beneficiary and  
as Mutawalli of the Waqf Qotb ed Din el Khudairi

Appellant

and

THE KEREN KAYEMETH LEISRAEL LTD.

Respondent.

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

No. 8.  
Notice and  
Memoran-  
dum of  
Grounds of  
Appeal,  
9th July  
1941.

**NOTICE AND MEMORANDUM OF GROUNDS OF APPEAL.**

APPELLANT herein, being aggrieved by the Judgment of the Learned  
Land Settlement Officer, Safad, Settlement Area Case No. 1 Khiyam  
el Walid dated the 25th day of May, 1941, and having been granted leave  
to appeal against the said Judgment by notice served on the 16th June,  
40 1941, hereby gives notice of appeal against the said Judgment and appeals  
therefrom on the following grounds :—

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

No. 8.  
Notice and  
Memoran-  
dum of  
Grounds of  
Appeal,  
9th July  
1941,  
*continued.*

1. The Learned Settlement Officer erred in holding that the Respondent Company has any registerable interest in the land the subject matter of these proceedings or any interest whatsoever in the said land.

2. The Learned Settlement Officer erred in holding that the Respondent Company has or had the right of mashad al maska in the said lands or that the said right, if it exists at all, is capable of transfer by inheritance, sale or otherwise.

3. The Learned Settlement Officer should have held that the registration of the said lands in the name of the Respondent Company and of their predecessors in title is void and was obtained by fraud against the interests 10 of Appellants.

4. The Learned Settlement Officer erred in para. 8 of his said judgment in holding that any of the laws and regulations referred to therein have any application to the said lands and are any basis for the decision reached by him.

5. The Learned Settlement Officer should have set aside the Registration in the name of the Respondent Company in that it was effected without the knowledge of and in the absence of the Appellant and his predecessor in office.

6. The Learned Land Settlement Officer erred in refusing to admit 20 documents No. 2 and 6 in file 3 filed by Appellant.

7. The Learned Settlement Officer should have held that the Respondent Company has no rights whatsoever in the said lands, that the said lands were originally mulk and that the Waqf in question is beyond any doubt a Waqf Sahih, particularly as Government pays over any taxes upon the said lands to the Appellant.

WHEREFORE IT IS PRAYED that the Judgment of the Learned Settlement Officer may be set aside and that Judgment may be entered in favour of Appellant and that any registration in the name of the Respondent Company whatever its nature may be cancelled and that 30 Respondent be ordered to pay Appellant's costs both in this Court and before the Land Settlement Officer.

Appellant offers to make a deposit in Court in lieu of bond as security for costs and requisite application and notices are attached hereto.

Appellant will also ask leave to file certain documents to show that Appellant has certain rights in the land concerning taxes which Appellant received from Government and which do not concern the Respondent Company.

(Sgd.) WESTON SANDERS,

Advocate for Appellant. 40

Haifa 9th July, 1941.

THIS Notice and Memorandum of Grounds of Appeal was filed by H. C. Weston Sanders advocate for Appellant whose address for service is Newton Place, 8 Stanton Street, Haifa.

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No. 9.

## NOTICE AND GROUNDS OF APPEAL.

Civil Appeal No. 136/41.

July 11th, 1941.

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

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

No. 9.  
Notice and  
Grounds of  
Appeal,  
11th July  
1941.

10 KEREN KAYEMETH LEISRAEL LTD. represented  
by Messrs. M. ELIASH, A. BEN-SHEMESH, M. KEHATY  
and I. OLSHAN, Advocates, Assicurazioni Generali  
Building, Princess Mary Avenue, Jerusalem, where  
service will be accepted

Appellant

V.

ZAKI BEY ER RICABI in his capacity as beneficiary and  
as Mutawalli of the Waqf Qotb ed Din el Khudairi Respondent.

Civil Appeal No. 136 of 1941.

## NOTICE AND GROUNDS OF APPEAL.

20 This is an appeal from the decision of the Settlement Officer in  
Case No. 1/Khiyam el Walid delivered on the 25th May, 1941, pursuant  
to the Leave to Appeal granted by the Settlement Officer on 16.6.41, as  
is evidenced by his attached letter.

2 certified copies of the said judgment are attached hereto, one to  
be retained by this Honourable Court and the other to be served on the  
Respondent together with a copy of the notice of appeal and annexures.

An application to fix an amount to be paid into Court as deposit in  
lieu of guarantee is also attached.

The following grounds of appeal are respectfully urged :—

30 1. The learned Settlement Officer erred in his conclusion that the  
Waqf in question was of the Waqf Sahih category. Such evidence as  
there was before him pointed to the conclusion that the Waqf in question  
was of the Waqf ghair sahih category, i.e. a Tahsisat Waqf of which the  
taxes and other Government imposts were created Waqf by the Sultan.  
There was no evidence to show that the land was ever of the Mulk category,  
or that it was ever created a Waqf Sahih, and in the absence of such  
evidence the learned Settlement Officer should not have come to the  
conclusion to which he did come.

40 2. The archaic tenure of mashad el maska, entirely unknown in  
Palestine, is not only fully consonant with a Tahsisat Waqf of Miri land,  
but is made to apply by the Hanbali School of Moslem Law to Miri land  
only. There was evidence before the Settlement Officer that a Hanbali  
Qadi dealt with this tenure, which is a further indication that the land is of  
Tahsisat Waqf.

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

3. In the absence of a Waqfieh or any other written evidence to show that the land was Waqf Sahih, as pointed out at the beginning of paragraph 8 of the Decision, the Settlement Officer should have resolved the doubt to which he refers in paragraph 9 of the Decision in favour of the majority class of Waqf land in Palestine, namely a Tahsisat Waqf of Miri land.

No. 9.  
Notice and  
Grounds of  
Appeal,  
11th July  
1941,  
*continued.*

4. The learned Settlement Officer further erred in holding that the so-called rent which was payable to the Syrian Treasury was anything else but a fixed annual payment, in accordance with the usual Waqf practice, and in construing the introduction of an overbidder in the Waqf lease as anything more than the ordinary legal fiction in Sharia Waqf procedure, which requires the introduction of an element of withdrawal into a Waqf Deed, to be refuted by the Qadi for the purpose of further strengthening the value of the Deed.

5. Further more, the question as to whether the rent payable was a fixed annual payment or true rent which may be varied by the lessor at his own will, was not within the jurisdiction of the learned Settlement Officer, and ought to have been left for the decision of a competent Court if and when a claim for the variation of the rent will be brought.

Wherefore it is prayed that the Decision of the Settlement Officer may be varied to the extent of holding that the land in question is an untrue Waqf, and that the rent thereon is a fixed annual rent, or alternatively that the question of the nature of the rent was not within the jurisdiction of the learned Settlement Officer.

(Sgd) M. ELIASH

*Attorney for Appellant.*

No. 10.  
Notice of  
Motion by  
the  
Appellant,  
Keren  
Kayemeth  
Leisrael  
Ltd., for  
leave to  
produce  
two  
documents,  
30th  
October  
1941.

No. 10.

**NOTICE OF MOTION by the Appellant (Keren Kayemeth Leisrael Ltd.) for leave to produce two documents.**

October 30th, 1941.

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

30

Civil Appeals Nos. 133/41 and 136/41.

Between :

**KEREN KAYEMETH LEISRAEL LTD.**, represented by  
Messrs. M. ELIASH, M. KEHATY and I. OLSHAN,  
Advocates of Jerusalem Appellant and Respondent

**ZAKI BEY RICABI** in his capacity as beneficiary and  
as Mutawalli of the Waqf of Qotb ed Din el Khudairi,  
represented by H. C. WESTON SANDERS, Advocate of  
Haifa Respondent and Appellant

40

The said Appellants in Civil Appeal No. 136/41, who are Respondents in Civil Appeal No. 133/41, succeeded in discovering two documents which

have full bearing on the issue as to whether the land in dispute is miri mavqufe, i.e. Waqf Ghair Sahih, or is Waqf Sahih.

These documents are :—

a. An original copy of the proceedings of a Turkish Commission of enquiry into the registration of the land in question, together with the conclusions of that Commission.

b. An official budget of the Imperial Awqaf Ministry for the year 1327, which contains entries concerning the land in question.

The original documents with translations in English are submitted herewith, and copies are being served on the Respondent in case No. 136/41, who is also the Appellant in Case No. 133/41, and it is prayed that this Honourable Court may allow these documents to be produced, pursuant to Rule 344 (1) (b) of the Civil Procedure Rules, 1938.

(Sgd.) M. ELIASH

*Attorney for Appellant in case No. 136/41, and Respondent in case No. 133/41.*

*In the Supreme Court sitting as a Court of Appeal.*

No. 10.  
Notice of Motion by the Appellant, Keren Kayemeth Leisrael Ltd., for leave to produce two documents, 30th October 1941, continued.

No. 11.

JUDGMENT in Civil Appeals Nos. 133/41 and 136/41.

20

CIVIL APPEAL NO 133 OF 1941.  
CIVIL APPEAL NO. 136 OF 1941.

IN THE SUPREME COURT

Sitting as a Court of Civil Appeal.

Before : Mr. Justice ROSE and Mr. Justice EDWARDS.

IN THE APPEAL OF :

*Civil Appeal 133/41*

ZAKI BEY RICABI, in his capacity as beneficiary and as Mutawalli of the Waqf of Qotb ed Din el Khudairi

Appellant

30

v.

THE KEREN KAYEMETH LEISRAEL LTD. Respondent.

*Civil Appeal 136/41.*

THE KEREN KAYEMETH LEISRAEL LTD. Appellant

v.

ZAKI BEY RICABI, in his capacity as beneficiary and as Mutawalli of the Waqf of Qotb ed Din el Khudairi - Respondent.

Appeals from the Decision of the Land Settlement Officer, Safad Settlement Area, dated the 25th May, 1941, in Case No. 1/Khiyam el Walid.

40

*Civil Appeal 133/41.*

For Appellant : Mr. W. Sanders.

For Respondent : Dr. Eliash & Mr. Ben Shemesh.

*Civil Appeal 136/41.*

For Appellant : Dr. Eliash & Mr. Ben Shemesh.

For Respondent : Mr. W. Sanders.

No. 11.  
Judgment, Civil Appeals Nos. 133/41 and 136/41, 24th February 1942.

## JUDGMENT.

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

No. 11.  
Judgment,  
Civil  
Appeals  
Nos. 133/41  
and 136/41,  
24th  
February  
1942,  
*continued.*

EDWARDS J. : These are an appeal and a cross-appeal from a decision of the Land Settlement Officer, Safad Settlement Area (Mr. Kenyon), whereby he found that certain lands known as Khiyam el Walid, which were purchased by the respondents, the Keren Kayemeth Leisrael Ltd., on 14th February, 1939, were of the class of land known as " waqf Sahih " and that the respondents had a registrable and transferable right in " mashad el maska." The facts are fully set out in paragraphs 4 and 5 of the careful and comprehensive decision of the L.S.O., and there is no need for us to repeat them in this judgment. 10

The appellant, in his capacity as beneficiary and also as Mutawalli of the Waqf Qotb ed Din el Khudairi, now appeals against the decision of the L.S.O. and there is also a cross-appeal by the respondents. The main contention of the appellant is that the waqf is a true waqf and that, accordingly, all the transactions whereby the respondents acquired title were illegal and that, at most, the respondents acquired only a rather vague right of " mashad al maska " that is, a right which may be enforced by the Sharia Court but which is not registrable, not being a right known to the Land Law of Palestine. The appellant's advocate (Mr. Weston Sanders) says that this right of " mashad al maska " is a 20 vague sort of leasehold right and asks that respondent's title deed as registered in the Land Registry be cancelled because of fraud and abuse of office and as being contrary to law. The contention of Dr. Eliash (advocate for the respondent) is that the Land Settlement Officer was correct in holding that the respondents had a valid registrable title but that he was wrong in holding that Waqf was a true Waqf (Waqf Sahih) and that he should have held that the waqf in question was of the Waqf Ghair Sahih category, i.e. a Tahsisat Waqf (see Messrs. Goadby and Doukhan's " Land Law of Palestine," pages 75 and 76). Dr. Eliash also contends that the archaic tenure of mashad el maska, which (he argues) 30 is entirely unknown in Palestine, is not only fully consonant with a tahsisat waqf of miri land but is made to apply by the Hanbali School of Moslem Law to miri land only. He also contends that there was evidence before the Settlement Officer that a Hanbali Qadi had dealt with this tenure, this being a further indication that the land is Tahsisat Waqf. The argument proceeds that, in the absence of a waqfieh or any other written evidence to show that the land was Waqf Sahih, the S.O. should have resolved the doubt to which he refers in paragraph 9 of his decision in favour of the majority class of waqf land in Palestine, namely, a Tahsisat Waqf of Miri land. Dr. Eliash further complains that the L.S.O. erred 40 in holding that the so-called rent, which was payable to the Syrian Treasury, was anything other than a fixed annual payment in accordance with the usual waqf practice and that he also erred in construing the introduction of an overbidder in the waqf lease as anything more than the ordinary legal fiction in Sharia Waqf procedure which requires the introduction of an element of withdrawal into a waqf deed to be refuted by the Qadi for the purpose of a further strengthening of the value of the deed. Dr. Eliash, therefore, asks this Court to vary the decision of the L.S.O. to the extent of holding that the land in question is an untrue waqf and that the rent thereon is a fixed annual rent, or, alternatively, that the question of the 50 rent was not within the jurisdiction of the L.S.O. This Court sat for two whole days hearing exhaustive and learned arguments by both

Mr. Weston Sanders and Dr. Eliash in support of those main contentions which I have just set out. Nevertheless, I feel that the points falling for decision are capable of being set out very briefly. The main point is whether the L.S.O. was correct in holding that the respondents had acquired a registrable title. If he was wrong, then the matter would at once seem to be concluded in favour of the present appellants. I, however, consider that he was correct for the following reasons, viz. : all the evidence goes to show that the family of Ricabis, i.e. the predecessors in title of the person from whom the respondents purchased the land, were the

10 owners of Mewqafa land which they sold to the Buzo family. The Ricabis, in addition to being the owners of the land as individuals, were also administrators of charitable funds which they received from the Treasury. The mere fact that this family were administrators of those charitable funds did not alter the fact that they, as individuals, owned the land. In support of this statement I quote from Messrs. Goadby and Doukhan's book at page 76—

“It (i.e. an untrue waqf or ghair sahiha waqf) is merely a dedication of the interests which the State has in the produce of the land and in the fees arising therefrom.”

20 At the hearing of this appeal we allowed Dr. Eliash to produce an original copy of the Minutes (Record) of proceedings of a Turkish Commission of Enquiry into the registration of the land in question together with the conclusions of that Commission and also a copy of the official budget of the Imperial Awqaf Ministry for the year 1327 (Fiscal Year) which contains entries concerning the land in question. This we allowed by virtue of the provisions of Rule 341 (1) (b) Civil Procedure Rules 1938. A perusal of the former clearly reveals that the Ricabi family were the original owners and used annually to pay to the Finance Office tithe and werko amounting to 188 piastres and that then these lands were transferred

30 to Mahmoud Bey Buzo who later transferred them to his son, Ali Bey. The subsequent history of the transaction, so far as the respondents' title is concerned, is fully set out in paragraphs 4 and 5 of the L.S.O.'s decision. From the whole history of this land and from a perusal of all the documents produced I am satisfied that the L.S.O. was correct in holding that the respondents had a registrable interest in the land and I generally agree with his conclusions as set out at the end of paragraph 7 of his decision. I am, however, of opinion that he erred in concluding that the waqf was of the waqf sahiha category. As he himself pointed out in the first sentence of para. 8 of his decision, the appellant had no documentary proof that the

40 land was waqf sahiha. According to Messrs. Goadby and Doukhan (see page 75 of their “Land Law of Palestine”)—“The only true waqf (Waqf Sahiha) is that land which, at the time of dedication was the mulk of the dedicator.” Now, there is no evidence at all as to the dedication, and it follows therefore none as to the time of dedication.

The main argument advanced on behalf of the appellant at the hearing of the appeal was that the four members of the Ricabi family were Mutawallis of the Waqf and that they improperly disposed of the waqf interest. There is, however, no evidence of the establishment of a waqf as a true waqf and it is therefore impossible for us to hold that the waqf

50 was a true waqf—still less to hold that anything that the Ricabi family did was unlawful.

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

— — —  
No. 11.  
Judgment  
Civil  
Appeals  
Nos. 133/41  
and 136/41,  
24th  
February  
1942,  
*continued.*

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

No. 11.  
Judgment,  
Civil  
Appeals  
Nos. 133/41  
and 136/41,  
24th  
February  
1942,  
*continued.*

The main grounds (beyond those which I have already stated) on which I incline to the view that the waqf is not waqf sahiha are the following, namely :—

(i) There is no evidence of creation or of dedication. In this connection I agree with the L.S.O.'s reasoning as set out in para. 8 of his decision. I do not ignore the effect of the decision of this Court in C.A. 107 and 108 of 1941 P.L.R. Vol. 8, August and September 1941 page 402. In that case this Court found present all the incidents of a waqf sahih extending over a very long period. The facts in this case, however, are different. 10

(ii) The conclusions reached on 15th August, 1303, by the Acting Kaimakam of Kuneitra, the Mudir el Mahl, the Chief Secretary and the Tabu Registrar, as a result of the enquiry held by them on 17th August, 1302, and subsequent days (Financial Year (1302)) which conclusions were that the "said lands were owned and cultivated by the Ricabi family without any dispute from olden times and they used to pay the yearly taxes in the amount of 188 piastres and also the tithes. And during the last 15 years Ali Bey, the son of Mahmoud Bey, pays werko and tahmiss and the tithe every year to the Finance Office and it is in his ownership without any dispute. This was established. It follows, therefore, that according to Section 78 of the Royal Land Law (Land Code) and the instructions as to the issue of Tabu Deeds Section 8 ownership under 'Haq Karar' was proved in the most satisfactory manner and the Tabu Deed issued to the said owner will remain valid." All this is consistent with the waqf being Takhsisat when one remembers that the word "Mequfe" appears in the excerpt of the Budget of the Imperial Awqaf Ministry for the year 1327 (see the citation from the law of 6 Rejeb, 1292, at p. 79, of Messrs. Goadby & Doukhan's book). 20 30

(iii) The fact that the Ricabi family used from olden times to pay 188 piastres every year as werko (see report of 13 Tamuz, 1303, from the head of the Finance Office, Kuneitra Sub-district).

(iv) All the facts, coupled with the mention of the word "Mequfe" tend to show that the land was an untrue waqf such as is described in the last eight lines of page 8 of Messrs. Goadby and Doukhan's "Land Law of Palestine," and the first eight lines of page 9.

(v) It seems clear that there was never a dedication of the "Tessaruf" itself (see line 9 of page 9 of Messrs. Goadby & Doukhan). 40 The exhibit D/1 gave authority for the Tessaruf to be transferred to Ali Bey Mahmoud Buzo.

(vi) In Omar Hilmi's "Law of Evqaf" (translation of Messrs. Tyser & Demetriades, 2nd Edition, Cyprus 1922, p. 115) we find in the example to Article 468, "If the ownership of the possessor is based on a ground regarded in law as a means of acquiring ownership, such as purchase gift and inheritance, then hearsay evidence about the original dedication is not admissible, but the proof of the judicial sanction (tesjil waqf) is required, and, in respect of that, hearsay evidence is not admissible." The ownership of the possessor 50

in the present case is clearly based on purchase. Now it was advanced on behalf of the Respondent that it was common knowledge that the waqf was of great antiquity. This seems scarcely sufficient to prove that it was a true waqf.

(vii) In Civil Appeal 84/38 (Palestine Law Reports 1938, p. 356) this Court held that there was no evidence that the Appellant, a registered owner, knew that the property in question was waqf and this Court consequently held, following Land Appeal 173/26 (Vol. I, P.L.R., p. 269) in favour of the Appellant. That case, although not on all fours with the present case, has one similar feature in that, in the present case, no knowledge that the waqf was a true waqf could be imputed to the present Respondents.

(viii) Mr. Weston Sanders says that the category of the land is set out in exhibits D/3 and D/4. An examination of exhibit D/4, however, merely shows that the category is "Waqf Sidau Qotb Eddin el Khudairi," i.e. waqf in favour of one Qotb Eddin el Khudairi; but does not mention what kind of waqf.

(ix) Mr. Weston Sanders cited Civil Appeal 70/39 (P.L.R., Vol. 6, July, 1939, p. 397) as being in his favour. That case, however, is no authority on the question of what amount of proof is necessary, in the absence of a waqfieh, to determine whether a waqf is true as distinct from untrue waqf.

(x) Had it been a true waqf, the Administrative Authorities would never have reached the conclusions set out in their decision of 15th August, 1303, because the effect of a true waqf or dedication is to render the land inalienable (Goadby & Doukhan, p. 71).

For all the foregoing reasons I am of the opinion that the contention of Dr. Eliash that the land is of the category known as Takhsisat Waqf is sound. As regards the question of the nature of the rent, I hold that this was not within the jurisdiction of the Land Settlement Officer.

The appeal will therefore be dismissed and the cross-appeal allowed to the extent that the decision of the Land Settlement Officer be varied by declaring that the land is of the category known as "Takhsisat Waqf" and by declaring also that the question of the nature of the rent is not within the jurisdiction of the Land Settlement Officer.

The Appellant will pay to the Respondents the costs of this appeal to be taxed on the lower scale to include an advocate's attendance fee of LP.15, no costs of the cross appeal.

Delivered this 24th day of February, 1942.

(Sgd.) D. EDWARDS,

British Puisne Judge.

I concur. (Sgd.) ALAN ROSE,

British Puisne Judge.

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

—  
No. 11.  
Judgment,  
Civil  
Appeals  
Nos. 133/41  
and 136/41,  
24th  
February  
1942,  
*continued.*

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*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

No. 12.

**APPLICATION for Leave to Appeal to His Majesty in Council.**

(Translation from Arabic.)

**IN THE SUPREME COURT**

Sitting as a Court of Civil Appeal.

Civil Appeal No. 133/41 (Consolidated).

ABDALLAH MUKHLES, Mudir el Awqaf el Aam,  
and as acting Mutawalli of the Waqf of Qotb ed  
Din el Khudairi, represented by Advocate AWNI  
ABDULHADI, Jerusalem -

Applicant 10

and

KEREN KAYEMETH LEISRAEL LIMITED,  
represented by Advocate Mr. ELIASH

Respondent.

Civil Appeal No. 136/41 (Consolidated).

KEREN KAYEMETH LEISRAEL LIMITED

Appellant

and

ABDALLAH MUKHLES, Mudir el Awqaf el Aam,  
and as acting Mutawalli of the Waqf of Qotb ed  
Din el Khudairi -

Respondent.

Application under Article 3 of the Palestine (Appeal to the Privy 20  
Council) Order in Council, 1924.

1. On the 24th February, 1942, the Supreme Court sitting as a Court  
of Civil Appeal delivered a judgment in C.A. 133/41 and in the counter-  
appeal No. 136/41, whereby Appellant's appeal was dismissed and the  
counter-appeal allowed.

2. The value of the land in dispute exceeds LP.500.-.

3. Applicant is lodging this application for leave to appeal within  
the prescribed period, and submits a copy thereof for service on the  
Respondent pursuant to Article 5 of the said Order in Council.

4. Applicant is prepared to file the guarantee which the Court orders 30  
to be produced, within the period to be fixed, and pay all the costs which  
may be ordered in favour of the Respondent.

Applicant is further prepared to comply with all the conditions which  
the Court may lay down in connection with the preparation of the record  
and the despatch thereof to England.

(Sgd.) AWNI ABDULHADI,

Counsel for Applicant.

25.3.42.

No. 13.

APPLICATION for the substitution of Abdallah Eff. Mukhles for Zaki Bey er Ricabi.

Civil Appeal No. 133/41.

IN THE SUPREME COURT

Sitting as a Court of Civil Appeal.

AWNI ABDULHADI, Advocate, Attorney for  
Abdallah Mukhles, acting Mutawalli of the Waqf  
of Qotb ed Din el Khudairi - - - Applicant

and

10 KEREN KAYEMETH LEISRAEL LTD., repre-  
sented by Advocate Mr. ELIASH Respondent.

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

No. 13.  
Application  
for the  
substitution  
of  
Abdallah  
Eff.  
Mukhles for  
Zaki Bey  
er Ricabi,  
26th  
March  
1942.

The judgment which we are appealing from to the Privy Council was given against Zaki Bay er Ricabi in his capacity as beneficiary and as Mutawalli of the Waqf of Qotb ed Din el Khudairi.

The Sharia Court of Jerusalem have elected and appointed Abdallah Eff. Mukhles, Mudir el Awqaf el Islamiah el Aam in Palestine as acting Mutawalli of the Waqf of Qotb ed Din el Khudairi, and authorised him to carry on the legal proceedings in order to safeguard the interests of the said Waqf.

20 I therefore apply that the name of Abdallah Mukhles be cited in substitution for the said Zaki Bey er Ricabi in his capacity as acting Mutawalli of the Waqf of Qotb ed Din el Khudairi.

I enclose herewith a copy of the Sharia Court decision as regards this substitution.

(Sgd.) AWNI ABDULHADI,  
Applicant.

(Sgd.) ABDALLAH MUKHLES,  
Mudir el Awqaf el Aam in his  
capacity as Acting Mutawalli of  
Waqf of Qotb ed Din el Khudairi.

30 26th March, 1942.

No. 14.

**ORDER** confirming the substitution of Zaki Bey Ricabi by Abdallah Eff. Mukhles and granting Provisional Leave to Appeal to the Privy Council from the Judgment of the Supreme Court sitting as a Court of Civil Appeal in Civil Appeals 133/41 and 136/41.

P.C.L.A. No. 3/42.

*In the Supreme Court sitting as a Court of Appeal.*

IN THE SUPREME COURT.

Sitting as a Court of Civil Appeal.

Before : Mr. Justice COPLAND and Mr. Justice ROSE.

No. 14.  
Order confirming the substitution of Zaki Bey Ricabi by Abdallah Eff. Mukhles and granting provisional leave to appeal to the Privy Council from the judgment of the Supreme Court sitting as a Court of Civil Appeal in Civil Appeals 133/41 and 136/41, 20th April 1942.

In the Application of :

ZAKI BEY RICABI in his capacity as beneficiary and as Mutawalli of the Waqf Qotb ed Din el Khudairi 10  
Applicant

v.

KAREN KAYEMETH LEISRAEL LTD. Respondent.

Application for leave to appeal to the Privy Council from the judgment of the Supreme Court sitting as a Court of Civil Appeal in Civil Appeals 133/41 and 136/41.

For Applicant : No appearance—served.

For Respondent : Mr. M. Eliash.

And in the Application of :

ABDALLAH MUKHLES as acting Mutawalli of Waqf Qotb ed Din el Khudairi 20  
Applicant

v.

KEREN KAYEMETH LEISRAEL LTD. Respondent.

Application for the substitution of the applicant for Zaki Bey Ricabi in his capacity as beneficiary and as Mutawalli of the Waqf of Qotb ed Din el Khudairi, and for leave to appeal to the Privy Council from the judgment of the Supreme Court sitting as a Court of Civil Appeal in Civil Appeals 133/41 and 136/41.

For Applicant : Awni Bey Abdulhadi. 30

For Respondent : Mr. M. Eliash.

**ORDER.**

Mr. H. C. Weston Sanders, advocate, who filed an application for leave to appeal to His Majesty in Council on behalf of Zaki Bey Ricabi, in his capacity as beneficiary and Mutawalli of the Waqf of Qotb ed Din el Khudairi, was summoned to appear before this Court to-day but failed to do so and the Court therefore orders that his application for leave to appeal be struck out.

Awni Bey Abdulhadi filed an application requesting the substitution of Abdallah Eff. Mukhles, Kaim Makam Mutawalli of Waqf Qotb ed Din el 40

Khudairi, for Zaki Bey Ricabi and he further applied for leave to appeal to His Majesty in Council from the judgment of this Court given in Civil Appeals Nos. 133 and 136 of 1941.

After hearing the parties, we order that Abdallah Eff. Mukhles, Kaim Makam Mutawalli of Waqf Qotb ed Dib el Khudairi, be substituted for Zaki Bey Ricabi, and we further order that leave to appeal to His Majesty in Council be granted subject to the following conditions :—

*In the Supreme Court sitting as a Court of Appeal.*

No. 14.  
Order

confirming the substitution of Zaki Bey Ricabi by Abdallah Eff. Mukhles and

granting provisional leave to appeal to the Privy Council from the judgment of the Supreme Court sitting as a Court of Civil Appeal in Civil Appeals 133/41 and 136/41, 20th April 1942, *continued.*

No. 15.  
Order granting final leave to appeal, 9th June 1942.

10

(i) That the appellant do enter, within six weeks of the date of this order into a bank guarantee either unlimited in time or for a period of not less than three years from Barclays Bank, Ottoman Bank, or the Anglo-Palestine Bank, in the sum of LP.300 for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent 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 appellant to pay the respondent's costs of the appeal (as the case may be).

20

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

Upon fulfilling the above conditions, the applicant may apply to this Court, after giving due notice to the respondent, for final leave to appeal.

Given this 20th day of April, 1942.

(Sgd.) ALAN ROSE,

(Sgd.) R. COPLAND,

British Puisne Judge.

British Puisne Judge.

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No. 15.

ORDER granting Final Leave to Appeal.

Privy Council Leave Application No. 3/42.

30

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

Before : THE CHIEF JUSTICE and Mr. Justice FRUMKIN.

In the Application of :

ABDALLAH MUKHLES as acting Mutawalli of  
Waqf Qotb ed Din el Khudairi

Applicant

v.

KEREN KAYEMETH LEISRAEL LTD - Respondent.

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 in Civil Appeals Nos. 133/41 and 136/41.

40

For Applicant : 'Awni Bey Abdulhadi.

For Respondent : Mr. M. Eliash.

## ORDER.

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

No. 15.  
Order  
granting  
final leave  
to appeal,  
9th June  
1942,  
*continued.*

WHEREAS by order of this Court dated the 20th April, 1942, the Petitioner was granted conditional leave to appeal to His Majesty in Council, subject to the following conditions :—

(i) That the appellant do enter, within six weeks of the date of this order into a bank guarantee either unlimited in time or for a period of not less than three years from Barclays Bank, Ottoman Bank, or the Anglo-Palestine Bank, in the sum of LP.300 for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appellant 10 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 appellant to pay the respondent's costs of the appeal (as the case may be) ;

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

AND WHEREAS the Petitioner has fulfilled the said conditions, in that he has filed a guarantee bond for the sum of LP.300, as prescribed, and has filed a list of the documents which should constitute the file to be 20 dispatched to England.

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

Given this 9th day of June, 1942.

(Sgd.) F. GORDON SMITH,  
Chief Justice.

(Sgd.) G. FRUMKIN,  
Puisne Judge. 30

No. 16.

No. 16.

**LETTER OF GUARANTEE** given by Barclays Bank (D.C. & O.), Jerusalem,  
30th May, 1942.

(Not printed.)

## EXHIBITS.

No. 6.

POWER OF ATTORNEY made before the Sharia Court (Damascus).

## THE SHARIA COURT OF DAMASCUS.

It was stated in page 32 of the first register which belongs to the time of Musa Kadhim Eff., the Governor of Damascus the following:—

On 13 Jamad el Awal, 1298, before the Deputy Governor who stands a witness to Murad Agha Ibn Suleiman Agha Ricab, and the two brothers Abdallah Eff. and Salih Eff., son of late Ahmad Agha Ricab, the first on his own behalf and the second on his own behalf and as legal attorney for his brother Mahmoud Eff., who appointed him before the date of this meeting to act on his own behalf as specified therein and was given a general power wherein he was authorized to appoint attorneys on his behalf those whom he chooses and whilst being mentally fit voluntarily and without undue influence or force and whilst being fully and legally capable, they appointed and placed on their own behalf Ahmad Agha Ibn Mohd. Tibeh el Kurdi who is present with them on this date at the meeting to transfer their rights of possession by virtue of Tabu Documents therein situated in the Kula lands of Quneitra sub-district, known as Mazra't Khiyam Walid, containing plain and stony lands, far and near, summer and winter resorts and a house fit for living which are bounded: S.—Lands of Wadi Ain Qamran and El Muftakhara lands, E.—El 'Asfiat and Wadi Gharabi, N.—El Hula Lake, known as El-Kabish, W.—El Muftakhara lands. All their rights in the said property to be transferred for equivalent value to the son of Mahmoud Bey Ibn Ahmad Pasha Buzo, who is Ali Bey the minor and who is under the guardianship of his father Ahmad Bey Buzo. This is a lawful and unrestricted power of attorney duly accepted by him. It is duly accepted and executed in presence of witnesses whose signatures appear below. This was recorded in folio 133 as it appears from the register.

Stamps

17.2.1940.

True Copy

(Sgd.) Illegible

This was copied on the application of Zaki el Ricabi and was extracted from the record.

Stamps of the Sharia Court of Damascus.

(Sgd.) Illegible.

The signature and seal affixed above are those of the Sharia Court, and the signature of the Acting Kadi Ahmad Abdu Ed'im.

40 4.4.1940.

(Seal and Signature)

Ministry of Justice

Syrian Government.

*Exhibits.*

No. 6.  
Power of  
Attorney  
made  
before the  
Sharia  
Court  
(Damascus)  
13 Jamad  
el Awal,  
1298

*Exhibits.*

No. 8.  
 Turkish  
 Certificate  
 of Registra-  
 tion,  
 Daimi,  
 May 1303.

No. 8.

**TURKISH CERTIFICATE OF REGISTRATION.**

Seal of the President of Council  
 of Ministers.  
 Republic of Syria

Daftar Khakani

Daimi, May 1303.

Temporary Receipt in respect of Waqf.

District :—Horan.

Sub-District : Quneitra.

10

Village : Farm of Khiyam Waldi.

Waqf :—Sidna Qotb Ed Din el Khudairi.

Kind of land :—Tarla.

Boundaries :—South :—Wadi Ein Kamran, supplemented by the  
 lands of Gharaba.

North :—Lands of Muftakhira, and water course of  
 Sheikh Salman.

East :—Lands of El Afsian and Wadi Gharaba.

West :—Forest of Huleh Lake.

Dunums :—4000.

20

Nature of Transaction :—Mazbata given to the Majlis Idara of the  
 District dated 13 November, 302, No. 11.

Possessor :—Ali Bey Ibn Mahmud Bey Buzo—Ottoman subject.

Subject of Tithes :—Land subject to tithes.

Transfer :—Ottoman subject Murad Agha, Abdallah, Saleh and  
 Mahmud sons of Suleiman Agha.

Value of Transfer :—100 Turkish Pounds.

Registered in the Daftar Khakani, 1st day of Ramdan, 304, 129, in the  
 name of Ali Bey Ibn Muhammad Bey Buzo.

Signatures. 30

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**PROCEEDINGS AND CONCLUSIONS of Turkish Commission of Enquiry.**

No. 17 (a).  
 Proceedings  
 and  
 Conclusions  
 of Turkish  
 Commission  
 of  
 Enquiry,  
 15th  
 August  
 1303.

Page 1. By a cable dated the 17th of August, 1302 sent by the Registrar of the Tabu of the district to the Registrar of the Tabu of the Quneitra sub-district it was ordered not to register the lands of Khiyam Walid village until further order. The Registrar of the Tabu who succeeded the Registrar of the Tabu of Quneitra sub-district, however, declares that certificates of registration should be issued to Mahmoud Bey or to his sons and that should these lands be sold by public auction at the price prevailing  
 10 today they would realize not less than 20 to 30 thousand piastres. The said letter was passed to the Mutassaref and by a cable which has been received it was ordered that nothing should be done and that no certificate of registration should be issued either in the name of Mahmoud Bey or in the name of any one else of the inhabitants before a clear reply is received from the Villayet. The cable is dated the 28th of May 1303 and signed by the Muhasibgi (Accountant) Abdel Rahman Eff. Information was also received that the Khiyam Walid lands are Mahlul and an enquiry is being held and hence no certificates of registration should be issued in the names  
 20 of the sons of Mahmoud Bey Buzo the former Kaimkam of Quneitra and the registration and certificates issued by the acting Registrar of the Tabu of the Quneitra sub-district should be cancelled and he should be examined and the degree of his responsibility established. According to the order given on the 15th Huzeiran 303 under No. 120 by the Mutassaref, member of Parliament for the Hauran, Muhammad Raouf Eff., and according to the order of the Villayet of the 27th Huzeiran 303 under No. 348 we started the following enquiries.

On the 3rd of Tamuz 303 the former Registrar of the Tabu Khalil Eff. Yasagi was brought before us and questioned as follows :—

Q. Your name and occupation, age, nationality, place of abode ?

30 A. Khalil Ibn Youssef Ibn As'ad el Yasagi, Ottoman subject, aged 40, residing at present in Quneitra.

Q. Did you make a statement to the effect that Khiyam Walid was Mahlul ?

A. Yes. I made such a statement. 3rd Tamuz 303.

Q. On the basis of your statement these orders have been issued. Do peruse them and let us know in detail how did you arrive at the conclusion that the lands were Mahlul ?

40 A. After the perusal of the said orders in the matter of Khiyam Walid being Mahlul which are based on my statement and in accordance with your request for details, I do say that I made my statement since I did not find any registration in the Tabu Registers of the sub-district in question and basing myself on this I made my statement to the effect that the said lands were mahlul. 3rd Tamuz 303.

Q. On what date and to whom did you make your statement ? and do you have any other authority for it apart from the absence of a registration in the Tabu Registers of the sub-district ?

A. I made my statement in May 303. A copy thereof was sent to the Mutassaref and another to the Director of Land Registration of the Villayet. Since there is no registration in the Tabu Registers of the sub-district I

*Exhibits.*  
 No. 17 (a).  
 Proceedings  
 and  
 Conclusions  
 of Turkish  
 Commission  
 of Enquiry,  
 15th  
 August  
 1303,  
*continued.*

thought the said village to be Mahlul and this is my authority and I have no other. And if you deem it proper it is worth while to look up the Werko Books. 3rd Tamuz 303.

Q. You have to prove to us that the lands were Mahlul and to give us your proofs in support thereof.

A. I made a statement basing myself on the absence of any registration as I said already, my duty is only to notify, but it is not my duty to prove anything and this matter of the miri rights and the enquiry are in the province of the Mejles Idara and I have no other proofs. 3rd Tamuz 303.

Page 2. Continuation of the examination of the former Registrar of 10 the Tabu Khalil Eff.

Q. How did you on the 14th Tishrin Tani 302 agree to the transfer of Khiyam Walid from the names of sons of Ricabi Zada to the name of Ali Bey Ibn Mahmoud Bey Buzo and how did you sign the deed of transfer while knowing that the lands are Mahlul and why did you sign that deed and why did you not notify at that time the Mejles Idara? Please be straightforward.

A. The said deed of transfer was executed on the said date on the strength of an admission of the representative of the Ricabi family and my seal on the deed is only to attest the admission of the representative 20 of the said transferor. I did not notify the Mejles to the effect that the said lands are Mahlul because I was not certain about it. And after I have examined the Tabu Registers, I have notified the Registrar of the District that I found that there was no registration of the said village and this is the foundation of my statement. 3rd Tamuz 303.

Q. At the time when the representative of the Ricabi Zada family appeared for the purpose of the transfer under a Power of Attorney given to him by the Supreme Religious Court at Damascus on the 10th of Jamad Awal 98, he appeared before the Mejles and transferred the Mazra Khiyam Walid on behalf of his principals for the transfer namely Saleh Eff. and 30 Abdallah Eff. and Mohammad Eff. and Murad Eff. Ricabi Zada relying on 4 Tabu Deeds of the year 94 showing that the family are the owners of the land and how did you state that there was no entry in the Tabu Registers of the sub-district? Please answer.

A. This is true. When the representative of the transferor appeared before the Mejles Idara I saw in his hands 4 Kushans in the name of the Ricabi family of the year 94 and I also saw in the hands of the said representative the Power of Attorney of the Religious Court which was given to him by the said Effendis dated the 10th Jamad Awal 98, but I did not find any registration of the said Tabu Deeds. This is why a suspicion arose in 40 my mind that the said village was Mahlul and I made a statement to that effect and my duty is nothing else but to notify and I am not a Plaintiff and it is not upon me to prove the said matter. 3rd Tamuz 303.

Q. It follows from your statement that you did not find in the Tabu Registers any registration of the said Kushans and what about the taxes which were paid, did you not find a registration in the Werko books? Please answer.

A. Since there is no registration of the Kushans it follows that there is also no registration of the fees paid on the Kushans in the Tabu Registers,

but you have to ask about this the Werko Office and you will be able to get at the truth.

3rd Tamuz 303.

Former Registrar of Tabu in  
Quneitra Khalil Yasagi.

This examination was made in our presence.

Member	Member	Tabu Registrar	Mudir Mal	Chief Secretary A/to Attorney General.
Saad	Muhammad	Youssef	Amin	Mohammad

*Exhibits.*  
No. 17 (a).  
Proceedings  
and  
Conclusions  
of Turkish  
Commission  
of Enquiry,  
15th  
August  
1303,  
*continued.*

10 Page 3. On the 4th of Tamuz there was brought *Ibrahim Saloum* and was questioned as follows :—

Q. Your name, surname, etc.

A. Ibrahim Ibn Othman Saloum, Moslem, Ottoman, fellah, residing at the Quneitra sub-district.

Q. Since you are an expert and one of the neighbours of Khiyam Walid lands, please let us know whether there are owners of these lands and how they are being used and since when and whether they are Mahlul. Tell us justly and honestly.

20 A. I know and testify before God and man that Khiyam Walid village was from olden times before the lifetime of my grandfather in the possession and ownership of the Ricabi family. About thirteen years ago they gave the lands on lease to Ali Bey Buzo and afterwards they sold them to him by a final sale and thencefrom he used the lands without any dispute or objection and he pays the Werko Taxes and the tithes to the Government. This is what is known to me and to this I testify. 4th Tamuz 303. Ibrahim Othman El Saloum.

On the 4th of Tamuz there was brought His Highness the Emir *Mohammad el Faour* and was questioned as follows :

30 Q. Since your Highness is one of the neighbours, of the experts and a land and property owner in this sub-district, we hope to hear from you about the Mazra Khiyam Walid, whether it is in the ownership of somebody from olden times or whether it is Mahlul %

A. I know and declare that the said Mazra was from olden times the property of the Ricabi family and they used to give it on lease to the Sheikh Abdallah Suleiman of our people and we took it on lease from them for one year and afterwards thirteen years ago or more Mahmoud Bey Buzo took it on lease in view of its being situate between his villages Muftakhira and Ghurbah. Afterwards the Ricabi family sold the land by a final sale to Ali Bey Buzo and he pays all the taxes as is evidenced by the Werko 40 books of the sub-district and thencefrom and up till now they are in possession thereof. 4th Tamuz 303. Muhammad El Faour.

On the 5th of Tamuz *Ghattas Abdul Aziz* was brought and questioned as follows :—

Q. Your name, surname, etc.

A. My name is Ghattas ibn Shehadch Abdul Aziz, Moslem, Ottoman, land and property owner, aged 35.

*Exhibits.*  
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Q. Since you are one of the landowners adjoining to the Khiyam Walid village we hope to hear from you justly about this village whether it is Mahlul without any owner or possessor, please answer accurately.

A. I have heard from olden times from my late father that the said village was in the possession and ownership of the Ricabi family and my cousin Abdallah Suleiman took it on lease from them. Thirteen or fourteen years ago it was taken on lease by Mahmoud Bey Buzo. Afterwards it was sold to Ali Bey Ibn Mahmoud Bey Buzo and as far as my memory reaches, they are in possession thereof without any dispute or objection. This is what I do know and to this I testify before God and man. 10

5th Tamuz 303. GHATTAS IBN SHEHADEH ABDEL AZIZ.

Page 4. On the 5th of Tamuz 303 there was brought Jouma e Khalef the Mukhtar of the Arabs of Hawarja and was questioned as follows :—

Q. Your name, surname, etc.

A. Ahmad ibn Khalef Abdul Aziz, Moslem, Ottoman, Mukhtar of the Arabs of Hawarja, aged 35.

Q. Since you are one of the experts and of the neighbours of Khiyam Walid village we ask you to tell us justly and honestly whether this village is Mahlul or whether it is in anybody's possession. Please answer in detail. 20

A. The said village was from olden times in the possession of the Ricabi family. Some twenty years ago my late cousin Abdallah Suleiman took it from them on lease and somewhat more than fourteen years ago it was taken on lease by Mahmoud Bey Buzo and afterwards it was bought from them by his son Ali, and several of my Arabs and some others are sowing it and ploughing it in consideration of a part of the produce and every year deliver the part to the representative of the Bey the Purchaser. From the day the Bey and the son took possession of the village they hold it without any objector. This is what I do know and to this I testify before God and man. 30

5th Tamuz 303. AHMAD IBN KHALEF ABDUL AZIZ.

On the same day there was brought Mehawesh ibn Abdallah Suleiman and was questioned as follows :—

Q. Your name, surname, etc.

A. My name is Mehawesh ibn Abdallah Suleiman, Moslem, Ottoman, fellah of the Arabs of Hawarja, aged 35.

Q. Since you are one of the experts and a neighbour of the Khiyam Walid lands, we ask you to tell us justly and honestly whether the lands of the said village are Mahlul or in anybody's possession. Please tell us in detail. 40

A. The Khiyam Walid lands were since long the property of the Ricabi family. Some 35 years ago they were taken on lease by my late father Abdallah and after the expiration of the period of the lease about 14 years ago they were taken on lease by Mahmoud Bey Buzo and afterwards they were sold to his son Ali Bey Buzo and from then till now they are in possession thereof without any objector and people of our tribe have since years sown the land and are paying part of the produce to the representative of Ali Buzo and the Government Taxes are paid by Mahmoud

Bey and his son as from the day they took possession thereof. Previously the taxes were paid by the Ricabi family. This is what I know and to this I testify before God and man.

5th Tamuz 303.

MEHAWESH ABDALLAH SULEIMAN.

This evidence was given in our presence by Mehawesh who lost his seal and this is his signature and his answer and we attest this.

AKASH ABDO AKASH.

AHMED EL KHALEF.

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10 Page 5. 6th Tamuz 303. Ibrahim Eff. El Dabaghi was brought and questioned as follows:—

Q. Your name, surname, etc.

A. Ibrahim ibn Faris El Dabaghi, Christian, Ottoman, landowner in Dawara, aged 50, of the inhabitants of Hazabieh sub-district from Hazabieh itself, the owner of Dawara village belonging to the Marj Ayoun sub-district.

Q. Please tell us about the Mazra Khiyam Walid, since you are the owner of the Dawara village adjoining to the said Mazra, whether it is in somebody's possession, what kind of possession, or whether it is Mahlul  
 20 land, please tell us justly and truthfully.

A. Since the Committee for farming out of the tithes was constituted I am farming the tithes in the Khuleh sub-district, I have also bought the Dawara village in the Merj Ayoun sub-district since a considerable time and I know and testify that the Mazra Khiyam Walid was the property of the Ricabi family and from the day I farmed the tithes and I bought the Dawara village Mahmoud Bey Buzo is in possession of the said Mazra and he pays every year the Government Taxes and their representatives received the produce or a part thereof from the fellahin who sow the lands up to the year 96 when the Emir Hassan Faour claimed that he took it on  
 30 lease from the Ricabi family and received part of the produce from the fellahin according to custom. Afterwards Mahmoud Bey Buzo and his brother came to take the produce of their village Muftakhira and Ghurbah and Khiyam Walid and they came to my village Dawara which is in my possession and there appeared also the Emir Muhammad, the son of the Emir Hassan El Faour and they agreed between themselves as to the part which he received from the Mazra Khiyam Walid their property, all this in my presence. From the day the tithes were introduced and from the day I am the owner of the Dawara village I know and testify that Mahmoud Bey Buzo is in possession of Khiyam Walid village without any  
 40 objection or dispute and is receiving part of the produce from the sowers according to custom and he pays the Government Taxes, this I do know and to this I testify.

6th Tamuz 303.

IBRAHIM EL DABAGHI.

On the same date there was brought Mahmoud El Mustafa of the Dawara village in the Merj Ayoun sub-district and was questioned as follows:—

Q. Your name, surname, etc.

A. Mahmoud Mustafa Abdul Nabi of the Dawara village in the Merj Ayoun sub-district, Moslem, Ottoman, fellah, aged 45.

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Q. Since you are one of the neighbours of the Mazra Khiyam Walid, we hope to hear from you about that place whether you know that these lands are waste and Mahlul or whether somebody is in possession thereof and in what form. Please tell us truthfully and justly.

A. I know from olden times and testify that the Mazra Khiyam Walid was in the possession of the Ricabi family and since 14 years it is in the possession of Mahmoud Bey Buzo and his representatives receive part of the produce according to custom from the sowers and Mahmoud Bey pays the Government Taxes. This I know and to this I testify before God and man.

10

Page 6. The Mazra Khiyam Walid is in the possession of Mahmoud Bey Buzo since 14 years without anybody objecting thereto.

MAHMOUD EL MUSTAFA ABDEL NABI.

6th Tamuz 303.

6th Tamuz 303 Hussein El Ahmad of the Dawara Village situate in the Merj Ayoun sub-district was brought and questioned as follows :—

Q. Your name, surname, etc.

A. Hsein Hamoud el Ahmad, Moslem, Ottoman, resident of Dawara, fellah aged 60.

Q. You are one of the experts and neighbours of the Mazra Khiyam Walid and we ask you to tell us whether these lands are Mahlul or waste or whether they are in anybody's possession and in what form of possession. Please tell us truthfully and justly.

20

A. I know and testify that the Mazra Khiyam Walid was from olden times in the ownership of the Ricabi family without anyone objecting thereto and they have given it on lease thirty years ago to Suleiman Abu Krum of the people of the late Ahmad Pasha Buzo and afterwards they gave it on lease to Salem Gneim of Damascus and thereafter they gave it on lease to Abdallah Suleiman of the Arab el Fadl, about 14 years ago they gave it on lease to Mahmoud Bey Buzo and then sold it to his son Ali Bey whose representatives used to receive part of the produce according to the custom in the neighbouring lands and the Bey used to pay the Government Taxes and was in possession of the lands without any dispute. This I know and attest before God and man.

30

6th Tamuz 303.

HSEIN EL HAMOUD.

On the 7th of Tamuz 303 there was brought Hsein ibn Ali Hsein Mukhtar of Salahiyeh village belonging to the Merj Ayoun sub-district and was questioned as follows :—

Q. Your name, surname, etc.

A. Hsein ibn Ali el Hsein, Mukhtar of Salahiyeh village of the Merj Ayoun sub-district, Moslem, Ottoman.

40

Q. Since you are one of the experts and a neighbour of the Khiyam Walid lands please tell us about the Mazra Khiyam whether it is waste land or Mahlul or whether it does belong to somebody and of what kind is his possession. Tell us justly and honestly.

A. I know and attest that the Mazra Khiyam Walid was from olden times in the ownership of the Ricabi family, about 14 or more years in the hands of Mahmoud Bey Buzo and he gives it to cultivators for part

of the produce and pays the Government Taxes, his ownership was never disputed nor objected to. This is what I know and to this I testify before God and man.

7th Tamuz 303.

HSEIN ALI HSEIN.

We the undersigned on the margin witness herewith that this is his reply.

ABDEL HALIM.

HSEIN HALAWA.

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Page 7. On the 7th of Tamuz 303 there was brought Hsein Halawah  
10 of Salahieh situate in the Merj Ayoun sub-district.

Q. Your name, surname, etc.

A. Hsein Hassan Halawah, Moslem, Ottoman, fellah of the Dawarah village, aged 60, residing in Salahiah of the Merj Ayoun sub-district.

Q. Since you are an expert and a neighbour of the Mazra Khiyam Walid, please tell us whether the said Mazra is Mahlul and waste or whether anybody is in possession thereof and in what kind of possession. Tell us justly and honestly.

A. I know and testify that the Mazra Khiyam Walid is the property of the Ricabi family and is in their possession without any dispute or objection  
20 from olden times. And about 30 years ago it was given on lease to Suleiman Abu Krum of the people of the late Ahmad Pasha and thereafter to Salem Ghneim of Damascus and thereafter to Abdallah Suleiman of the Arab el Fadl and about 14 years ago it was given on lease to Mahmoud Bey Buzo and thereafter it was sold to Ali Bey the son of Mahmoud Bey Buzo. These 14 years they are in possession thereof till today without anybody objecting thereto and they are paying the Government Taxes. This is what I know and testify before God and man.

7th Tamuz 303.

HSEIN HALAWAH.

On the same day there was brought Abdul Khalim the son of  
30 Muhammed El Ibrahim of Salahieh village of the Merj Ayoun sub-district and was questioned as follows :—

Q. Your name, surname, etc.

A. My name is Abdul Khalim the son of Muhammed Ibrahim of Salahieh village of Merj Ayoun sub-district, Moslem, Ottoman, fellah, aged 45.

Q. Since you are an expert and a neighbour of the Mazra Khiyam Walid you should tell us about the said Mazra whether it is Mahlul or belonging to anybody, and if belonging to anybody please let us know of what kind is his possession.

A. I know that the Mazra Khiyam Walid belongs to the Ricabi family  
40 from olden times. Some 15 years ago they gave it on lease to Mahmoud Bey Buzo and thereafter they sold it to his son Ali Bey. Since then and till today they are in possession thereof without any dispute or objection on the part of anybody and they pay the Government Taxes. This is what I know and to this I testify before God and man.

7th Tamuz 303.

ABDUL KHALIM MUHD. EL IBRAHIM.

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On the same date there was brought Khalil the son of Mahmoud Joud of Salahieh village of the Merj Ayoun sub-district and was questioned as follows :—

Q. Your name, surname, occupation etc.

A. My name is Khalil Ibn Mohammad El Joud, Moslem, Ottoman, of Salahieh village of the Merj Ayoun sub-district, fellah aged 65.

Q. Since you are of the experts and a neighbour of the Mazra Khiyam Walid, please tell us whether the said Mazra is Mahlul or whether it is in anybody's ownership and of what kind is his possession. Speak justly and honestly. 10

A. I know and testify that the Mazra Khiyam Walid was from olden times the property of the Ricabi family without any objection and 30 years ago they gave it on lease to Suleiman Abu Krum and thereafter to Salem Ghneim of Damascus and thereafter to Abdallah Suleiman of the Arab el Fadl and thereafter some 14 years ago it was given on lease to Mahmoud Bey Buzo and thereafter sold to his son Ali and during these 14 years and up till now they are in possession thereof without anybody objecting thereto and they are paying the Government Taxes. This is what I know and to this I testify before God and man.

7th Tamuz 303.

KHALIL IBN MAHD. EL JOUD. 20

Page 8. On the same date there was brought Youssef El Haj Mahmoud of Salahieh village and was questioned as follows :—

Q. Your name, surname, etc.

A. My name is Youssef ibn El Haj Mahmoud of Salahieh village of Merj Ayoun sub-district, Moslem, Ottoman, fellah, aged 48.

Q. Since you are one of the experts and a neighbour of the Mazra Khiyam Walid you should tell us whether this Mazra is Mahlul or waste or whether it is in anybody's possession and what sort of possession and form of possession, justly and truthfully,

A. I know that the Mazra Khiyam Walid is in the possession of the Ricabi family from olden times and they used to give it on lease and about 15 years ago they gave it on lease to Mahmoud Bey Buzo and thereafter sold it to his son Ali Bey and since then and till now they are in possession thereof without anybody objecting thereto and they pay the Government Taxes. This is what I do know and to this I testify before God and man. 30

7th Tamuz 303.

YOUSSEF EL HAJ MAHMOUD.

On the 8th of Tamuz there was brought El Haj Ahmed ibn Diab El Muhammed of Dawareh village of Merj Ayoun sub-district and was questioned as follows :—

Q. Your name, surname, etc. 40

A. My name is El Haj Ahmed ibn Diab El Muhammed of Dawareh village of Merj Ayoun sub-district, Moslem, Ottoman, fellah, age 45.

Q. Since you are one of the experts and a neighbour of the Mazra Khiyam Walid you should tell us about the said Mazra whether it is Mahlul and waste or whether it is in anybody's possession and what is the origin of that possession and what is its kind. Tell us justly honestly and impartially.

A. I testify and I know from my father, grandfather and uncle that the Mazra Khiyam Walid is the property of the Ricabi family and that they gave it on lease to several persons and about 15 years ago they gave 50

it on lease to Mahmoud Bey Buzo and afterwards sold it to Ali Bey the son of Mahmoud Bey Buzo and as from the date they took it on lease and bought it they hold it without anybody disputing their rights and this is what I know and testify to this for always.

8th Tamuz 303.

EL HAJ AHMED EL DIAB EL MUHD.

On the same date there was brought Suleiman ibn Shehadeh El Krum of Muftakhirah village of Quneitra sub-district and was questioned as follows :—

Q. Your name, surname, etc.

10 A. My name is Suleiman ibn Shehadeh El Krum of Muftakhirah village of Quneitra sub-district, Moslem, Ottoman, fellah, age 45.

Q. Since you are one of the neighbours of Khiyam Walid and one of the experts we hope to hear from you about the said Mazra whether it is Mahlul and its lands are waste or whether anybody is in possession thereof, what is its origin and what is the kind of the possession.

A. I testify what I have heard from my father and what is known to me and what I have investigated and I testify to this before God and man that the Mazra Khiyam Walid is from olden times before the Egyptian Rule in the possession of the Ricabi family and Suleiman Abu Krum of the late Ahmed Pasha Buzo's men took it on lease from them and thereafter 20 Muhammed Agha Diwani Kurdi took it on lease.

Page 9. (Continuation of examination of Suleiman ibn Shehadeh Krum)—

and thereafter they gave it on lease to Ahmed Eff. Mudineh and thereafter it was given on lease to Salem Ghneim and thereafter to Abdallah Suleiman of the Arab El Fadl and somewhat more than 15 years ago it was taken on lease by Muhammed Bey Buzo and afterwards it was bought by him from the said family for his son Ali Bey and thencefrom and up till now they are in possession thereof without any objection or dispute and we and 30 others are ploughing it from time to time and paying them part of the produce as rental, like our neighbours who pay a quarter of the produce and the said people pay the Government Taxes from the date they took hold of the land. This is what I know and to the truth thereof I testify.

8th Tamuz 303.

SULEIMAN IBN SHEHADEH KRUM.

On the said date there was brought Shehadeh ibn Salem Ghneim of Muftakhirah village of Quneitra sub-district and was questioned as follows :—

Q. Your name, surname, etc.

40 A. My name is Shehadeh ibn Hussein El Salem of Muftakhirah village of Quneitra sub-district, Ottoman, Moslem, fellah, aged 40.

Q. Since you are one of the experts and a neighbour of the Mazra Khiyam Walid do tell me about the said Mazra whether it is Mahlul or whether it is in anybody's possession and what is the origin thereof.

A. I testify on the basis of what I have heard in the days of my father and of what I know and have investigated and of what I was eye-witness since my coming of age and up to this day, namely that the Mazra Khiyam Walid was from olden times, even before the Egyptians, in the hands of the Ricabi family and Suleiman Abu Krum took it on lease from them. Similarly Muhammad Agha Diwani Kurdi, and after him 50 it was given on lease to Ahmed Eff. Mudineh and thereafter it was given

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on lease to Salem Ghneim, my cousin, and thereafter to Abdallah Suleiman of the Arab El Fadl and since 15 years it was taken on lease from them by Mahmoud Bey Buzo and afterwards bought from them for his son Ali Bey. Since then and up till now they are in possession without any objection or dispute and there are several years that we sow these lands and are paying to them a part of the produce as rental for the land according to the custom of cultivators in our country who pay a quarter of the produce and the said persons are in possession thereof from then till to-day and are paying the Government Taxes. This is what I know and to this I testify before God and man.

10

8th Tamuz.

SHEHADEH SALEM.

On the same date there was brought Mahmoud ibn Mohammed el Salem of Muftakhireh village of Quneitra sub-district and was questioned as follows :—

Q. Your name, surname, etc.

A. My name is Mahmoud ibn Mohammed El Salem of Muftakhireh of Quneitra sub-district, Moslem, Ottoman, fellah, aged 35.

Q. Since you are one of the neighbours of the Mazra Khiyam Walid you should tell us whether it is Mahlul and waste or whether it is in anybody's possession and of what kind is his possession.

20

A. I testify from my knowledge and from what I have heard from my late father that the Mazra Khiyam Walid was from olden times in the possession of the Ricabi family and they gave it on lease to different persons and about 15 years ago they gave it on lease to Mahmoud Bey Buzo and afterwards they sold it to his son Ali Bey and from that day they hold it and pay the Government Taxes and for several years we sow it and pay them part of the produce as rental instead of a quarter of the produce as is the custom of the cultivators in our country. This is what I know and to this I do testify before God and man.

8th Tamuz 303.

MAHMOUD IBN MOHAMMED EL SALEM.

30

Page 10. On the 9th of Tamuz 303 there was brought the Sheikh Mahmoud el Zamel of Zawieh village of Merj Ayoun sub-district and was questioned as follows :—

Q. Your name, surname, etc.

A. My name is Mahmoud ibn Zamel El Mustafa of Zawieh village of Merj Ayoun sub-district, Moslem, Ottoman, land and property owner in the said village, aged 60.

Q. Since you are one of the experts and of the neighbours of the Mazra Khiyam Walid we hope to hear from you about this Mazra whether it is Mahlul and waste or whether it is in the possession of anybody and of what kind is his possession, justly and truthfully.

40

A. I know and testify that the Mazra Khiyam Walid is from olden times the property of the Ricabi family, and since long Mahmoud Bey Buzo took hold thereof till a few years ago when the Emir Hassan el Faour claimed that he took it on lease from the Ricabi family and received part of the produce from the cultivators, afterwards the Bey Mahmoud appeared and took away from him the part received by him and it is also known to me and I testify that 12 years ago the inhabitants of Salahiyeh wanted to deflect the water sluices from the Khiyam Walid lands, and then there appeared Mahmoud Bey Buzo and a Government Committee of the Merj

50

Ayoun sub-district and they ordered the sluice deflected by the inhabitants of Salahiyeh to be destroyed and Mahmoud Bey was attending its destruction during 30 days till it was destroyed and the said sluice can be seen even to-day, and I say what I know before God and man. Mahmoud Bey Buzo is since long in possession of Khiyam Walid and without any objection or dispute.

9th Tamuz 303.

MAHMOUD IBN ZAMEL EL MUSTAFA.

10 On the same date there was brought Yusef el Shehadeh Abu Saleh of the Salahiyeh village of Merj Ayoun sub-district and was questioned as follows :—

Q. Your name, surname, etc. ?

A. My name is Yousef ibn Shehadeh Abu Saleh of Salahiyeh village of Merj Ayoun sub-district, Moslem, Ottoman, fellah, aged 45.

Q. Since you are one of the experts and neighbours of the Mazra Khiyam Walid we ask you to tell us about this Mazra whether it is Mahlul and in nobody's possession or whether it is anybody's possession, tell us about the kind of his possession and its manner ?

20 A. I do know and testify that the Mazra Khiyam Walid from olden times even before the Egyptians was in the possession of the Ricabi family and it was taken from them on lease by Suleiman Abu Krum and afterwards they gave it on lease to Ahmad Eff. Mudine and to Muhamed Agha Diwani and afterwards they gave it on lease to Salem Ghuneim and afterwards they gave it on lease to Abdel Suleiman of the Arab el Fadl and since 15 years or more it was taken on lease by Mahmoud Bey Buzo and afterwards he bought it for his son Ali and from that day and till now he is in possession thereof without any dispute and they receive the produce thereof and pay the Government Taxes. This is what I know and to this I testify before God and man.

9th Tamuz, 303.

YOUSEF SHEHADEH ABU SALEH.

30 On the same date there was brought Muhamed el Saleh el Ibrahim of Salahiyeh village and was questioned as follows :—

Q. Your name, surname, etc. ?

A. My name is Muhamed el Saleh el Ibrahim of Salahiyeh village of Merj Ayoun sub-district, my occupation a fellah, Moslem, Ottoman, aged 60.

40 Q. Since you are one of the experts and neighbours of the Mazra Khiyam Walid you have to tell us about this Mazra whether it is Mahlul and waste and in nobody's possession or if there is somebody in possession thereof we hope to hear from you about the kind of his possession and its state truthfully and justly ?

A. I do now and do testify before God and man that the Mazra Khiyam Walid is from olden times the property and in the possession of the Ricabi family and they gave it on lease to several persons and 15 or more years ago it was taken from them on lease by Mahmoud Bey Buzo and afterwards it was bought by him from them for his son Ali Bey and since then and till this day Mahmoud Bey Buzo is in possession thereof without any dispute or objection whatsoever and he pays the Government Taxes and it is by no means Mahlul or waste. This I know and to this I testify.

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MUHAMED SALEH EL IBRAHIM.

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On the 10th of Tamuz there was brought Ibrahim el Khalil of the Valesut Ghurbah of the Quneitra sub-district and was questioned as follows :—

Q. Your name, surname, etc. ?

A. My name is Ibrahim Khalil Bawalsa of the Arab Ghourba in the Quneitra sub-district, Moslem, Ottoman, fellah, aged 45.

Q. Since you are one of the experts and neighbours of the Mazra Khiyam Walid, we hope to hear from you about it whether it is Mahlul and waste or whether it is in anybody's possession and in case it is in somebody's possession you have to inform us about the kind of his possession 10 in the name of equity, religion and truth.

A. As to the Mazra Khiyam Walid I know and testify before God and man that it was in the possession of the Ricabi family from olden times and 15 years ago Mahmoud Bey Buzo took possession thereof by taking it on lease from the afore-mentioned and afterwards bought it from them for his son Ali Bey and since the day he took hold thereof and till to-day he is in possession without any dispute and pays the Government Taxes. This is what I know and to this I testify.

10th Tamuz 303.

IBRAHIM EL KHALIL.

Q. Was it ever left without ploughing and sowing and unoccupied and 20 Mahlul ?

A. It is not Mahlul, on the contrary it is being ploughed and sown every year and the Government Taxes are being paid and how can it be Mahlul ?

10th Tamuz 303.

IBRAHIM EL KHALIL.

On the same date there was brought Mustafa ibn Abdalla el Rakhil of the Valsiet Ghurba in the Quneitra sub-district and was questioned as follows :—

Q. Your name, surname, etc. ?

A. My name is Mustafa Abdallah el Rakhil of the Valsiet Ghurba of 30 the Quneitra sub-district, Moslem, Ottoman, fellah, aged 50.

Q. You are one of the experts and neighbours of the Mazra Khiyam Walid and you should tell us about the Mazra Khiyam Walid whether it is Mahlul and waste or whether it is in possession of anybody and if there is a possessor you have to tell us about the merits and state of that possession.

A. I know and testify before God and man that the Mazra Khiyam Walid was in the possession of the Ricabi family and they use to give it on lease and 15 or more years ago Mahmoud Bey Buzo took it on lease from them and afterwards bought it for his son Ali Bey and since then and till now they hold it without any dispute and every year they do pay the 40 Government Taxes and it is not Mahlul as long as the Taxes are being paid on it from year to year, and this is what I know and to what I testify.

10th Tamuz 303.

MUSTAFA EL ABDALLAH.

Page 12. On the 10th Tamuz 303 there was brought Kharbush ibn Abdalla el Karim.

Q. Your name, surname, etc.

A. My name is Kharbush ibn Abdalla Karim, residing at the Mazra el Muftakhira, Moslem, Ottoman, fellah, aged 35.

Q. Since you are one of the neighbours and experts of the Mazra Khiyam Walid we ask you to inform us whether it is Mahlul and waste or there is somebody in possession thereof and if so we want to hear from you about his possession truthfully and justly.

A. I know and testify that the Mazra Khiyam Walid is the property of the Ricabi family from olden times and 15 years or more ago Mahmud Bey Buzo took it on lease from the Ricabi family, and thereafter bought it for his son Ali Bey and since the time of the lease and purchase they hold it without any objection and during several years I took from them  
 10 on lease lands and sow them in consideration of part of the produce and I used to pay to the representatives of Mahmud Bey and his son Ali quarter of the produce as rental for the lands I used to sow and I know and testify that they are not Mahlul and were never deserted not even for one year and every year the Beys pay the Government Taxes and how could they be Mahlul. This is what I know and testify before man and God.

10th Tamuz, 303.

KHARBUSH IBN ABDALLA KARIM.

On the same date there was brought Hsein ibn Fandi of the fellahin of Ghurba of the Quneitra sub-district and was questioned :—

20 Q. Your name, surname, etc.

A. My name is Hsein ibn Fandi of the fellahin of Ghurba of Quneitra sub-district, Moslem, Ottoman, aged 60.

Q. Since you are one of the neighbours and experts of the Mazra Khiyam Walid please inform us about it whether it is Mahlul and waste or in anybody's possession and also about the nature of the possession and its origin in detail according to truth and justice.

A. I am a man of age, know and testify that the Mazra Khiyam Walid from olden times belonged to the Ricabi family and 15 or more years ago it was taken on lease by Mahmud Bey Buzo and was afterwards bought  
 30 by him from them for his son Ali Bey and since 15 years they hold it without any objection and pay the Government Taxes and it is neither waste nor Mahlul and how could it be Mahlul if the Government Taxes are paid from year to year and the land is being ploughed and sown. This I do testify before God and man.

10th Tamuz 303.

HSEIN FANDI.

On the same date there was brought Fouad el Mustafa of the Fellahin of Ghurba.

Q. Your name, surname, etc.

40 A. My name is Fouad ibn Mustafa, Moslem, Ottoman, of the fellahin of Ghourba of the Quneitra sub-district, aged 40.

Q. Since you are one of the neighbours and experts you have to tell us about this Mazra whether it is Mahlul or in anybody's possession truthfully and justly.

A. I testify and know that the Mazra Khiyam Walid was from olden times in the possession of the Ricabi family and 15 or more years ago it was taken from them on lease by Mahmud Bey Buzo and afterwards he bought it from them for his son Ali Bey, since then during 15 years or more Mahmud Bey Buzo is in possession thereof and he received it from

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the Ricabi family and every year the Government Taxes are paid and it was not deserted, even during one year and it is not Mahlul. This I know and to this I testify before God and man.

10th Tamuz 303.

FOUAD EL MUSTAFA.

Page 13. On the 11th of Tamuz 303 there was brought Showash ibn Qasem El Khamadeh of the Arab Leweisseh, fellah at El Madraj and was questioned as follows :—

Q. Your name, surname, etc.

A. My name is Showash ibn Qasem El Khamadeh, Moslem, Ottoman of the Arab Leweisseh, fellah at El Madraj of the Quneitra sub-district, 10 aged 40.

Q. Since you are an expert and a neighbour of the Mazra Khiyam Walid we hope to hear from you about it whether it is Mahlul and waste or whether there is anybody in possession thereof and what is the origin of his possession and of what kind is it truthfully and faithfully.

A. I know and testify that the Mazra Khiyam Walid was from olden times the property of the Ricabi family and 15 years ago or more Mahmoud Bey Buzo took hold thereof by way of lease from the aforementioned and afterwards bought it for his son Ali Bey and during 15 years or more they hold it without anybody objecting thereto and they pay the 20 Government Taxes, they did not desert it even for one year neither is it Mahlul because since the times of the Egyptians the Ricabi family is in possession thereof and after them Mahmoud Bey Buzo. This is what I know and testify.

11th Tamuz 303.

SHOWASH IBN QASEM EL KHAMADEH.

On the same date there was brought Darwish ibn Ahmed El Khateeb El Absi of Khiyam Absi village of the Merj Ayoun sub-district.

Q. Your name, surname, etc.

A. My name is Darwish ibn Ahmed El Khateeb of Khiyam Absi village of the Merj Ayoun sub-district, Moslem, Ottoman, Imam, aged 38. 30

Q. Since you are a neighbour and an expert you should tell us about the Mazra Khiyam Walid whether it is Mahlul and waste or whether it is in anybody's possession truthfully and justly.

A. I know and testify that the Mazra Khiyam Walid is in the possession and the property of the Ricabi family and 15 years ago or more Mahmoud Bey Buzo took hold thereof and is in possession thereof without any dispute pays the Government Taxes and it was not deserted even for one year and it is not Mahlul. This is what I know and to this I testify before God and man.

11th Tamuz 303.

DARWISH IBN AHMED EL KHATEEB

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On the same date there was brought Sheikh Massoud ibn Mohammed Mukhtar Arab El Khawarjah and was questioned as follows :—

Q. Your name, surname, etc.

A. My name is Massoud ibn Mohammed Mukhtar of Arab El Khawarjah, Moslem, Ottoman, the owner of the Mazra Rawieh of the Quneitra sub-district, aged 65.

Q. Since you are one of the neighbours and experts you have to tell us about the Mazra Khiyam Walid whether it is Mahlul and waste or whether it is in anybody's possession and also what is the nature of that possession truthfully and justly.

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A. I know and testify that the Mazra Khiyam Walid as far as my memory reaches from olden times was the property and in the possession of the Ricabi family and 25 years ago it was given on lease by them to my cousin Abdallah El Suleiman and 15 years ago or more it was taken on lease from the Ricabi family by Mahmoud Bey Buzo and afterwards he bought it from them for his son Ali Bey and from olden times the Ricabi family are in possession thereof and during 15 years Mahmoud Bey Buzo and his son Ali are in possession thereof and pay the Government Taxes every year and it is neither Mahlul nor waste and it never was.

10 This is what I know and testify before God and man.

11th Tamuz 303.

MASSOUD IBN MOHAMMED Mukhtar of  
Arab El Khawarjeh.

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Page 14. On the same date there was brought Muhammed el Ahmmad of the Arab El Hawarjeh of the fellahin of Rawayah in the Quneitra sub-district.

Q. Your name, surname, etc.

A. My name is Muhammed el Ahmmad of the Arab El Hawarjeh, Moslem, Ottoman, of the fellahin of the Mazra Rawayah of the Quneitra sub-district, age 45.

20 Q. Since you are one of the neighbours and experts you have to tell us about the Mazra Khiyam Walid whether it is Mahlul or in anybody's possession. You should tell us about this truthfully.

A. I know and testify that as far as my memory reaches the Mazra Khiyam Walid was the property and in the possession of the Ricabi family and about 25 years ago it was taken from them on lease by Abdallah El Suleiman of our tribe and 15 years ago or more it was taken on lease from them by Mahmoud Bey Buzo who afterwards bought it for his son Ali Bey Buzo and from olden times it is in the possession of the Ricabi family and afterwards since 15 years it was held by Mahmoud Bey Buzo and his son Ali and the Government Taxes are paid every year and it is not Mahlul nor was it deserted even for one year and every year the Taxes are paid and how could it be Mahlul. This is what I know and testify before God and man.

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11th Tamuz 303.

MUHAMMED EL AHMMED.

On the 12th of Tamuz 303 there was brought Hsein Hamdan and questioned as follows :—

Q. Your name, surname, etc.

A. My name is Hsein ibn Hamdan Suleiman of the Ein Fiat village, Moslem, Ottoman, land and property owner in the neighbourhood of Khuleh, aged 70.

40

Q. Since you are an expert and a man of knowledge and a landowner in the neighbourhood of Khuleh adjoining to the Mazra Khiyam Walid we hope to hear from you about this Mazra whether it is waste and Mahlul and whether there is anybody in possession thereof since when is he in possession and in what manner truthfully and justly.

A. As far as my memory reaches from olden times from the times of the Egyptians I know and testify that the Mazra Khiyam Walid is the property of the Ricabi family and since long it was taken from them on lease by Khamo Agha Diwaneh and was cultivated by the Ein Fiat village and similarly it was taken on lease from the Ricabi family by Suleiman Abu

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Krum of the people of Ahmmed Pasha Buzo and also by Abdallah El Suleiman from El Hawarja from the village El Fadl and 15 years or more ago it was taken hold of by Mahmoud Bey Buzo and he is in possession thereof till now without any objection or dispute and pays the Government Taxes and it was not deserted nor fallow in any year whatsoever and is not Mahlul. This is what I know and testify before God and man.

12th Tamuz 303.

HSEIN HAMDAN.

On the same date there was brought Salem ibn Younes Blan of the inhabitants of Khasabieh proper, residing in Ein Fiat village.

Q. Your name, surname, etc.

10

A. My name is Salem ibn Younes Blan, Druz, Ottoman, residing in Ein Fiat of the Quneitra sub-district, cultivator of the lands in the Khuleh neighbourhood, aged 60.

Q. You should tell us about the Mazra Khiyam Walid whether it is Mahlul or in anybody's possession justly and truthfully.

A. During 35 years I have farmed the Taxes in the Ghurbeh village adjoining to El Muftakhireh and Khiyam Walid. I know that Khiyam Walid belongs to the Ricabi family and 15 years or more years ago it was taken hold of by Mahmoud Bey Buzo and he is in possession thereof till now without any dispute or objection and pays the Government Taxes and 20 as far as my memory reaches and till now I am cultivating land in Khuleh, it was never fallow nor deserted not even for one year and it is not Mahlul. This is what I know and testify before God and man.

12th Tamuz 303.

SALEM IBN YOUNES BLAN.

Page 15. On the same date there was brought Sheikh Diab el Malham Mukhtar of Zaura village and was questioned as follows :—

Q. Your name, surname, etc.

A. My name is Diab ibn Malham Fuad, Moslem, Ottoman, of Zaura village in Quneitra sub-district, Mukhtar of the said village, aged 40.

Q. Please tell us everything you know about the Mazra Khiyam 30 Walid whether it is Mahlul and waste or there is somebody in possession thereof and how did he obtain possession and in what manner in detail.

A. Since I live in Zaura village and we own no arable land and from olden times we live on cultivation of lands belonging to Shehadeh Abdel Aziz in the Mazra Barkiat adjoining to the Mazra of El Muftakhira and Ghurba and Khiyam Walid I know and testify that since long the Mazra Khiyam Walid is the property and in the possession of the Ricabi family and 25 years ago it was taken on lease by Abdallah el Suleiman ibn Daoud Shehadeh Abdel Aziz and thereafter 15 or more years ago it is in the hands 40 of Mahmoud Bey Buzo as far as I know and some people of the inhabitants of our village and of Leweisseh and Hawarjeh sow it in consideration of part of the produce, and in time of harvest the representatives of the Bey receive the rental of the Mazra according to custom from us and from the Arab Leweisseh and Hawarjeh and the Bey pays the Government Taxes to the Government and he is in possession thereof without any objection or dispute. Afterwards he bought it from the Ricabi family for his son Ali Bey in a lawful way and this is what I know and to this I testify before God and man.

12th Tamuz 303.

DIAB IBN MALHAM FOUAD.

On the same date there was brought Sheikh Qassem ibn Ahmmad Suleiman of Ein Fiat village of Quneitra sub-district and was questioned as follows :—

Q. Your name, surname, etc.

A. My name is Qassem ibn Ahmmad Suleiman of Ein Fiat village in Quneitra sub-district, Moslem, Ottoman, land and property owner in the Khuleh region, aged 62.

10 Q. Since you are one of the experts and a landowner in the Khuleh region in the neighbourhood of the Mazra Khiyam Walid, we ask you to tell us about this Mazra whether it is waste and Mahlul or whether there is anybody in possession thereof and since how many years is he in possession and in what manner, truthfully and justly.

20 A. As long as I can remember and till now as from the Egyptian times I know and testify that the Mazra Khiyam Walid is the property of the Ricabi family, and a long time ago it was taken from them on lease by Khamo Agha Dawareh and it was cultivated by our village Ein Fiat, similarly Suleiman Abu Krum of the people of Ahmmad Pasha Buzo took it on lease from the Ricabi family, similarly it was taken on lease by Abdallah Suleiman of the Arab el Hawarjah of the el Fadl tribe, and 15 years ago it was taken hold of by Mahmoud Bey Buzo and he remains in possession thereof till now without any objection or dispute and pays the Government Taxes. The land was never fallow or deserted, not even during one year and it is not Mahlul and this is what I know and testify before God and man.

12th Tamuz 303.

QASSEM AHMMAD.

Copy of enquiry into the Werko entry of the sub-district.

13th Tamuz, 303.

(Translation from Turkish.)

Page 16.

30 To the Director of the Treasury, Quneitra sub-district.

Are taxes such as werko, tithe and takhmis levied from the Khiam Walid Village. If yes, since what date and what is the amount of the said taxes in piastres, and who is in possession of the village, and since how many years are Werko and tithes paid and who is paying them every year. If no Werko or tithe has been levied till now why did it happen so and in case Tabu fees have been paid for the said village, who paid the Tabu fees and on what date? You are requested to give a separate and detailed answer to every question after having examined the entries in the old and the new "Melieh."

40 13th Tamuz 303.

The Investigator of the Mejlis,  
Idara, Quneitra sub-district,  
Said Hussein.

Transfer to the Taxes Department of the sub-district. The Ricabi family used from olden times to pay 188 piastres every year as werko for Khiyam Walid village and recently as from the year 1292 and till 303 it was paid by Ali Bey ibn Mahmud Bey Buzo Zada together with Tahmis and tithe every year. And after deduction of the income of Mazra Bet Akar which amounts to 2,080 piastres, the balance is 1,791½ piastres. This appears in the revenue of the year 95 and the total of the Tabu revenue

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which amounts to 32,229 piastres and 15 paras. There is also an entry on the 12th Mais 303 in the Revenue Diary under No. 140 in the name of Khiyam Walid showing an amount of 1,800 piastres revenue transferred from the Tabu to the Treasury and all this is clear from the registers.

13th Tamuz 303. MUDIR MAAL (Head of Finance Office),  
 in Quneitra sub-district.

On the 14th of Tamuz 303 there was brought the former Registrar of the Tabu and questioned as follows:—

Q. From the examination of your previous answers it follows that according to you there is no registration of Khiyam Walid Village in the Tabu registers for the sub-district and in view of this absence of a registration you have stated it to be Mahlul, whilst the Taxes Department when questioned about this replies that from olden times the Ricabi family used to pay the Government Taxes on it and since 1292 Mahmud Bey Buzo, the purchaser, pays the Government taxes for it. The same follows also from the evidence given by the neighbours i.e. that from olden times it was the property and in the possession of the Ricabi family and since about 15 years it is possessed by Mahmud Bey Buzo, and since upon closing the enquiry and investigation in this matter we did not find evidence in support of its being Mahlul, you have to go through all the evidence given by the Taxes Department of the sub-district and also by the neighbours set out hereinabove and thereafter you have to give us sufficient proofs as to the accuracy of your statements so that we could rely on them and take legal steps in detail.

A. After having perused your repeated questions set out in this record, I have come to the conclusion that you intend to make me a Plaintiff in the matter of Khiyam Walid and I was very surprised at that, since I told you repeatedly that I have stated it to be Mahlul only with the purpose of informing but not as a claimant, and now also I wish to tell you that my duty is only to inform and that I have no proofs or authorities of its being Mahlul except of that not having found any registration in respect thereof in the Tabu registers of the sub-district. But if there is an entry in the Taxes Registers of the sub-district detailing the taxes levied thereon, then I have nothing to say as to this and the same applies to your examinations of the inhabitants of the neighbouring villages and experts, you are more experienced therein and know better the requirements of the law and I have no other information.

14th Tamuz 303.

KHALIL YASAGI,  
 Former Tabu Registrar.

Page 17. Continuation of the examination of Khalil Eff.

Q. Why did you not hand over to your successor in office in due time the cable dated the 17th August 302 ordering to delay the registration of Khiyam Walid village till final order, but you brought it to him together with all the orders and handed it over on the 26th of Mais 303 after he has effected the registration of the said village on the 12th of Mais 303, please tell us now why this so happened.

A. The said cable was together with several other cables and documents kept in the office and as I took them for the purpose of registering in a special Register and while attending to this my health failed me and

hindered the completion of their registration. This was what caused the delay in the handing over of the said cable together with some other orders to my successor in office till the 26th of Mais 303. There are no other reasons except this.

14th Tamuz 303.

Former Tabu Registrar of Quneitra,  
Khalil.

Copy of the examination of the Tabu Registrar Yousef Eff. annexed to these presents.

(Translated from Turkish).

10 To the Tabu Office of Quneitra sub-district.

Were Tabu Deeds at all issued till now to anybody in respect of Khiyam Walid village, on what date, to whom, in what form and on what basis, as what kind of land was it registered. Please examine the registration of the said village and give us the details you will find out on the margin of this letter.

15th Tamuz 303.

The investigator of the Majles Idara  
of Quneitra.

(Translated from Arabic.)

(Copy of the Reply of the Tabu Registrar.)

- 20 Upon perusal of the Tabu Office Registers of this sub-district no other registration of Khiyam Walid village was found except the four Tabu Kushans of the year 94 made in the time of the former Tabu Registrar Ibrahim Eff. Sayour issued under the "Karar Law" to Abdallah and Saleh Eff. and Muhammed Eff. and Murad Eff. Ricabi and in the month Tishrin Tani, 1302 there appeared the representative of the said persons in possession as per Sharia power of attorney of the 10th Jamad el Awal 98, issued by the Supreme Sharia Court at Damascus and on the strength of the said power of attorney he transferred by way of final transfer to Ali Bey the son of Mahmoud Bey Buzo the former Kaimkam and thereupon
- 30 a Mazbata was prepared by the Mejlis Idara of the sub-district on the 14th Tishrin Tani 302 approving and containing the legal transaction of the acceptance of the transfer under the seal of the former Tabu Registrar Khalil Eff. and passed to the Tabu Office for completion of the transaction and annexed thereto the said old Tabu documents, and a Mazbata signed by the neighbours and a deed of transfer and sale signed by the Mukhtar and elders of the village, and on the 12th of Mais 303 there appeared the representatives of Ali Bey Buzo and demanded the Tabu Certificates on behalf of his principal and after perusal of the Mazbatas and documents
- 40 and having found the transaction completed we handed him over the Tabu Certificates after he has paid the fees provided by law to the cash of the sub-district and on the 15th Huzeiran 303 according to an order of the Mutassaref to mark the Registers wherein the registration of the said village appears the Registers were marked and for this purpose this declaration is given.

15th Tamuz 303.

Tabu Registrar Quneitra sub-district Youssef.

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Since the enquiry in the matter of Khiyam Walid was completed, this record was handed over to the Acting Assistant of the Attorney General for perusal and taking the necessary steps according to law.

16th Tamuz 303.

MUSTANATAK MEJLIS IDARA QUNEITRA.  
SAID EL HASSAN.

(Translated from Turkish.)

It follows from the record of the enquiry annexed hereto that Khalil Eff. Yasagi the former Tabu Registrar who stated Khiyam Walid village to be Mahlul, is not in a position to prove the state of "Mahlul." And also that the Ricabi family were the owners and used to pay the Finance Office every year tithe and werko in the amount of 188 piastres and these lands were transferred to Mahmoud Bey Buzo Zada who bought them 15 years ago and afterwards transferred them to the name of his son Ali Bey and he used to pay every year the werko and tithe and other official taxes as appears from the evidence of the neighbours from all four sides and from the official letter of the Tabu Office. These lands are owned by Ali Bey the son of Mahmoud Bey and according to Section 78 of the Land Law, and Section 8 of the instructions concerning Tabu Deeds a person, who is in possession of and sows during 10 years miri or mevkufe land without any dispute acquires a right called "Har Karar" whether he has or has not got any legal title and the land cannot be deemed Mahlul and a Tabu Deed should be given to him anew without any payment. It follows then that he is in possession from olden times and pays every year the Government Taxes to the Finance Office, his ownership and possession were proved in the most satisfactory manner and the Tabu Deeds given in the past according to law should remain in force. And I request the Mustanatik of the Mejles Idara of Quneitra to hand over these papers to the Mejles Idara and ask for a decision accordingly.

Page 18.

18th Tamuz 303.

Assistant Attorney-General of the Mejles Quneitra.

On the basis of information received from the former Tabu Registrar of the sub-district Khalil Eff. as to the Mazra Khiyam Walid being Mahlul to which there were annexed copies of the supreme orders of the 27th Huzeiran 303 numbered 348 and of the 27th of the same month without a number and of the 28th Mais 303 number 100, as to the institution of an enquiry as to the said Mazra. On the said basis there was brought the said Tabu Registrar and from the evidence adduced in the said documents it follows that there exists no registration of the said Mazra in the Tabu Office of the sub-district, and this is why the neighbours and experts and owners of property and land adjoining thereto were examined and asked for information which has shown the statement of the said informer to be misplaced since the Ricabi family is entitled to possession and after them Ali Bey the son of Mahmoud Bey Buzo, on the strength of the evidence of the neighbours and competent persons set out in this record, and enquiry from the Taxes Office showed that the Ricabi family paid for the said village the Werko Taxes from olden times and in Shebat 94 the Tabu Fees were paid together with those for Mazra Beth Axkar by the Ricabi family in the amount of 2082 piastres, and since the beginning of the year 94

and till now Mahmoud Bey Buzo and his son Ali Bey pay the Werko tax amounting to 188 piastres with the sum due as tithes every year. And as a result of the aforesaid investigations made in the above matter and taken down herewith it was found that the said village is not of the Mahlul lands but of the lands which are subject to legal possession under Section 78 of the Royal Land Code. I do, therefore, agree to the opinion of the Assistant Attorney General of the Mejles Idara of the sub-district to complete the legal steps in order to make out a Mazbata for the correction of the Tabu Registers according to enquiry and the matter is transferred to those who are in charge thereof.

19th Tamuz 303.

Investigator of the Mejles Idara, Quneitra  
sub-district.

SAAD EL HSEIN.

(Translation from Turkish.)

Since the investigations have been completed after consideration of the matter, it is passed herewith to the Mejles Idara of the sub-district in order to prepare the Mazbata.

20th Tamuz 303.

Assistant Attorney General of the Mejles Idara of Quneitra.

No. 151 (Seal) Mejles Idara, Quneitra sub-district.

The statement of the former Tabu Registrar Khalil Eff. Yasagi in the matter of the Khiyam Walid lands is based only and solely on the absence of a registration in the Tabu Office and does not rely on any other proof or authority. And he himself declares that he is not a claimant and his statement was only for the purpose of information and he is not in a position to prove the matter. And nevertheless should the neighbours on all four sides and the Finance Office be interrogated the truth could be established. And on the 17th of August 302 it was cabled not to make any registration in Tabu until further order. But since the Mazbata of the transfer (Faragh) was already signed previously his successor in office issued Tabu Deeds on the 13th of Mais 303 and after the lapse of 13 days i.e. on the 26th of Mais 303 he remembered the said cable and handed it over to his successor in office. This is what the former Tabu Registrar states. Hence everyone was brought and also the neighbours from all four sides and experts and investigations were also made in the Tabu Offices and in the Finance Department and it was established that the said lands were owned and cultivated by the Ricabi family without any dispute from olden times and they used to pay the yearly taxes in the amount of 188 piastres and also the tithe. And during the last 15 years Ali Bey the son of Mahmoud Bey pays Werko and Tahmiss and tithe every year to the Finance Office and it is in his ownership without any dispute. This was established. It follows, therefore, that according to Section 78 of the Royal Land Law and the instructions as to the issue of Tabu Deeds Section 8 ownership under "Haq Karar" was proved in the most satisfactory manner and the Tabu Deed issued to the said owner will remain valid. And on the 20th of Tamuz 303 the Assistant of the Attorney-General of the Mejles Idara wrote that after the completion of the investigations

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and according to the request and decision of the investigator to issue the proper order for the purpose of correcting the registration. The documents of the enquiry were passed to us and upon perusal thereof all the above was found and we decide that the proper order should be made as early as possible as you may deem it fit.

15th August 303.

Signed :—

Acting Kaimkam, Qunaitra  
 Mudir el Mahl  
 Chief Secretary  
 Tabu Registrar  
 Member  
 Member  
 Member  
 Member

} Seal. 10

No. 9.  
 Turkish  
 Certificate  
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No. 9.

**TURKISH CERTIFICATE OF REGISTRATION.**

REPUBLIC OF SYRIA  
 Seal of the President of Council  
 of Ministers.

20

November, 303.

**SANAD KHAKANI.**

District : Horan.

Sub-District : Quneitra.

Village : Khiyam Walid.

Kind : Tarla.

Category : Waqf Sidna Qotb ed Din el Khudairi.

Boundaries : South : Wadi Ein Kamran supplemented by lands of Gharaba.

East : Lands of Afsian and Wadi Gharbi.

30

North : Lands of Muftakhara and the water course of Sheikh Sleiman.

West : Forest of Huleh Lake.

Amount : 4000 old dunums ; 1470 new dunums and 22 pics.

Previous possessor : Ottoman subject Murad Agha, Abdallah Eff. Saleh Eff. and Mahmoud Eff., sons of Suleiman Agha Ricab.

Nature of Transaction : Transfer.

Possessor : Ottoman subject Ali Bey Ibn Mahmoud Bey Buzo.

Consideration : 10,000.

40

Registered in the Dafter Khakani, 21 Shawal 307, in the name of the possessor Ali Bey Ibn Mahmoud Bey Buzo.

Seal of the Dafter Khakani.

## No. 2.

**TURKISH CERTIFICATE OF REGISTRATION of Khiyam el Walid Land.**

No. 55/13—1—Whole.

Kassaha or Village—Khiyam el Walid.

Nazara—Mulhaq.

Waqf—Waqf Saidna Qotb Din Khudairi.

Boundaries : From south Wadi Hussein and Aradi Gharaba, East  
Ghadban and Wadi Gharbi, North Al Matmara and  
Seil Sheikh Suleiman, and from West Ghabet  
Barakeh.

10

Daimi register of November 303.

New Measurements (Surveys) : 1470 Donums 22 Olk.

Old Measurements (Surveys) : 4000 Donums.

Nature of Land : Tithe : Tarla.

Manner of issue of Deed : Transfer from Murad Agha and Abdullah  
Eff. and Saleh Eff. and Mahmud Eff..  
Sons of Suleiman Agha Ricabi.

Grantee : Transfer to Ali Bey son of Mahmud Buzo.

Price of the transfer : 10,000 Piastres.

20

Date of Sanad (Deed) : 21 Shawal 1307.

Remarks : 7938/2887.

*Exhibits.*

No. 2.  
Turkish  
Certificate  
of Registra-  
tion of  
Khiyam el  
Walid land,  
November  
1303

## No. 7.

**DECISION of Majlis Idara, Wadi el Ajam District, Damascus.**

(Seal of the Syrian Republic)

Seal of the Administrative Council of Wadi  
El 'Ajam.

No. 7.  
Decision  
of Majlis  
Idara,  
Wadi el  
Ajam  
District,  
Damascus,  
29 Safar,  
1304.

30 Appeared to this meeting Ahmad Ibn Muhammad Tibi, a Moslem and  
a subject of the Imperial Government, of El Salah ya Quarter at Damascus.  
Being the lawful attorney in the following sale and transfer who received  
the price on behalf of Murad Agha Ibn late Suleiman Agha Ricab and the  
two brothers Abdallah Eff. and Salih Eff. sons of late Ahmad Agha Ricab, the  
first one on his own behalf and the second on his own behalf and as lawful  
attorney for his brother Mahmoud Eff. el Thabit. This power of attorney  
is a Sharia document headed with the signatures and seals of the Ulama  
and the high officers Musa Kazim Eff., the Governor of Damascus, dated  
the 13 Jamad el Awal, 1298. The said Ahmad Agha sold and transferred

*Exhibits.*  
 No. 7.  
 Decision of  
 Majlis  
 Idara,  
 Wadi el  
 Ajam  
 District,  
 Damascus,  
 29 Safar,  
 1304,  
*continued.*

by virtue of this power of attorney, voluntarily, without force and by his will all what his principals own and under their possession and which they are capable to sell, transfer and assign. He is also authorized to receive the price from Muhammad Agha Ibn Yasin Agha Ibn Hassan Agha el Kurdi of El Salahiya Quarter, Damascus, who accepted transfer by virtue of his power of attorney for the Honourable Ali Bey son of late Ahmad Pasha Buzo, a notable of Damascus. The price was paid by the principal's own money and not by the attorney. The property includes all the forest known as the forest of Khiyam Walid situated in the Hula locality of Quneitra. It includes many lands, plain and wa'ar near and far, summer and winter resorts and a house fit for living and all what is included in the forest situated in the said farm. It is bounded: S.—Lands of 'Ain Kamran and AghrabeH Lands. E.—El'Asifat lands and Wadi Ghrabi. W.—Huleh lake known as El Aghab. N.—Mustakhra lands. The sale includes all rights attached lawfully to the land such as roads, rights of passage and other things customary in a similar sale or legally attached thereto. The vendor, transferor, and the said purchaser declare that transfer is complete and final and the sale is good, clear and free from excess or deceit and other voidable conditions. The purchase price of 100 gold pounds (Turkish) were received in full by the said vendor, the transferor, from the said purchaser. The vendor admitted to have received and thereby discharged the liability of the purchaser and the latter accepted the sale. On the above terms this certificate was written by the Council of Directors in order that it may be sent to the District Tabu Clerk, who will issue new Tabu documents after the necessary fees are paid.

29 Safar 1304—13 Tashrin Thani 1302.

Tabu Clerk	writer of agreements	Deputy	Treasurer	District Officer	
Khalil	Mohammad	Muhammad	Mohd.Amin (Kaim Maqam)	Quneitra District	30
				Muhammad Buzo	
	Members	Members		Members	
	Isa'im el Arafat	Indistinct signature		Indistinct seal	
				2nd April, 1940.	
				Stamp Seal of Muhafiz of Damascus.	

This is a true copy of the original.

2.4.1940.

Stamp and seal of Mohafiz of  
 Damascus.

(Signature Illegible) 40

## No. 4.

**DECISION of Majlis Idara (Administrative Council) Jerusalem.**

After careful investigation and examination it has been ascertained that in spite of the Mutawalli's claim that the land in question is part of the Nabi Musa Waqf, neither the Mutawallis nor the Awqaf Department have produced documents to support and substantiate their claim. All these lands are treated in the same way as Takhsisat Waqf (untrue waqf) which means that all its tithes are paid directly to the Awqaf revenue office. As the said lands are found in various localities with the exception of the uncultivated lands, they should be registered together with the buildings in the Lands Department in the name of Muhie El Din El Husseini. But the estimated value which has been mentioned by the experts in their report does not coincide with the truth. Therefore it was decided to increase the value of the flour mill to twenty thousand Piastres, and the value of the house to fifteen thousand and to increase the value of Kherbet Qaiqon of the cultivated lands and Tal Magheiber to nineteen piastres per dunam. Therefore it was decided to refer this case to the Land Registry (Dafter Khaqani) together with the attached documents.

*Exhibits.*

No. 4.

Decision of  
Majlis Idara  
(Administrative  
Council)  
Jerusalem,  
27th  
January  
1329.

## MAJLIS IDARA

Jerusalem

20

No. 878 Memorandum 6277

Serial 6670  
For Action

27 Kanun Thani 329

## No. 14.

**DECISION of Sharia Court of Damascus concerning the lease of Waqf Qotb ed Din el Khudairi.**

## TRANSLATION

## SHARIA COURT OF DAMASCUS.

In record 197, folio 123 rd. 10, folio of register 158 No. 1523, which refers to the time of the General Qadi, Muhammad Khurshid Eff. of Damascus, the following is written :—

In the venerable Sharia Council of Damascus, before the Hanbali Qadi, who is mentioned hereabove, Muhmud Pasha son of Ahmad Pasha son of Muhammad Agha Buzo Zada, the wise man, who has become of age, the Moslem, the Turkish, regarded as one of Salhiyya Quarter of Damascus, who is well known, has taken on lease on his behalf and by legal guardianship for his grandsons, sons of the deceased Ali Bey who died before him, who are :—

40

Khalid Bey  
Ahd al Ghani Bey  
Mohammad Ali Bey  
Salma Khanum  
Fariza Khanum  
Saniyya Khanum  
Fayiza Khanum

the minors who are under his legal wilaya (guardianship) by his money and the money of the minors mentioned above. The lease is between

No. 14.

Decision of  
Sharia  
Court of  
Damascus  
concerning  
the lease of  
Waqf  
Qotb ed  
Din el  
Khudairi,  
3 Muharram  
1334.

*Exhibits.*  
 —  
 No. 14.  
 Decision of  
 Sharia  
 Court of  
 Damascus  
 concerning  
 the lease of  
 Waqf  
 Qotb ed  
 Din el  
 Khudairi,  
 3 Muharram  
 1334,  
*continued.*

them according to the following explanation: What he took on lease for himself by his own money is  $11/24$  qirats out of the whole lease. What he took on lease for the minors by what was left to them from their father the mentioned is the rest of the share amounting to  $13/24$  qirats to be divided amongst them in a legal manner. This will make the total shares of the leased lands, the explanation of the rent of each of which is following: He has taken on lease from Rida Pasha son of Mahmud Eff. son of Ahmad or Ricabi Zada, the wise who is of age, the Moslem, the Turkish, regarded as one of Damascus, of known personality, the principal was present with him in the council on his behalf and as a legal curator, appointed 10 by the Sharia Qadi for his brother, Ahmad Said Eff., the absentee from Damascus, living at Bisra Aski-Sham, which is far from Damascus more than usual; and from his cousin Muhammad Sadiq son of Murad son of Suleiman Ricabi Zada, the absentee from Damascus, which is far from Damascus more than usual. He appears for them because both are absentees before now, and because they did not appoint a legal attorney to deal with the affairs of the Waqf in order to have a legal power the same as the lessor has, i.e. Tawlia and looking after the Waqf of his grandfather Qotb Ed Din el Khudairi, who has  $2/24$  qirats, which is under supervision and Tawlia of the first absentee, Ahmad Sa'id Eff., the mentioned. The 20 second absentee, Muhammad Sadiq Eff., the mentioned, has supervision and Tawlia for  $1/42$  i.e. 6 Qirats of the mentioned Waqf. The documentary evidence in the hands of the lessor and the two absentees are the Honourable charters by the State and legal judgments kept in their hands before this time. The lessor is also appointed as a legal inspector, by the Sharia Qadi, for the mentioned Waqf for 14 Qirats, because it has no legal inspector due the death of the former inspectors who are:—his brother, Ahd er Razzaq Bey, and his two uncles Salih Pasha and Abdallah Eff. The documentary evidence for the death of those are the Honourable charters and legal judgments they have before now. 30

Therefore, he contracted the lease for himself and as a curator and guardian for the minors. And it is between them in the manner shown hereabove, for the mentioned waqf in the legal manner. The lease is for all the Bayad and Qarar of al Mazra' land together with the forest inside it situated in Huleh lands relating to Quneitra S/D in the Syrian wilayat. It is known also as Mazra at Khiyam el Walid which includes plain pieces of lands and wa'ar far and near summer and winter plantations and inhabited villages, bounded:—S. 'Ein Qamran, Tamama & Gharaba lands, owned by the mentioned lessees and his partners. E. Al 'Afsiyyat lands and Wadi Gharba. N. Birkat (Pond) al Hula called al Kabsh. 40 W. Al-Muftakhira lands owned by the lessee and his partners. The lease affects all these lands known to both of them, in legal manner. It is for planting summer and winter plantations, seeding, taking products and getting benefits in the usual manner, for 3 whole 'Iqds, each of which contains 3 whole years amounting to 9 whole years. It was made in legal offer and acceptance. The period begins from the date mentioned hereunder, for a rent of 400 piastres of the usual coin of Damascus for each year, to be paid on the beginning of Muharram of each year. The lessee will lay his hand, on behalf of himself and for the others, on the leased lands after inspection and experience and legal contract, without fraud, 50 iniquity or voidness, after approval of both parties either on behalf of themselves, by Tawlia or curation, verbally and by legal consent.

Then, Muhammad 'Abd el Qadir Muhammad Qaddura as-Samman, appeared. He is a free man, wise of age, Moslem, Turkish, resident in al 'Uqeiba Quarter in Damascus and under the High Turkish Rule. He raised the amount of lease and increased it by 80 piastres per annum in the presence of the lessor. He applied for taking the lands on lease for one year beginning from this date with the a/m increase. The lessor replied that the lease mentioned above is not correct because the period is long and leased lands were given to them as masha' for a low rent, in which there is no good fortune and benefit on the part of the waqf. The lessee objected saying that the lease is correct and must stand, because it was made before the Hanbali Qadi, and the rent is good, all of which is to the good fortune and benefit of the waqf, and that the increase was made for damage and confusion. But he was not believed by both the lessor and the increaser, and was asked by them to prove that in their presence.

*Exhibits.*

No. 14.  
Decision of  
Sharia  
Court of  
Damascus  
concerning  
the lease of  
Waqf  
Qotb ed  
Din el  
Khudairi,  
3 Muharram  
1334,  
*continued.*

The lessee brought two witnesses: his brother, Suleiman Bey Buzo Zada and 'Ali Agha son of Muhammed Agha son of Yasin Agha Arafat, both of them inhabitants of al Akrad quarter, in Salhiyya of Damascus. He asked them to give evidence. They did so before the Hanbali Qadi in the presence of the lessor and increaser. And to their knowledge of the leased Mazra' bounded as above, the rent is good. In their evidence they mentioned the four boundaries in a sufficient manner and the same as the boundaries mentioned hereabove. They said it is to the good fortune and legal benefit of the waqf, and the increase proposed by the increaser is for damage and confusion. They know this and give evidence legally accepted by law, and confirmed by Rasul (Othman Muhammad el Mushibi and Farhan Bani Baari, both of al Akrad quarter, in which the two witnesses live). Those two confirmed secretly in a hidden chamber in this Court. Then they were confirmed openly by Mustafa Eff. Hassan 'Akkash al Kurdi and Muhammad Said Muhammad as-Shkhani al-Kurdi, both of al Akrad quarter in as-Salhiyya of Damascus, resident there, and under High Turkish Rule, in the presence of the two former witnesses. This was a legal confirmation. This was pleaded before the Hanbali Qadi, from whom they applied for legal judgment.

The Hanbali Qadi gave a judgment to the effect that the lease is correct, must stand and cannot be cancelled during the mentioned period, without any increase or anything else. And if as he mentioned, the lessor, the two absentees or the increaser forbade the lessee and the minors from working in the waqf, it will make a legal judgment and prohibition. Then the Sharia Qadi executed his judgment after the case and pleadings were over in a legal manner.

Then the lessee, Muhmud Pasha, testified his own will and that he has no right in the lease of the 7 qirats in the whole leased lands bounded as above, but his wife, Rivki Safa Khanum daughter of Abdallah al-Jarkas has 4 qirats and the wife of his son Ali Bey, Ayisha Khanum daughter of Abd al Latif Raghil Al-Ajlani 3 qirats, both are absent from this council, they are wise and of age. His name was mentioned in the deed of lease the exclusion of the names of both of those two, but on behalf of those two legally. The leased lands are under possession and ownership of the mentioned lessees, the minors and the two ladies mentioned hereabove and will be inherited by the lessee and the husband of 'Ayisha Khanum

*Exhibits.*

No. 14.  
Decision of  
Sharia  
Court of  
Damascus  
concerning  
the lease of  
Waqf  
Qotb ed  
Din el  
Khudairi,  
3 Muharram  
1334,  
*continued.*

father of the minors, Ali Bey who died on the 21st day of Thil Qi'idi, 1327, and his heirs are only they, and the evidence for this is the Tugharli Certificate of Registration dated November, 1303 (Financial year) No. 1 which was submitted to this Council.

What happened was recorded on the 3rd of Muharram, 1334.

Certified true copy.

(Sgd.)

Certified true copy of the original.

Extracted upon application submitted  
by Zaki er Ricabi dated 11.2.1940.

10

It is the same as the record.

4 Pt. Stamp—10 Pt. Stamp.

10 Pt. Stamp

14th February, 1940.

(Sgd.) President of the Council

Sharia Court of Damascus.

Certified true.

19.2.40

Qadi of Damascus

(Sgd.) Illegible

226 Syrian piastres were paid vide R.V. 2985 dated 14.2.40 and 20 registered in the incomes of the Court under No. 525.

14.2.40.

Chief Clerk

(Sgd.) Illegible.

Sent to the Cabinet on 4.3.40.

The signature and seal hereabove one the seal of the Sharia Court of Damascus and the signature of Shukri-as-Siba'i Esq. the Chief Clerk.

(Sgd.) Illegible.

25 Muharram 1359

4 March, 1940.

Ministry of Justice

(Sgd.) Illegible.

30

No. 15.  
Certificate  
of  
Registra-  
tion,  
15th May  
and  
15th  
September  
1921.

**No. 15.**

**CERTIFICATE OF REGISTRATION.**

**REASON FOR GIVING THIS CERTIFICATE.**

The mentioned sikh lands are in possession of Mohammed 'Ali Bey, son of Mahmud Pasha Buzo vide a certificate of registration, which was lost by chance, the date and No. of which are quoted in the two legal certificates. This was found out from the evidence of the village and certification of the Majlis Idara of the District dated 2 Mais, 921, No. 334, Certification of the Majlis Idara of the District dated 15 Mais, 921, No. 677. 40

The mentioned Muhammad 'Ali Bey died on 25th November, 925, and his heirs are Khalil Bey, 'Abdul Ghani Bey, Muhammad Badriyya Khanum. Badriyya died on 1st March, 1326, and her heirs are her mother Sa'adiyya Ahmad el-Khatib, and her mentioned brothers. Then Samiyya died on 11.1.1332 and her heirs are her mother, 'Ayisha 'Abd el-Latif el 'Agtani and her mentioned brothers. Therefore, transfer to the heirs was made according to the register of the Revenue and Inhabitants.

*Exhibits.* •  
—  
No. 15.  
Certificate  
of  
Registra-  
tion,  
15th May  
and  
15th  
September  
1921,  
*continued.*

Regarding all the mentioned sikh lands 24 shares.

Khalil Bey, 'Abd el Ghani Bey, Muhammad Bey, Salma Khanum,  
10 Fariza Khanum and Fayiza Khanum, sons and daughters of Muhammad 'Ali Bey, together get  $20\frac{1}{2}$  shares; 'Ayishe 'Abd el Latif al 'Agtani  $1\frac{1}{2}$ ; Sa'diyya Ahmad al Khatib 3; this is according to the Certificate of Registration. According to the evidence of the village and the certificate of licence issued by the Incomes dated 15 Ilul, 921, folio 1/86, Sa'diyya Ahmad al Khatib has transferred all her shares absolutely.

As explained in No. 1. As one of the partners, Sa'diyya Ahmad al Khatib has transferred her share, this Certificate is given instead.

Upon application, we extracted hereabove the registration of Khiyam Walid as recorded in the Register of Ownership for Quneitra S/D. And  
20 due to the loss of the original documents we could not extract copies from the documents according to which the mentioned registration was made. So we hereby certify it.

I hereby certify the correctness of the signatures and seal of the acting i/c of the Lands Register, Mr. Zaki ash-Shatti.

I hereby certify the correctness of the signature and seal of the General Director of Lands and State Domain, 'Arif Bey al Khatib.

3.3.40.

(Sgd.) Seal.

(Sgd.) Seal.

General Director of the Land  
& State Domain.

General Director of National  
Economy.

30

Ministry of National Economy.

*Exhibits.*

No. 16.  
Under-  
taking by  
the Keren  
Kayemeth  
Lisrael  
Ltd. at the  
Land  
Registry,  
Safad,  
14th  
February  
1939.

No. 16.

**UNDERTAKING by the Keren Kayemeth Leisrael Ltd. at the Land Registry, Safad.**

D/No. 7.  
Registrar of Lands,  
Safad.

Extract No. 3/64/39.

Sir,

Subject : Undertaking.

I, the undersigned, JOSEPH NAHMANI, the legal Attorney of Keren Kayemeth Leisrael Ltd., vide Notarial Power of Attorney Jerusalem No. D/285 of 9.12.36, hereby declare that my principal undertakes to pay to those entitled to Waqf rights in Khiyam Walid lands, which have been transferred today to my principal in file No. 18/39, the sums which will be due to them in accordance with the conditions and customs prevailing heretofore. 10

On behalf of  
The Keren Kayemeth Leisrael Ltd.

(Sgd.) JOSEPH NAHMANI

Haifa, 14.2.39.

No. 1.  
Certificate  
of Registra-  
tion in  
the name  
of Keren  
Kayemeth  
Leisrael  
Ltd.,  
14th  
February  
1939.

No. 1.

**CERTIFICATE OF REGISTRATION in the name of Keren Kayemeth Leisrael Ltd.** 20

**GOVERNMENT OF PALESTINE.**

**CERTIFICATE OF REGISTRATION.**

Land Registry Office of Safad.

Petition Number 18/38.

Volume No. 1.

Deed No. 12 of 14.2.39.

Folio No. 2.

Sub-District : Safad.

Town or Village : Khiyam el Walid.

Situation or Quarter : Khiyam el Walid.

Class of Land : Waqf Qotb ed Din el Khudairi—Mulhaq.

Description of Property : Land. 30

Boundaries : North : Messil esh-Sheikh Sliman, Ein Indrawess and Ard el Muftakhara.

South : Ein Kamary and Ard Gharaba Mulk of Mahmoud Pasha Buzo and partners.

East : Ard el 'Assabat and Wadi Gharaba.

West : Al Hardaban and Ard Es-Salhiyeh.

Area : 3,677 standard dunams, 200 sq. metres.

Share : In Whole.

Mukataa or Bedal Ushr : —

Name of former Owner : Aishe Khanum bint Abdul Latif Eff. El Ajlani, Khaled Bey, Abdul Ghani Bey, Mohammad Bey, Salma Khanum, Fayizeh Khanum, children of Mohammad Ali Bey.

Nature of Transaction : Sale.

Consideration or Price : LP.17,000.—.

Remarks : This registration is for the part that falls within Palestine only.

- 10 The immovable property above described is registered in the name of :—  
Keren Kayemeth Leisrael Ltd., Resident of : Jerusalem.

And this Certificate is delivered to him as a certificate of this Registration.

This Certificate of registration is issued subject to the provisions of (A) Article 3 of the Law of Disposition of Immovable Property of 5th Jamad el-Awal 1331 (30th March, 1329) and (B) Article 9 of the Transfer of Land Ordinance, 1920.

Those Provisions are :—

- 20 (A) " Formal title deeds are valid and executory. The Civil and Sharia Courts shall give judgment 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."  
(B) " No guarantee of title or of the validity of the transaction is implied by the consent of the Administration and the registration of the Deed."

Seal of Land Registry Office.

Date 24th February, 1939.

Land Registry of Safad.

Signature of Registrar of Lands.

**No. 10.**

**LETTER from Khalid Buzo to Mudir (Director) of Waqf.**

- 30 His Eminence Mudir Awqaf, Damascus :—

Name of the applicant for substitution.

Place where the substitution is required.

Khalid and Abdul Ghani and Mohamed Ali and Salma and Friza and Faiza sons of the late Mohamed Ali Bey Buzo and Aisha bint Abdul Latif eff. Ajlani.

The whole of the village of Khiyam el Walid ; consisting of Slikh land.

Expert of the applicant and his residence :

- 40 Mouafak Kaziha ; Advocate ; Damascus.

In the Waqf of :  
Qotb ed Din el Khudairi

No. of Document :  
Registration Deed No. 211.  
Dated September 1921.

*Exhibits.*

No.1.  
Certificate of Registration in the name of Keren Kayemeth Leisrael Ltd.,  
14th February 1939,  
*continued.*

No. 10.  
Letter from Khalid Buzo to Mudir (Director) of Waqf,  
23rd February 1939.

*Exhibits.*

No. 10.  
Letter from  
Khalid  
Buzo to  
Mudir  
(Director)  
of Waqf,  
23rd  
February  
1939,  
*continued.*

It is prayed that substitution of the above-mentioned land according to the decision No. 80, dated the 29th of January, 1926, be effected. I gave above the name of my expert and his residence.

(Sgd.) KHALID BUZO

Dated 21.2.39.

(Principal & agent).

Ist. To the Accountant on 22nd inst.

For payment in due course (Mouajallah)  
on 22nd inst.

Mulhaqa 18  
—  
29

Mazra at Khiyam el Walid situated in Quneitra sub-district, is of the 10  
Waqf of Qotb ed Din el Khudairi and that its annual rent is 305¼ gold  
Turkish piastres collected until the year 1357 by virtue of the cash receipt  
dated 23.2.39 under No. 232/264.

Dated : 23.2.39.

(Sgd.)

To the substitution on the 23rd inst.

No. 11.  
Statement  
of Claim in  
the Court of  
First  
Instance in  
Civil Case  
No. 143,  
27th  
March  
1940.

No. 11.

**STATEMENT OF CLAIM in the Court of First Instance in Civil Case No. 143.**

Case No. 143.

27th March, 1940. 20

His Honour,

The President of the Court of First Instance in Civil Cases,  
Damascus.

Plaintiffs : Muhammad Said, Muhammad Kamel, Hayat el Nefus and Fatmeh, sons and daughters of the late Mahmud Pasha Buzo, and Khalil, Hassan, Abdul Hameed and Zeinab, the sons and daughters of the late Ahmad Bey son of Mahmud Pasha Buzo, and their mother Mrs. Amneh daughter of Abdul Lateef Eff. El-Ajlani, represented by Muhammad Said El Mahasni, Advocate, by virtue of a 30 power of attorney attached to this application.

Defendants : Khalid Bey son of Muhammad Ali Bey Buzo, in his personal capacity and on behalf of his brothers and sisters, Muhammad Ali Bey, Salma Khanum, Farizeh Khanum, Fayzeh Khanum and Abdul Ghani Bey, and his mother Aysheh Khanum daughter of Abdul Lateef Eff. El-Ajlani, all of whom are living at Muhajireen Abu Rommaneh Quarter.

Third Party : Assistant Manager of the Real Estate Office at Quneitra.

## STATEMENT OF CLAIM.

*Exhibits.*

The late Muhammad Ali Bey son of the late Mahmud Pasha Buzo, owned and possessed all the lands of the village of Khiyam el Walid, of the Quneitra District, and bounded :—

East : The lands of El-Asfiyat and Wadi Gharaba.

North : The water course of Esh-Sheikh Suleiman and Ain (Spring) of Andrawes and the Muftakhara lands.

West : El-Hardaban and the Salhyieh lands.

South : The lands of Ain Kamaram and Gharaba.

No. 11.  
Statement  
of Claim in  
the Court of  
First  
Instance in  
Civil Case  
No. 143,  
27th  
March  
1940.  
*continued.*

- 10 These lands consist of distant and nearby lands, winter resorts and dunghills (Dimnah) and are leased at the rates of rents payable by the farmers thereof, and a forest consisting of lands on which weeds grow and spring waters flow, which he owned and possessed by virtue of a Tabu title deed dated November 1303, No. (1). The said Muhammad Ali Bey died on 25.11.1925, and his inheritance devolved on his father, Mahmud Pasha, his mother Ranki Safa Khanum and his wife Aysheh, daughter of Abdul Latif Eff. El-Ajlani and his sons and daughters from her, namely, Khalil, Abdul Ghani, Muhammad Ali, Salma, Farizeh, Fayzeh and Saniyyeh, and on his second wife, Saadiyeh, daughter of Ahmad El-Khateeb,
- 20 and his daughter from her, Badriyeh. Then Saniyyeh died and her inheritance devolved on her mother and grandfather mentioned above. Then the said Badriyeh died, and her inheritance devolved on her mother and her grandfather named above. Then the said Mahmud Pasha died and his inheritance devolved on his wife Hanki Safa named above and on his sons and daughters from her—Messrs. Ahmad, Muhammad, Said, Hayat El-Nifus and Fatmeh, and on his two sons from a former wife who died before him, namely Muhammad Adeeb and Muhammad Kamel, and on his son from his former wife, who died before him, namely Abdul Latif. Then the said Abdul Latif died and his inheritance devolved on his
- 30 brothers on the father's side, namely, Ahmed, Muhammad, Said Muhammad-Adeeb and Muhammad Kamel, Hayat El-Nifus, and Fatmeh, named above. Then the said Ranki Safa died leaving her surviving her sons and daughters named above. Then the said Ahmed Bey died, leaving him surviving his wife Amneh daughter of Abdel Latif Eff. El-Ajlani and his sons and daughters from her, Messrs. Khalid, Abdul Hameed, Hassen, Zeinab and Tala'at and his daughter from a former wife, who died before him, namely, Adla only. The legal inheritance is limited to those named above and there are no other heirs to those mentioned herein, other than those whose names were mentioned herein.
- 40 The said heirs, namely, Mahmud Pasha, his wife Ranki Safa, and his son Ali Bey and their mother named above, took possession of the lands so inherited from the first testator, the said Ali Bey, each according to his own share. This is proved by the deed (Hijjeh) issued by the Sharia Court at Damacus during the month of Muharram 334 whereby the ownership and possession of Mahmud Pasha, his wife and the other heirs of Ali Bey, referred to above, were indicated. This deed shows that Mahmud Pasha took on lease the whole of the said lands on behalf of Khudairi Waqf in his personal capacity and on behalf of his grand-child from his son Ali Bey named above on the basis that its surface and under-surface are included
- 50 in the property of the said Waqf, and that the said possessors have the right of Mashad el Maska, which is a form of ownership over the said

*Exhibits.*  
 ———  
 No. 11.  
 Statement  
 of Claim in  
 the Court of  
 First  
 Instance in  
 Civil Case  
 No. 143,  
 27th  
 March  
 1940,  
*continued.*

inherited lands, including the dunghill, dwellings and forest. The (Hijjah) deed contains provisions as to the validity of the lease, inheritance and judgment which are free from any taint of fraud and forgery, and are valid and enforceable without further evidence.

When my clients wanted to carry out legal transactions for the registration of their said shares in their names, they perused two deeds dated May 1921, No. (7), and September, 1921 (Nos. 1 and 2) whereby a transaction was being proceeded with in the names of the Defendants who are the sons of the wife of the said Muhammad Ali Bey only, to the exclusion of the other heirs, with additions to the shares which can easily be seen at first sight, and this shows that intentional errors were committed with a view to effacing and obliterating the truth. 10

WHEREAS the "Mashad Maska" of the said lands was originally inherent in the ownership of its owners, who on 13th Jamad el Awal, 198, engaged Ahmed Agha son of Muhammad Teebeh El Kurdi as their agent to represent them in the sale of the Mashad Maska of the said lands, together with the forest included therein and including the lands, and dunghill (Dimneh) in good condition, at the nominal rent payable by its owners, and a forest as proved by a power of attorney issued by the Sharia Court, Damascus, on the said date : 20

AND WHEREAS the said agent had attended the disposition and administrative councils held on 29th Safar, 314, and 3rd November, under the chairmanship of the District Officer of Quneitra, and sold all that he was delegated to sell by virtue of the said power of attorney, as proved by the Mazbata (deed) issued on the said date :

AND WHEREAS it is proved from the Tabu extract of registration that the lands are of the Waqfs attached to the Waqf of Qotb ed Din el Khudairi, and its formal title deed (Sanad Khakani) is a provisional information ('Elm Wa-Khabar) generally given in the name of the Waqf :

And WHEREAS Khalid Bey Buzo, one of the Defendants, in his own capacity and on behalf of and as attorney for his partners, the other Defendants, had by virtue of a power of attorney, No. (525), executed before the Notary Public Mr. Abdul Wahab El-Jabi, on 28.1.1939, approached the Waqf Department on the 22nd of February, 1939, on the basis of his said power of attorney, and requested that a substitution transaction of the said lands be carried out for the purpose of divesting the said lands from registration as a Waqf and subsequently on the 11th of March, 1939, he produced the said deed (Hijjah) which contains the statements of the suit and succession, thereby admitting same : 30

AND WHEREAS up to the date when the said Mahmoud Pasha died the taxes were paid by him and the receipts were issued in his name : 40

AND WHEREAS the succession to the properties of those mentioned by me as having died was proved by the certificates of succession which I produced :

AND WHEREAS the specific rights to the said lands are inheritable according to the Sharia Law and devolve on the legal heirs but do not pass to those having the right to inherit according to the Land Law, and, moreover, whereas the forest and dunghill (Dimneh) in good condition and dwellings around it are all immovable properties :

AND WHEREAS the Waqf of Qotb Ed Din El Khudairi who was the founder of the famous School at Khudeirieh Quarter, Damascus, dating as far back as 878, were of the old class of Waqfs to which the Land Code did not apply :

*Exhibits.*  
—  
No. 11.  
Statement of Claim in the Court of First Instance in Civil Case No. 143, 27th March 1940, *continued.*

AND WHEREAS the real estate (property) laws and the Sharia Laws are unanimous in treating as null and void any illegal act committed by one of the heirs to the exclusion of the other heirs :

AND WHEREAS this claim is a simple one and not subject to written notification, and as it is based on proper documentary evidence :

10 I, THEREFORE, beg to lodge this case in original, with copies thereof, praying that the original be retained in the registry of Your Honourable Court, that copies thereof be served on Defendants, that Defendants and myself be summoned for hearing before the Court, that judgment may be given against them annulling and revoking the said two deeds, and that the said lands be registered in the names of the owners thereof who are the legal heirs, each according to the share allotted to him in the said Sharia Deed (Hijeh) with costs and advocates' fees.

(Sgd.) MAHMUD SAID MAHASNI,

Advocate.

20 Certified true copy of the original which was produced in Case No. 143/40.

Seal of the President of the Council of Ministers Syrian Republic.

(Sgd.) Illegible Director of the Bureau.

I affirm that the signature appearing on the stamp is that of the Clerk of the Court.

(Sgd.) For President of the Court of First Instance, Damascus.

13.7.40.

I hereby affirm that the signature appearing on the seal of the Civil Court of First Instance is that of the Acting President.

30

*Exhibits.*

No. 12.

No. 12.  
Letter from  
Zaki er  
Ricabi,  
Mutawalli  
of Waqf of  
Ricabi  
family, to  
the Mudir  
Awqaf and  
his reply  
thereto  
12th and  
15th July  
1940  
respectively

**LETTER from Zaki er Ricabi, Mutawalli of Waqf of Ricabi family to the Mudir Awqaf and his reply thereto.**

His Eminence Mudir Awqaf,  
Damascus.

I should be obliged to you if you let me know whether the Treasury of the Syrian Government paid and still pays through the Awqaf Department to Waqf Qotb Ed Din El Khudairi of Ricabi Waqfs, tithes of village Khiyam el Walid, or not ; and if Mr. Khalid Buzo and partners had paid the equivalent rent (Ajir methel) of the land of the said village. 10

Mutawalli of Awqafs of Ricabi family

(Sgd.) ZAKI RICABI.

Date

12.7.1940.

The Treasury of the Government of Syria paid and still pays through our Department the tithes of village Khiyam el Walid of the Waqfs of Qotb Ed Din El Khudairi, which is of the true common charitable waqfs.

Mr. Khalid Buzo and his partners have paid the rent of the said land till the year 1357 by virtue of receipt No. 232/26 dated 23rd February, 1939. 20

Director of Awqaf Damascus.

Damascus, 10 Jamad Akhar 1359      Signature and Seal

15 July 1940

MR. AHMED KASSIMI.

No. 3.

**CERTIFICATE OF WERKO issued by the Director of Finance (Syria).**

No. 3.  
Certificate  
of Werko  
issued by  
the Director  
of Finance  
(Syria),  
27th  
November  
1940.

Diwan El Muavazana.

10657

1830

NAME OF WAQF

NAME OF THE VILLAGE

BADAL MAKTOU  
(Fixed rent) 30

Waqf of El Ricabi  
Family  
Qotb ed Din el  
Khudairi

Farm of  
Khiyam El Walid

344  
three hundred  
fortyfour Ottoman  
Piastres only.

As requested, the above statement refers to the Bedel Maktou' (fixed rent) in respect of Mazra'a (Farm) Khiyam el Walid which belongs to the Waqf of Ricabi family, situate at Quneitra Sub-District.

(Sgd.) Director of Finance

Damascus, 27.11.1940.

## No. 13.

**LETTER from Zaki er Ricabi, Mutawalli of Waqf of Ricabi family, to the Mudir Awqaf and his reply.**

His Eminence Mudir Awqaf,  
Damascus.

I should be obliged if you kindly let me know the following :—

1. What was the date of the construction of the school which my ancestor the Cadi Qotb Ed Din Khudairi had built in the Khudeiri Quarter, Damascus ?
- 10 2. What are the villages situated in Palestine and dedicated as Waqf of the above mentioned Qotb Ed Din el Khudairi ?
3. Whether village Khiyam el Walid is a true Waqf ?

Mutawalli Awqaf Ricabi  
(signature)

ZAKI RICABI.

13.2.1941.

To the Mutawalli, Zaki Bey Ricabi.

Referring to the Order given for the construction of the School, it appeared that this school of the late Qotb Ed Din el Khudairi, Khudeiri  
20 Quarter, Damascus, was built in 878 Hegira.

The village of Khiyam el Walid situated in Palestine is one of the villages made Waqf by the said dedicator and it is one of the true waqf (awqaf sahiha).

The Director of Awqaf Damascus

(Sgd.)

15.2.41.

*Exhibits.*

No. 13.  
Letter from  
Zaki er  
Ricabi,  
Mutawalli  
of Waqf of  
Ricabi  
family, to  
the Mudir  
Awqaf, and  
his reply,  
13th and  
15th  
February  
1941  
respectively

## No. 5.

**LETTER from Mr. Khalid Buzo, Beirut, to the Director of Moslem Waqfs, Beirut, and the reply of the Advocate for the Waqfs, Beirut.**

30 The Director of Moslem Waqfs.

Our testator, the late Ali Bey, son of the late Mahmud Pasha Buzo, owned and possessed the farm (Mazra'a) known as Khiyam el Walid, situated in the Huleh lands of the Quneitra District, by virtue of Tapu (Title Deed), dated November 307. After his death, the said farm devolved on us as his heirs by virtue of a proper and legal transaction for transfer dated December 1921. It was stated in the Column "Category of Land" of the said Deed (Sanad) that it was included in the Waqf of Qotb ed Din el Khudairi, and an annual tax of 344 piastres, at the current rate, is levied thereon, and this is in accordance with the Treasury records whereby the

No. 5.  
Letter  
from Mr.  
Khalid  
Buzo Beirut  
to the  
Director of  
Moslem  
Waqfs,  
Beirut, of  
7th April,  
1941,  
and the  
reply of the  
Advocate  
for the  
Waqfs,  
Beirut.

*Exhibits.*  
 No. 5.  
 Letter  
 from Mr.  
 Khalid  
 Buzo Beirut  
 to the  
 Director of  
 Moslem  
 Waqfs,  
 Beirut, of  
 7th April,  
 1941,  
 and the  
 reply of the  
 Advocate  
 for the  
 Waqfs,  
 Beirut,  
*continued.*

said tax was fixed and imposed on the said "Farm." When the Treasury took over the Raqaba (ownership) of the Waqf lands and considered same to be of the true Waqf lands, to which the laws applicable to Miri lands are applicable in accordance with the law enacted in the year 1285, naturally these lands became subject to the substitution decree No. 80, even leaving out of consideration the fact that there is no deed constituting a true waqf, nor is there an Imperial Baraat (authorization) to support the said Waqf.

May I therefore be informed whether such kind of lands is true or untrue Waqf and whether it can be substituted or not ?

With respects,

10

(Sgd.) KHALID BUZO.

After registration : I refer it to M. Muhyi Eddin Eff. Alam-Eddin, advocate for the Department, for his observation on the matter.

Director of Moslem Waqfs, Beirut.

To His Excellency,  
 the Director of Waqfs, Beirut.

8.4.41.

Sir,

If the farm (Mazra'a) referred to above is of the miri class of lands and was not made a waqf by Imperial authorization, this waqf should be 20 considered as falling within the class of untrue waqf, and this does not preclude the substitution by the Treasury of the annual taxes as its taxes have been fixed in accordance with the decree of the High Commissariat, No. 80, dated 29th January, 1926.

With respects,

(Sgd.) MUHYI-EDDIN ALAM-EDDIN,

Advocate for Waqfs.

Referred to Petitioner, with consent to peruse the observation of the advocate for the Department.

Director of Waqfs, Beirut. 30

For the legalization of the signature of Khair Eddin Bey Nahhas, Director of Moslem Waqfs.

(Sgd.) MUHAMMAD TAWFIQ KHALID,

Mufti of the Lebanese Republic.

8.4.41.

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**In the Privy Council.**

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

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**BETWEEN**

**ABDALLAH MUKHLES - - - - - Appellant**

**AND**

**KAREN KAYEMETH LEISRAEL LIMITED - - Respondents.**

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**RECORD OF PROCEEDINGS.**

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**STONEHAM & SONS,**  
108A CANNON STREET,  
LONDON, E.C.4,  
*Solicitors for the Appellant.*

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

## EXCERPTS from the Printed Budget of the Ottoman Awqaf Ministry for the year 1327.

*Exhibits.*No. 17 (b).  
Excerpts  
from the  
printed  
Budget  
of the  
Ottoman  
Awqaf  
Ministry  
for the year  
1327.

Page 1	Explanatory note to the Budget of the Imperial Awqaf Ministry for the year 1327.													
	Budget of the portion of Awqaf income received by the Treasury, amounting to 11973136 piastres and the bedl of trusteeships shown on the registers at 8929048 piastres 36 paras, with detailed entries.													
Page 180	Name of Waqf	Register No.	Repairs & beneficiaries of the Waqf non existing				Repairs & beneficiaries of the Waqf existing				Original bedl		Payment due for the year one thousand three hundred twenty-seven	
			to be held two-thirds of bedl		for distribution one-third of bedl		to be held one-third of bedl		for distribution two-thirds of bedl					
			piastre	para	piastre	para	piastre	para	piastre	para	piastre	para		
Page 303	Bedl of the Waqf dedicated to the cemetery of Sidi Ricab and administered by the trustees Mahmud Eff. Abdulla Eff. and Sadek Eff. Ricab, and situated in the Abbassieh village of the Qada of Wadi-il-Ajam	33					340		680		1020		680	
Page 303	Bedl of the Waqf of the Mazra'ah of Khiyam-el-Walid in the Quneitra District and administered by Murad Eff., Saleh Eff. and Mahmud Eff. Ricab	34					172		344		516		344	
Page 458	Name of Wilayet or Independent Liwa				Register of disbursements for Bedl 'A'shar of Mevqufa villages entered up for the year one thousand three hundred and twenty seven.									