NATIONAL FUND LIBRARY

LAND TENURE *In* PALESTINE

By

PROFESSOR FRANZ OPPENHEIMER

and

JACOB OETTINGER

PUBLISHED BY THE

Head Office of the JEWISH NATIONAL FUND

THE HAGUE

COLLECTIVE OWNERSHIP *and* PRIVATE OWNERSHIP OF LAND

By

PROFESSOR FRANZ OPPENHEIMER

CONTENTS

PREFACE

The present work is the first of a series of popular scientific monographs, published by the Head Office of the Jewish National Fund, upon the problems of colonisation in Palestine, which the National Fund is called upon to help in solving.

The Jewish National Fund (Keren Kajemeth Le Jisroel) was called into existence on December 30th, 1901, by the Fifth Zionist Congress at Basle, for the purpose defined as follows: "The Jewish National Fund shall be an inalienable possession of the Jewish people, which shall be exclusively devoted solely to the purchase of land in Palestine and Syria." Since that time the National Fund has acquired considerable strength. In the year 1913 its revenue amounted to a million francs; after a passing decline in the first period of the war, it again amounted to a million francs; and in the first seven months of the year 1917, it likewise reached this total. At the time of its establishment it was contemplated that the National Fund should proceed to the task of purchasing land as soon as it would have a capital of 5 million francs. But already the Sixth Zionist Congress, held in 1903 at Basle, found itself compelled to begin immediately with the purchase of land; and it was therefore resolved and laid down by Statute that one-fourth of the capital of the National Fund must remain an inviolable reserve.

The settlement work begun a few years later in Palestine by the Jewish National Fund, which has thus lasted hardly ten years, is fully described in the Reports of the National Fund Executive to the Congresses, as well as in numerous publications. But it may here be pointed out that the capital hitherto invested by the National Fund in Palestine has reached the total of more than 4,500,000 francs. In the course of its development the National Fund has not only increased its resources in a gratifying manner, but it has also been extended by the affiliation of new funds. To the fund originally decided upon for the purchase of land there have been added funds for plantations, for workmen's dwellings, and for co-operative settlement. The National Fund is thus rightly regarded as the most important instrument of national colonisation, and it is therefore justifiable to inquire what principles it should follow in its settlement policy.

The questions connected with the work in Palestine are constantly becoming more numerous and complicated. The acquisition of land, its preparation and cultivation for European settlers, the training of townsfolk in agriculture, the investigation of the methods of farming and labour that shall create the preliminary conditions for the settlement of the moneyless masses, the questions of credit and law connected with hereditary lease, the housing problems in town and country—all these matters induced the Eleventh Zionist Congress held in 1913 in Vienna, to entrust the Directors of the Jewish National Fund with the task of working out a system of labour for the National Fund.

In accordance with the character of the Jewish National Fund as a popular institution based upon the contributions of the masses, who, through the medium of the Zionist Congress, have a decisive voice in appointing its Directors and determining its use, the discussion upon the problems of our work shall be conducted under the eye and with the co-operation of the public.

We are therefore beginning with the issue of a series of publications, which shall discuss and elucidate the fundamental principles and working methods of the National Fund, in the light of the experiences gained by ourselves in Palestine as well as by other colonising nations. The contribution by Prof. Franz Oppenheimer is intended to expound the fundamental idea of the National Fund, which the author of the idea of the National Fund, Professor Hermann Schapira, as well as the real founder of this institution, Theodor Herzl, proclaimed as the basis of Jewish settlement policy in Palestine. The article by Mr. J. Oettinger shows the practical application of the principles of the Jewish National Fund.

The National Fund rests, as is known, upon the principle of collective ownership of land: it may not alienate its land, but only let it upon lease or hereditary lease. The vast importance that this principle enjoyed in the economic development of peoples and countries and is constantly acquiring in the economic world, is very fully explained in this work.

The Hague, Oct., 1917.

The Head Office of The Jewish National Fund.

Collective and Private Ownership of Land

Feudal ownership and private ownership.

The law of land ownership, as observed in most civilised countries at the present day, is a comparatively recent institution. This law, which confers upon the owner the "right of abuse" and of use, as in the case of all moveables, is derived from the Roman law and is a result of the Gracchic revolution. When the Gracchi passed their law for restricting the right of the Roman citizens to 500 yokes of the Roman common, they made a concession to the landowners by conferring upon them the entire ownership of the property which they had hitherto held in fee from the state. Upon their movement being defeated the new restrictions fell to the ground, but the ruling classes held fast to the new law. Until then there also prevailed in Rome, as everywhere else in the world, only the simple right of ownership, the *jus possessionis*, of land, not the *imperium directum:* it was regarded as conferred by the state, which formally reserved its supreme ownership for ever. Only then was this new right carried by Roman arms across the globe; and afterwards it was introduced partly by cunning, and partly by force into all the other regions of West-European civilisation, by the ruling classes of other and later nations, who could make very good use for themselves of this right which was excellently adapted to the interests of a ruling class. But until the dawn of the present era it played a very small part indeed upon this planet. Not until quite recently has it made strong headway everywhere, thanks to the infiltration of Europeans into all parts of the world.

Common ownership of land in the early period of the life of nations.

It had long been thought that the beginnings of national life, so far as this manifested itself in a fixed domicile, were bound up with the communism of the agricultural stage. This view, which is especially favoured by all agrarian Socialists and land reformers, has lately been shaken very severely, particularly by Robert von Pöhlmann, in his famous "Geschichte des Sozialismus und Kommunismus im klassischen Altertum," and has now only a few adherents. Pöhlmann showed that among the few accredited facts we are here concerned with the natural communism of a military camp, of a tribe welded together in a fortress, or of another form of society which, in warlike periods, fosters the inevitable community of management and consumption. In many other cases, as, for example, in the case of the Lycurgus legend, we have to deal with a capricious reading of Socialistic wishes into the past, in order to exercise all the greater influence upon the present and to realise future dreams. But, even if these views are erroneous, it is undisputed and undisputable that all civilisation begins, not indeed with the collective management, but with the collective ownership of land on the part of the group, the tribe, the country, the village, the race. This is the natural law, the primæval and permanent law, which, quite as a matter of course, develops and prevails wherever a new and stronger right is not introduced by a conquering power. It is the primitive law, the natural law of equality, which aims at making all the members of the society equal, which does not wish to place anybody at an advantage or a disadvantage in relation to his neighbour. Only when some conquering power creates classes, and when these classes, united in the state, approach one another in a relation of superiority and subordination, does this ancient law of equality recede in favour of a law of inequality, and this,

of course, reshapes the right of ownership with all other rights until it receives, as has already been said, its latest and final development in the Roman legislation. But until matters advance so far the primitive right of which we have spoken prevails in almost all relations. Its purport is to grant every one as much land as he needs to sustain himself and his family; it assures, to express myself in legal language, the use or *usus,* but it wishes to prevent every abuse or *abusus,* which Roman law first assigned to the landowner, "as of all moveables."

Right of occupation and of usufruct.

For this purpose it grants every member of the society that has a right to the ownership of the land the right of occupation. He may take from the supply of land as much as he needs in order to provide for himself and his family. From the moment when, by some sort of ceremony or sign, for example, by hewing the trees on a particular spot or by stretching a thread or rope, he indicates that he intends occupying and cultivating this piece of land, the right of all others ceases completely for a definite period. Nobody has the right to lay claim to such a piece occupied by a member, and as long as he cultivates it nobody has the right to interfere with him in his property or possession or to drive him from it. I repeat expressly: as long as he is active upon it! This is the so-called *Rückenrecht* of Germanic law, which also prevails in the whole world, the law which is figuratively expressed in its name: that nobody may evict the owner from a piece of land as long as he rests with his *Rücken* (back) upon it.

Reversion of unoccupied land to the Community.

But the community reserves its paramount ownership in relation to the occupier as soon as he makes the least attempt to abuse his right of occupation. In the first place, it enacts the right of reversion to itself, that is, to some other new customer or occupier, as soon as the use has either not been entered upon, or as soon as it has lapsed a comparatively short time, as a rule only two years. Whoever does not use the land regularly forfeits his right thereto; every other person in the community may, by virtue of the community's right of paramount ownership embodied in him, occupy it anew for himself; and the former occupant, who has forfeited the right through lapse of use, has not the least right to resist him. As is widely known, this right still exists in modern Palestine; it has caused the Jewish associations no little trouble, and it involves them in no small cost even at the present day to prevent the reversion to the neighbouring Arabs of lands that have been acquired but of which possession has not yet been taken. We know that we must everywhere send groups who use the land at least superficially until the regular cultivation can be begun, in order that we may not, through the surrender of our *Rückenrecht,* fall a prey to this primitive right of reversion.

Prior right and right of pre-emption of the tribe; Jubilee year.

The second right, which the corporation, by virtue of its paramount ownership, reserves to itself in the whole world, in Java as well as in Palestine, in Central Africa as well as among the Germanic tribes in North West Europe, is the so-called prior right (of settling in a village). It has its sound origin in the whole conception of law among these peoples. As Gierke in his famous book "Das Genossenschaftsrecht" shows, in these races, peoples, or however else the group may be called, one is not a member of the community because one has landed property, but the reverse: one has landed property because one is a member of the community. The right to landed property is derived, as a matter of course, from the right of the community. Every member has the right to demand his portion of the common landed property of the tribe, etc. This right naturally involves corresponding obligations towards the corpora-

tion. The corporation wants to keep to itself: it does not wish to be compelled to tolerate the forcing upon it of alien and unacceptable elements. In these circumstances, in which equality of descent, of nationality, and even of religion and race, plays the part of the firm ring which holds together the bundle of arrows and renders them unbreakable, the influx of alien elements is synonymous with anarchy, with the loss of the power of self-defence and of social existence. That must not be tolerated. And thus, opposed to the right of the individual member to landed property is the right of the collective body to recover possession of the landed property as soon as the danger arises that it may come into the hands of elements that are undesired by the group. This is the substance of the right of priority. At first it will simply have been forbidden to admit any alien element into the corporation either by sale or surrender or perhaps by marriage of a daughter or other contracts; afterwards this will have been permitted, but only with the consent of the social group to which the property at the moment belongs.

In Germany in the middle ages the village as a whole had the right of priority, and that too as the right of pre-emption: it was entitled, without further ado, to enter into any purchase contract with a stranger if it did not wish to admit this stranger into his own circle. Similar rights are held even to-day by many family associations. It is known that this right too has partially survived in modern Palestine, where for every purchase of village land the assent of all the village inhabitants is requisite, but this is often difficult enough to procure as the guardians of the joint-owners who are still minors must also be asked. And if this right still prevails in Palestine it is only a continuation or rather a revival of the primitive rights of which we are told by the Mosaic land legislation. The principal aim of the famous Jubilee year law is simply to bring again the family property and tribal property, despite the disruption caused by the monetary system and ancient capitalism, into the hands of the real paramount owner, i.e., of the tribe, and within the tribe, of the family.

Paramount ownership and individual ownership. Remains of collective ownership in Europe.

However much legal forms and ceremonies may vary between land and land, between language and language, between race and race, between one part of the globe and another: the substance of this paramount ownership of the general body and of the merely derived right of ownership of the individuals is everywhere the same throughout the world, and even where the exclusive Roman Law has been introduced it is repeatedly found in remnants beneath this new stratum of law. Read that magnificent book by Emile de Laveleye: "Das Ureigentum," translated and most valuably supplemented by Karl Bücher, the distinguished Leipzig economist and sociologist, and you will find that this right is the primitive right of nations, directly born from their natural conditions and, as I would add, from their natural sense of right, which does not wish to see any member of the community placed at an advantage or at a disadvantage in relation to another. The entire mediæval feudal system is based upon the view that the paramount ownership of land belongs to the social group, the tribe, the nation, or the state, which varies, of course, with the political grade. The right of disposal is in the hands of the king, the "Kuni," the head of the family. (The word "King" is from the root "genos," race.) The peoples, districts, and villages derive their right of paramount ownership as against the mere title of possession of their individual members from the right of paramount ownership of the state, represented by the king; but the still unoccupied forests and the newly conquered territories are subject to the king, and he can dispose of them in the interest of the entire people. Considerable remains have still survived in Europe of this collective ownership of land, which was in the hands or rather in the possession of the various superior corporations: the large commons, particularly of South-West and West Germany,

the *Gehöferschaften* and *Haubergsgenossenschaften*,[1] which own and exploit common oak-forests, are such remnants of collective ownership, just as the common field, the *Flurzwang*,[2] etc., which were not abolished in Germany until the middle of the 19th century, are remnants of the same former conditions of ownership, likewise an emanation of the village title upon the individual title: when the sheaves have been removed and the harvest gathered the field can again be used in common; the villagers drive their mixed herds upon it, and the individual owner may not raise any protest. All that the individual, from the very beginning, acquired possession of are merely the *bina jugera*, the two acres in the village, with his house and cabbage-garden: that is, his home, which belongs to him entirely forever, his property in the strictest sense; but he has only a limited individual title even to his acres in the common field, whilst as regards the still undivided pastures and commons he has only his share of the collective ownership by virtue of his belonging to the village.

In a higher social stratum, in the upper class, we find analogous rights in the legal institutions of the coparcenaries, entails, and rights of primogeniture, where the family is the real owner of the land, but the proprietor for the time being has only the usufruct. In England, even at the present day, the entire land legally belongs to the king: all property is considered to derive its title solely from him; and Mr. Lloyd George, in his vigorous campaign against the private ownership of the landlords, bases his argument at least unconsciously upon the State's paramount title to all private property, which has always been instinctively held by the people. For the rest, in all civilised countries this paramount title has been legally maintained in the right of expropriation by the State for public purposes.

Obligatory introduction of Roman private law.

As already observed, it was only the introduction of Roman law that brought this ancient right of the people to an end, causing, as most writers believe, a grave loss to the people and especially to the peasants affected. There are sufficient writers who attribute the decay of the German peasants, which led to the terrible outbreak of the Peasants' Wars, exclusively to the introduction of Roman law, which supplanted the ancient German Court rights with their paramount ownership of the village and the district and handed over the land, namely the still unused land and the common pastures and forests, to the lords of the manor. Similarly, a great number of writers of high repute refer the distress of many Indian villages to the fact, that the English, as everywhere, applied the principles of Roman law to the ancient rights of the people and bestowed upon the local military nobility, the Zemindars, the complete right of ownership over those districts over which they had hitherto possessed only the paramount feudal right, which they had to apply like a guardian who has to take care of his ward. A similar reproach is made, and rightly so, against the Dutch in their South Indian colonies, in Java, etc.; here too the labouring peasantry, through the introduction of Roman legal principles, has been most severely damaged in its ancient popular legal institutions, deprived of its property or rather of its indestructible ownership, and converted into a landless labouring-class.

Extinction of free peasants in England and Germany

The same applies naturally to England itself and the other parts of the United Kingdom. One of the most terrible examples of what the introduction of Roman law can involve are the so-called clearings of estates in the Scottish highlands. Here, according to the ancient law of the people, the entire clan was owner of the district, and the head of this clan had only the disposal of

[1] Ancient corporations with collective ownership of meadows and woods.
[2] The obligation of all the members of a community to sow as well as to reap simultaneously, so that no one should trespass upon the field of another.

it, as is everywhere else the case. But the English, upon the basis of their Roman legal conceptions, assigned the complete possession to the paramount title-holder, and the consequence was, that when there was a reversal of the economic condition, these poor people were simply evicted from their hereditary estate and driven across the ocean. The Duchess of Sutherland was the worst representative of this principle. She literally removed 20,000 of her clansmen from their ancestral hide and cast them upon the sea-coast, where most of them perished. For this act she was highly praised by contemporary economic science, as Marx relates with bitter irony, because she thereby increased the private income of her landed estate. After the expulsion of the peasants the former agricultural districts, which were converted into pastures and hunting-parks, were given over to a few flocks and a great deal of game. Scarcely different, in mediæval Germany, was the effect of the usurpation by the nobles of the common forests, i.e., of the entire land reserves, and of the common marches, i.e., of the still undivided common district and village estates. The peasant, deprived of the backbone of his existence, the pasturage of his cattle, fell into the severest distress, and often enough into new serfdom. The latest so-called "Adjustment Legislation" in Prussia, which was adopted simultaneously with the emancipation of the serfs and divided up the entire common pastures among individuals, has also contributed towards the extinction of a great portion of the German peasantry. But nowhere has this process been so destructive in its effects as in England, where the free peasantry of mediæval times, the yeomanry, through the notorious inclosures of commons, fell into utter decay. If England is now faced by the gravest of all agrarian problems, if it seems possible only by really heroic means—by vigorous measures such as have never yet been attempted since Solon's Seisacthie—to preserve in the open country its remaining population and thus to save the people's power of defence and the home market, we must seek the cause of these things in the surrender of the title of paramount ownership of the communes and the State in favour of a class of "Roman law" proprietors. To-day the endeavor is made to undo the process as far as possible: not only are the still remaining commons and common forests protected as much as possible, but in the new German villages that are laid out in Posen and West Prussia communal ownership is again everywhere introduced as the nucleus of the source of taxation and of the maintenance of the poor. Bücher has shown that such a land reserve, such a communal land ownership, affords the best security against unemployment and the impoverishment of the villagers. It may be asserted that where such communal land ownership prevails there cannot be any question of a burden of the poor or of impoverishment at all: all the forces which to-day bring about the proletarisation of the masses are shaken off as by an invisible wall by those villages which include among their institutions extensive commons and an adequate communal estate.

Measures for the restriction of private ownership in England.

A still more resolute attempt is being made in England to turn the wheel of progress backwards. Here, as I have already indicated, it is intended to re-establish the paramount ownership of the State or the Crown, which is formally still in force. First of all, the utterly muddled conditions in Ireland were regulated compulsorily and without paying much regard to the so-called sacred right of landed property. The State bought out the landowners and transferred the land to the small peasants, a measure that involved extraordinarily great sacrifices on its part, whereby the landlords too had to bleed pretty heavily. Then, in certain counties of the Scottish Highlands the rent which the small farmers have to pay was fixed by a court, without the owner having the right to raise any objection. And this law has proved so beneficial that its application has now been extended to the whole of Scotland, although only to small farms, that is, all farms at a rent of less than £50 or with an area of less than 50 acres.

Mr. Lloyd George intends adopting even more radical measures in England and Wales. Here the wage of the agricultural labourers, which is at present altogether too low, is to be fixed by the State; and on the other hand, in order to enable the farmer to pay these increased wages, the rent which he has to pay to the landowner is to be determined by the authorities, by the courts, without appeal. This signifies the re-establishment of the paramount ownership of the whole in the interest of the whole, that is, in the interest of the health, wealth, defensive force, and happiness of the people, and constitutes an enormous restriction and narrowing of the title of possession according to Roman law: henceforth, the use of property is to be allowed within reasonable limits, but the abuse that has hitherto been indulged in by the English landlords is to be abolished: it is no longer to be permitted that the richest land, which could serve for the nourishment of many thousands of people, should be misused for merely sporting and hunting purposes, that arable land should be converted into pasture merely for the sake of the owner's convenience and perhaps of a slight increase of his rent. The conviction that the absolutely unlimited Roman title to land is pernicious has already become so widespread in England that even the opponents of the present Liberal Government do not venture any more to defend it unreservedly. They are also in favour of a very vigorous internal colonisation; they also wish to restore to the people as much land as it needs to be able to breathe: but, and this is very remarkable, they do not wish to give the people the land, as Mr. Lloyd George proposes, in the form of cheap, long-term or irredeemable leases, but in the form of the small estate upon the basis of Roman law. The economic and political grounds that actuate them to this step are perfectly obvious. The price of land in England, where it is in very great demand for all sorts of non-economic reasons, does not stand in any economic relation to the rent that can be earned from it. The average interest upon land capital is about 2 per cent. When the State takes a lease of land it pays at the most the present rent, which is very low; but when it is compelled to buy it pays the present purchase price, which is very high. Besides the landlords prefer to give away entirely pieces of their land rather than encumber their unrestricted possession with leases, upon whose holders they cannot exercise any immediate influence any longer. They instinctively subserve, so to speak, the principle that supports and protects the entire predatory system of the world hitherto in vogue, the principle of unrestricted land ownership; they will not in any circumstances admit even to a small extent the principle that promises humanity happiness, peace and harmony. That is the secret ground of their resistance and their counter-proposals.

Alleged advantages of complete possession and disadvantages of the short term lease.

Now, what grounds do they advance as pretexts? It is the old fable that complete possession is indispensable for the good management of the concern. We say, the old fable, for in England it is becoming more and more evident that complete possession does not guarantee the highest economic efficiency of management. Just as in Germany the very large estates there also are the worst managed: it is quite clear that the entails are always deprived of all available capital when an inheritance is entered upon, because every feoffee in trust—and all English landlords are feoffees in trust—will have the natural desire to leave as much capital as possible in money to his other children, who are practically disinherited by the laws, "the retiring heirs." Under such conditions the estate must naturally suffer most severely.

For the rest, it is not to be disputed that in general the real owner, the permanent owner, looks after his land with much more thoroughness and devotion than the tenant for a short period. It is obvious that nobody will sow where he is not sure that either he himself or his family will reap. And thus it is clear that every tenant who knows his advantage will invest in the estate only as long as he

is sure of reaping the fruits of his capital investment and labour, and that he acts perfectly correctly if in the concluding years of his lease he extracts whatever can be extracted from the property, so that after the lapse of the lease the despoiled property must again be developed by the new tenant; that always means a very heavy loss to the national welfare. Thus Arthur Young, the famous writer on agricultural conditions at the end of the eighteenth century, to whom the English and the present opponents of the Liberal Cabinet love to appeal, was perfectly right when he spoke of the "magic wand of the small proprietor, who knows how to turn sand into gold." Only he must be rightly understood. He contrasted the small proprietor with the tenant for a short period; but he did not in the least have in mind the institution of a tenure, which, in regard to the duration of the right of possession, is equivalent to the ownership itself, nay, as we shall soon see, even exceeds the ownership in duration.

Hereditary lease as substitute for permanent possession.

The hereditary lease-holder, who is sure that his great-great grandchildren will still cultivate his land, naturally labours with the same devotion and the same feeling of security as the peasant to whom the land belongs according to Roman law. Hence one cannot prove very much with this argument of the blessing of possession. The only characteristic that comes into question here, the uninterrupted incalculable duration of possession, is guaranteed through the simple title of possession under the paramount ownership of a corporation, be it the State or a county or a copartnership association, as perfectly as by possession according to Roman law; and it is also notorious that the hereditary lease-holder everywhere works his estate as well and as devotedly as the real owner.

Avoidable defects of collective ownership.

To be sure, collective ownership of land, from the historical point of view, has become greatly complicated through grave errors that have brought it into serious discredit. The *Flurzwang* mentioned before, the right of the whole community to drive their flocks upon the pasturage after harvest, with which must be naturally coupled the compulsory simultaneous cultivation and harvesting of all estates, has proved a hindrance to a progressive, advanced, and intensive farming-system. Much worse still is the regular dividing up of land that is frequently bound up with collective ownership, such as we still meet everywhere in the Russian Mir and in modern Palestine. This regular re-allotment of the land, this cycle, in which the same plot constantly comes into new hands, is naturally compatible only with the most extensive forms of agriculture, with *Brandwirtschaft*[1] and wild *Feldgraswirtschaft,* where manuring is out of question. But this requires an enormous area, an area whose individual parts come under the plough only once in every 12 to 18 years. Where the population is denser and a more intensive system of cultivation with regular use of the entire field asserts itself, this incessant re-allotment cannot take place without injury to the agricultural industry and to the farmers. For the land will then naturally be utterly despoiled: here too nobody will manure and cultivate diligently, and root out weeds, if he cannot reckon upon reaping a regular harvest. But all these things do not belong to the conception and essence of the right of possession, but are merely accidents that can easily be detached therefrom. Possession can be made just as firm and secure as property. It can be made as safe as the securest property, nay, as will become evident, much more safe and secure; the possession can be lost only if the possessor culpably ruins himself through indolence, carelessness, or vice, or in case the superior right of the community has to intervene, through expropriation—and this right applies also to Roman ownership.

[1] An extensive field-culture, in which, about every twenty years, a piece of underwood is cut down, dried and burned, the ashes being used for manuring the soil.

Private property and speculation.

Let us now consider, as against these advantages of possession, the right of complete ownership according to Roman law. That this can give occasion to the greatest abuses is fully known; and it is to-day generally recognised that the possibility of abusing a right should be prevented, because it is not to be expected that the average man will refrain from such abuses as long as they are possible. These abuses include above all the speculative locking-up of the land, that is, rendering the land useless, withdrawing it from the real purpose of its existence merely in order to increase its price by artificially making scarcer this indispensable means of production. It is known that urban land in particular is greatly exposed to such abuses; we have recently experienced certain traces of this speculative forcing up of the price of land and dwellings in Tel-Aviv, the city upon the "Spring Hill" near Jaffa; and it has also already been resolved that the means of the National Fund, at least in the future, shall not be used any more to procure undeserved benefits for private persons.

Private property and denationalisation

But what must be particularly taken into account in regard to Jewish colonisation in Palestine is the fact that nothing exposes the land to loss to alien nationalities so much as complete ownership. We have seen above that in the old joint-proprietorship of land the right of settling in a village and the right of reclamation by the family, the village, the district, the tribe, was enacted mainly for the purpose of preventing the infiltration of alien elements into the community. The Jews have a greater need of this right than of any other for their national colonisation in Palestine. If they do not ordain their settlement accordingly they will experience, what so many colonising nations have experienced, namely, the loss to a foreign nationality of the land acquired with the greatest trouble not with the plough, but with the sword or with money. Let us glance at Bohemia: here after the defeat of the Bohemian nobility in the Thirty Years' War, the entire land fell into the hands of old German noble families who had come from West Germany; but the plough-driving labourers were Czechs, and to-day all these old German noble families are Czechicised, the Princes of Schwarzenberg write their name "Svrcmbrg," without a single vowel, in Czechish fashion and are the most fanatical apostles of the Czechish spirit in the country. A similar process has occurred in Germany, in the provinces of Posen and West Prussia, which are strongly saturated with Polish elements. Labourers are affected in the same way as is money according to Gresham's law: just as bad money drives out good from the country, so does the inferior, that is, the less civilised and unassuming labourer, drive the more civilised and more exacting labourer irretrievably out of the country. The provinces east of the old language frontier that are reclaimed with toil and trouble by the German plough become subject again to Polish influence. The German labourers have migrated across the sea or into the cities, and the more fruitful Polish population has filled up the gaps, so that the percentage of Germans in these two provinces is on the constant decline. It is of no use here in Poland, as little as it was of use in Bohemia, that the "Roman law" proprietors, the titular owners of the land, were genuine Germans: the land has nevertheless become Czechicised in the one case and Polonised in the other. The force of these laws goes so far that even the direct Germanising action of the Prussian Government has been strongly thwarted thereby. At first a preference was shown for the settlement of German farmers, that is, such proprietors according to Roman law, who are compelled to keep servants because the area they have for cultivation is beyond the resources of their own family. And what was the result? That within a very short time the villages were occupied to the extent of more than half their population by Polish workmen's families, that it was necessary to establish Polish churches and Polish schools in these Germanising villages, so that

the object of the activity of the state, which was undertaken with such enormous means, has failed in these villages at least. In the face of these facts it has been of no avail that the Prussian State has itself reserved the paramount ownership by letting the estates only as leaseholds upon which a permanent rent of a tenth of the value of the estate remains, so that the State, at every change of proprietorship, has the right to intervene and to prevent the transference of the property to a Pole. The owners of these large farmsteads will thus remain Germans: but the land will become Polonised.

Colonisation through working farmers and State paramount ownership.

A lesson has been drawn from these experiences, and now, for the greatest part, there are settled farmers of medium standing, who, in the regular working of their farms do not require any extraneous labour but manage with their family; and these villages will remain bulwarks of Germanism in the Polish ocean. Here too, moreover, the State has reserved its paramount ownership in the form of the right to an annual rent—just as in the so-called consolidation of threatened German farms and large estates, for which several million marks were voted, the State, by means of a relief measure, acquired the paramount ownership over the previously unlimited private ownership; it regulates the mortgages, grants them at a cheaper rate of interest, and places the tottering owners firmer in the saddle again; but in return it reserves to itself the enactment of its paramount ownership: if the estates are converted into leaseholds the stipulation must in every case be entered into the land register, that the owner has no right to sell again to a non-German owner.

Consequences of private ownership in Palestine.

That we are urgently in need of such a national assurance of possession in Palestine too is to-day generally recognised. In the entire south of the country, in the extensive districts devoted to plantations of vines, oranges, and almonds, there are wide stretches bought with the money of Baron Edmond de Rothschild and made over to Jewish owners as their absolute property. But who works in Petach Tikvah, in Rechoboth, and in Chedera, and all the other Judaean colonies? Almost exclusively Arab labourers; and Arab labourers would be there exclusively, the whole of this territory acquired so laboriously with Jewish money and Jewish toil would be completely Arabised, but for the fortuitous circumstance that we have received in the Yemenite labourers men of almost the same simple wants and productivity as the native Arabs are. Nevertheless we shall still have to book the greatest part of these colonies to the national loss account. Only one thing in the long run can really protect the national property, and that is the introduction and permanent establishment of the paramount ownership by the community of the land. If the individual proprietor has the land only as usufructuary with, say, a title in permanency, or on a very long tenure, constantly renewable under certain conditions, then one can insert into his emphyteusis contract every provision that seems necessary for the purposes of the general community: he can be effectually prevented through the special contracts that are concluded with him from engaging other than Jewish labourers or selling to non-Jews, an eventuality that lies quite within the realm of possibility, and which would naturally split up the Jewish villages quite differently, which would introduce germs of discord of quite a different nature than the mere presence of a sub-class of inferior labourers of a foreign nationality and tongue. To leave to the individual settler in nationally menaced regions the free right of sale and disposal in unlimited fashion signifies a loosening of the bond that holds together the bundle of arrows and makes them unbreakable. In such nationally menaced regions, particularly in new settlement districts, which must first be acquired, some sort of legal affirmation of the para-

mount ownership of the community is absolutely necessary, even if this took place in the mildest and simplest form, according to the Ulmer system, whereby during a very long period, 100 to 200 years, the community at every change of ownership has the right of redemption in return for a compensation which is to be determined in each individual case according to the statutes by a court of arbitration. The very best form of establishing the paramount ownership, however, consists in the community's co-operative possession of the land, from which the individual title of possession of the individual hereditary lessee is derived, to which it is permanently subjected, and which can always be withdrawn if there should be any intention of acting against the national interest of the general body. A land can be won for a nation neither with the sword, nor with gold, but simply with the plough. That is to-day a piece of wisdom which has everywhere been learnt with sorrow. Read that excellent book "Das deutsche Leid," by Bartsch: the complaint is here made that in southern Styria the influence of the Slovenes is irresistibly advancing; but at the end of the book, which throbs with passion, the remedy that has at length been found is given: the buying out of the Slovenian landowners and the settlement of small German farmers upon their former estate, of such farmers who do not need Slovenian labourers.

That is the one great objection to the unlimited right of possession in Palestine as in the whole world. The second great objection lies in the burden of debt.

Capacity of the rural estate for competition.

It is generally known that of all real middle classes during the capitalistic development only the free peasant has developed upwards. Whilst the artisans of the cities, under the competition of the capitalistic large undertakings have broken down one after the other and sunk into the proleteriat, the peasant has, in all countries of the world in which there is only a passably reasonable legislation and administration, made continuous advances during the last few decades, not only in the greatest measure in Germany, but also in the United States and New Zealand, where the huge properties of old times, through internal colonisation, constantly go over into peasants' hands. The causes are known: between farmers and wealthy landlords there is no such competition as that existing between the manufacturer and the artisan; the farmer does not need that extraordinarily expensive and constantly vanishing auxiliary of the alien work of the labourer, but he is in a position, with the aid of his family, to cultivate and look after his land entirely alone. As he also constantly develops in intelligence and energy, and as he is, moreover, strengthened and supported on all sides by the splendid co-operative societies created by him, he prospers even more happily. In Germany particularly has the peasantry made extraordinary advances: the farmer of medium status has strengthened his position extraordinarily at the expense of the large estate, the rich farmer, and the small allotment.

Indebtedness of the land proprietors.

Now and again, however, there are cases of farmers who are overtaken by ruin. In some cases, which can never be avoided, the cause is the farmer's own fault, indolence, absolute deficiency of intelligence and effort, oftener also drinking and gambling. But where, and this has happened in rare cases in Germany too, a farmer is overtaken by ruin who understands his business, who is industrious, intelligent, and sober, he has been ruined, as a rule, through nothing else than the burden of debt. The so-called "new farmers," i.e., those who have settled somewhere upon land that was previously not countrified or have acquired farmholdings by purchase, are often ruined by the debt contracted through purchase; they have, with their scanty resources, often paid over-dear, and then, at the first reverse in their position, they collapse beneath their burden of debt. But that is a relatively rare case in comparison with the more terrible encumbrance on the estate. As long as a farm remains in the free possession of the farmer,

all his children, according to our laws concerning patrimonial estates, apart from the cases of registration in the *Höferolle*[1] or of the right of inheritance, in which the "remaining heir" has certain important advantages over his "retiring" brothers and sisters—all his children have an equal right to the inheritance. And in this inheritance the comparatively high value of the naked land is reckoned as the strongest item. If, therefore, besides the farm, there is no considerable amount of money left behind to pay off the retiring brothers and sisters, the young farmer is obliged to let mortgages be effected for them; and he is then in many cases nothing else than the mortgage administrator of his brothers, who live and work somewhere or other in the town as teachers, as lawyers, as petty tradesmen, etc., and participate in the produce of the farm, for whose existence they bear no responsibility, and in the work of which they have no share. Whoever does not know these things should read the magnificent peasants' tragedy, "Der Büttnerbauer," by Wilhelm von Polenz. This tragedy describes how a Silesian farmer, industrious, efficient, falls a prey beyond redemption to the mortgage encumbrance he has been obliged to take up in order to pay off his brothers and sisters.

Avoidance of excessive debt in the case of hereditary tenure.

This burden of debt, both that incurred at purchase by the new farmer, as well as that involved by the inheritance of the old established farmer, is nothing else than the consequence of the possession of land according to Roman law. Where possession according to Roman law does not exist, but where in its place there exists the simple title of possession under the paramount ownership of the community, that is to say, where the farmer is the hereditary tenant of his own co-operative association or of his own community, there no such heavy burden of debt can arise. The new farmer who wishes to settle somewhere takes the land that he requires from the community or association not into his ownership, but merely into his possession; he has not to pay for it; and in consequence he has no debts to assume but has simply to pay a certain annual rent. The same holds good for the farmer already settled: the debt that he incurs with his heritage will be confined to modest proportions, for when the inheritance is divided the value of the naked land is not included in the valuation of the inheritance, but only the farm and inventory, and the value of this can never be so great that the remaining heir could thereby be involved in considerable debt. And yet justice is done here too, for under these circumstances, in which the retiring heirs can at any moment become hereditary tenants of a co-operative association, they can, with their paid-out portion of the heritage, rent just as large a farm as, under the present circumstances, they could acquire by purchase with the large inheritance. They suffer injury in relation to their present position only if they move into the towns; but the agricultural industry is then freed from the leeches that ever and again drain its entire life-blood away.

Prevention of speculation.

Whoever has in view not the welfare or the increase in wealth of the individual estate-owner or farmer for the time being, but the permanent welfare of the agricultural population, however much its personal composition may change, must be resolved to limit the unlimited right of Roman ownership and to introduce in its place the paramount ownership, best of all in the form of co-operative ownership. It is significant that the German agricultural expert Hubert Auhagen, who is well-known in Zionist circles, has, through practical experience, arrived at the same result. He has asserted that the right of free ownership leads to nothing else than to speculative sales and to the encumbrance of

[1] A recent innovation of German law for the conversion of farmers into a sort of entail, with a strong preference of the eldest son.

agriculture, considered as a permanent state. He has related, for example, that he once succeeded, by surrendering all personal advantages, in selling for 12,000 marks a splendid farm, which was worth its 16,000 marks. And what happened? Within a few weeks the new owner sold the property to somebody else for 16,000 marks and withdrew with the money into the town, in order to open a shop there; but the new owner was not in the least in a better position than the first one would have been if the Co-operative Small Holdings Bank had itself pocketed the profit. If one wishes to avoid such things, if one wishes to keep upon the land a population that in the long run will really remain there and not be eager for speculation, then one must deprive them of the possibility of speculative sales; and only then will they apply themselves with complete devotion to their noble calling; for they are waiting today in all villages, wherever a possible profit by speculation emerges on the horizon, for the golden rain which shall trickle through their roof, and actually thereby neglect the cultivation of their soil and their harvest.

Experiences with co-operative long-term lease in England.

This question to-day, theoretically, can be said to be thoroughly mature, and every colonising authority acts irresponsibly that still hands over the ownership of land into perfectly unlimited possession. If one has no intention of immediately attracting speculators and rearing rich people, under whom hosts of slaves must do feudal service, one must, on economic, national, and humanitarian grounds, seek the form that establishes and secures the right of possession under the paramount ownership of the general body, the form that combines all the advantages ascribed to the small owner with all the advantages of the paramount ownership of the community. This form has not only already been found theoretically, in the ownership of the great State corporations or co-operative societies, but it has already been tested in practice. In England today, where the movement for winning back the land for the people is in full swing, where Mr. Lloyd George has been making attacks upon private property in land and making such radical proposals for its restriction as are without parallel in the world's history, this form has already been developed and proved highly satisfactory. It consists of the so-called Small Holding Societies, the societies of small land-owners, who combine in a co-operative society; the society as a whole then leases from a county a piece of land with a joint title and divides the land among the individual members as their regular, permanent property. We have here a Producers' Co-operative Association, which does not own any land, but simply has a sub-ownership under the paramount ownership of a State authority. This form has proved thoroughly satisfactory in England. The title of possession gives the small people the feeling of permanence, nay of eternity, at least in the same degree as the completely unrestricted right of ownership; all speculation with the land is precluded; and for these two reasons these small estates are excellently cultivated, yield their owners' considerable profits, and create a contented population that is rooted to the soil. There is no question whatever that this exceedingly practical form of colonization will rapidly develop in England still further as soon as the obstacles, which are still placed in its way by the autonomous administration, (which is there too in the hands of the great landowners and the aristocracy), will have been overcome.

Advantages of hereditary tenure for people with little capital.

This form of settlement has, however, another advantage which is not to be underrated: it can be introduced more easily than the division into estates that remain one's own property, and for two reasons. In the first place it is intended for a section of the population from which only a small personal capital must be demanded, that is, for a considerably wide

section of the population. Whoever wishes to acquire the land by purchase must have a considerably larger sum of hard cash in hand than the one who wishes to acquire the land only upon hereditary tenure. He who has only a small fortune would, through the purchase and payment of the land, completely deprive himself of the working capital and pine away from the very start. But if he can invest in the farm the whole of the little capital that he has in hand, because he had not had to pay for the land outright, but has received it in return for a small premium paid annually, then he is in a fairly secure position and can go ahead. The second reason—and this is of much greater weight for Palestine and the Jewish colonisation—consists in the fact that it is possible to develop this form quite gradually out of the big farm.

Hereditary tenure and Co-operative Society.

In Palestine we have to deal unfortunately not with trained and qualified farm-labourers but, as a rule, with townsfolk, who must first of all pass through an intelligently managed farm in order to acquire the necessary training.

We cannot place our people upon holdings of their own, without further ado, and let them manage by themselves; they would make altogether too many mistakes, and their progress would be very questionable. We must first of all let them pass through the "land training home" of a big co-operative farm, in order that they may acquire the qualities that a farmer must possess to flourish. The possibility presents itself here of gradually transferring such a big farm, conducted by a suitable manager, into private ownership under the paramount ownership of the general body. The sequence that I have proposed in this respect, and which I am at present engaged in realising, as a first experiment, at Merchavia, is well-known. First, we have the big farm under the management of a capable administrator with the settlers consisting of labourers in receipt of a fixed wage, who are also in receipt of a large share of the profits. Here they are trained and, with good fortune, they can save. When they have sufficient savings they can, after a number of years, advance the payment agreed upon with them, and then they can acquire the estate for themselves as their joint concern. And it then remains for them to decide whether they wish to convert themselves into a Producers' Co-operative Society, that is, after setting aside a sufficiently large common for communal purposes, to convert the entire estate into small separate holdings of hereditary tenants, upon whom are naturally imposed the restrictions necessary for the security of national property, and who, as already shown, cannot possibly get into ruinous debt; or if they wish to form a real Workmen's Productive Co-operative Society, that is, to cultivate further the main portion of the land as a joint concern and to allot their individual members only parts of the land, small holdings for a home with a little field—a combination of Productive and Producers' Co-operative Society. But the Co-operative Society is here the owner everywhere, and the individual, whether he be a profit-sharing member or an independent hereditary tenant, will in every case have only the sub-ownership of the land.

Zionism and the collective ownership of land.

This is how the question stands to-day, fully ripe scientifically, and clear right up to its ultimate consequences. The modern Jewish movement must accustom itself to these ideas. It must learn to rid itself of inherited and acquired conceptions of property, speculation possibilities, etc., and must have in view the great end that we have to attain. If the Jewish colonisation in Palestine is to succeed, it must attain not only the maximum standard that exists today in Western Europe, but more. It must, in the social sphere, achieve the highest degree of progress attainable at the moment; and it must therefore avoid most strictly the errors of previous colonising attempts.

To hand over the soil of the Holy Land to individual private persons must, in the long run, damage the national objects of the work most seriously. The modern development of the co-operative system has placed into our hands the remedy which our forefathers, in the grave disruption of the Holy Land, sought in vain; that which was aimed at by the provisions concerning the jubilee year and the lapse of an estate to the family, can be attained today, without further ado, by means of the co-operative collective ownership and the sub-ownership of the individual hereditary tenants. What the National Fund does today in acquiring land as its permanently inalienable property, which it makes over to Jews for productive purposes only, amounts to an exact fulfillment of the ancient prescriptions of the Biblical land legislation. Only in this way can the Holy Land again become the land in which milk and honey flow, and where everybody—everybody, mark you—can rest with wife and child in the evening under his vine and under his fig-tree. The aim of this great popular movement cannot be to hand over the soil of the little country to a few or a few thousand well-to-do people and to deliver over to them all the rest of the hundred thousands in need of redemption as proletarian labourers to be exploited at will; but the aim must be to re-establish anew upon enduring foundations the ancient co-operative equality of the people, with which it migrated into Palestine, and which it has preserved through centuries. We do not want to introduce the curse of the present capitalistic disintegration nor class-hatred into the Holy Land; we have still enough to do with the racial antithesis between us and the Arabs and Turks. That which the ancient Biblical law prescribes for us, that which the sacred invaluable law in our inner breast commands us—fraternity, reasonable equality, that is what we have to establish anew in the Holy Land if we at all wish to attain the lofty goal that we have boldly set ourselves. We must take care not to worship strange gods and to dance around the golden calf, so that the curse of God may not send us wandering through the wilderness again for countless years. The Roman title of possession is the creation of the most sanguinary warrior-people in history, polished as sharp and pointed as the steel of its world conquering spear. It is called the private right of ownership, that is also the privative, and this, literally translated, means the "despoiling" right of ownership. It is also called the "quiritist" right of ownership, and "Quires" means citizen, originally the spear-carrier, the armour-bearing man. It is a right of conquest with the spear. Under this right of conquest of the spear nobody has suffered as severely as the Jewish people, whom the Roman spear dispersed over the whole world. Not the right of the spear will restore him his kingdom and country, but only the peaceful, mild, and gentle right of the plough. It is not domination that we have again to introduce into Palestine, but its eternal and historic antithesis, co-operative association. Under this sign we shall triumph; under any other sign we shall perish.

THE PRACTICAL ADVANTAGES
of
HEREDITARY LEASE

By
JACOB OETTINGER

THE PRACTICAL ADVANTAGES OF HEREDITARY LEASE.

By J. Oettinger

The principle of the Jewish National Fund in disposing of its lands purchased in Palestine for building purposes and cultivation, not by selling them outright, but by letting them upon hereditary lease, has not yet been sufficiently appreciated in its far-reaching significance. Before the war there were rather few new arrivals in Palestine, who would have applied to the National Fund for land upon hereditary lease. And outside Palestine one meets in Zionist circles not infrequently a certain astonishment and shrugging of shoulders in regard to the idea of hereditary lease represented by the National Fund. It seems to many persons like an incomprehensive whim, like a prejudice for a cause that has no prospects of success in practical life. Objection is raised on the ground of the psychology of the Jew and his individualist character; he does not wish to be a tenant, but only proprietor. This argument is thought to dispose completely of the idea of hereditary lease. And at Zionist conferences one often hears even the question: Does hereditary lease at all exist anywhere at present?

Let us first reply to such sceptics by mentioning a few facts.

There is a country in Europe that is sometimes called the land of hereditary lease, although its inhabitants are regarded as especially individualistically and practically inclined, and, exactly like the Jews, wish to be proprietors. This country is England, and its metropolis has been built up almost entirely—to the extent of six-sevenths—upon the basis of hereditary lease. In Liverpool one-fourth of the city has been erected upon land let on hereditary lease, and its suburbs have been built entirely upon such land. Birmingham has been built to the extent of one-half upon land occupied on hereditary lease. This form of ownership is also prevalent in the mining district of Wales. But there are also municipalities that let their lands upon hereditary lease. Thus, the municipality of Liverpool is the owner of most of the sites let there upon hereditary lease, and it derives there from a yearly income of about £100,000. There are also other Municipalities, that have let their land upon hereditary lease. Thus, from this source, Bristol has a yearly income of about £25,000, Derby of £10,000, Nottingham of about £15,000, etc.

How strong the idea of hereditary lease is in the open country in England, and how great is the recognition of its advantages for the farmer and especially for the new settler, was recently shown in the most striking manner in the application of the Small Holding's Act.

This Act, which dates from the year 1908, gives the applicant for a holding the alternative either of acquiring the land by purchase, in which case 80 per cent. of the price is provided as a loan for 50 years by the County Councils, or by taking it over upon a hereditary or permanent lease. In the course of the seven years 1908-1915, there have been fifty new settlers for the acquisition of 506 acres by purchase, whilst 12,584 new farmers have preferred to take over 178,911 acres on a permanent and hereditary lease.[1]

In Germany the new "Bürgerliches Gesetzbuch," published in 1900, supplied the legal basis for the practical application of hereditary lease through the law on the hereditary building right contained in paragraphs 1012-1017. The German Empire and the Prussian Government set the example of letting plots with hereditary building rights. In various places where officials had a difficulty in finding cheap dwellings, the German Empire acquired building sites and made them over to co-operative building societies with hereditary building right, as in Dresden, Dantzic, Holtenau, etc. The Prussian State has made over a large plot on the Dahlem demesne with hereditary building right to the Berlin Officials' Dwelling Society. Moreover, several German cities have had the principle adopted. Up to 1908 twenty cities—including Frankfort-on-the Main, Aachen, Breslau, Düsseldorf, Elberfeld, Strassburg, Bremen, Halle, Würzburg, Posen, Karlsruhe, Essen—had already applied the hereditary building right in practice.

In Germany it is mostly building societies which enjoy the hereditary building right. But agreements are often made between municipal corporations and private persons, as, for example, in Frankfort-on-the-Main. The motives advanced for the letting by the communities in Germany of building sites upon hereditary lease are advantages of a financial and social character. The municipalities are becoming more and more reluctant to sell municipal landed property, as the latter would thus be exposed to speculation. On the other hand, the hereditary building right affords the communities the possibility of securing for themselves the increased value arising in the future through the periodical raising of the rate of interest to be paid from the original land value. And as for the person enjoying the hereditary building right, he has the advantage of securing a home with ease, as he need not buy the land.

As applied to agrieulture, hereditary lease appears as the predominant form of ownership in Mecklenburg-Schwerin, where the right of hereditary lease was introduced in 1867 for the peasant population. In 1910 there were held on hereditary lease, upon the demesne of Mecklenburg-Schwerin, 5,500 peasant holdings (of at least 60 acres of land), 8,000 semi-peasant holdings (of 15 to 20 acres) and 1,500 cottage holdings (with 20 to 40 acres of garden-land each).

In Holland hereditary lease in regard to agricultural land is particularly in force in the province of Groningen. Many municipalities in other provinces are very glad to let their lands upon hereditary tenure. In Amsterdam, the Hague, Schiedam, Leeuwarden, Harderwijk, Vlaardingen, etc., the plots let on hereditary lease both for urban building purposes as well as for agriculture are constantly increasing.

Beyond Europe too hereditary lease is a prevalent form of land tenure. Thus the holders of the "Vakuf" lands in the Mohammedan countries may be regarded as hereditary lessees. In certain provinces of India (Bengal, North West Provinces) the land is regarded as in the ownership of the Zemindars and in the hereditary tenure of the peasant ryots. Finally, in Java, the Dutch Government lets uncultivated lands on hereditary lease.

It is particularly interesting to note that the erection of dwelling-houses and the planting of orchards and vineyards upon land belonging to others is not known even to us Jews, the arch-individualists and practical men. Tens of thousands of Jewish families have built their homes in East Russia under the conditions of the "Tschinsch," which is nothing else than a form of hereditary lease. In very many towns of Bessarabia the Jews, just like the Christians, have planted vineyards, and to a certain extent orchards too, upon municipal land. Over 1,200 of such Jewish plantations, with an average area of two hectares each, and forming an important source of income for their owners,

[1] Final Report of the Departmental Committee of Land Settlements for Sailors and Soldiers, London, 1916.

are situated at Soroki on municipal land, and at Resina, Orgiev, Kriulany, Teleneschty, etc., on private land. In the laying out of these plantations, which, in the course of the last ten years, was carried out to a certain extent with the aid of loans from the Jewish Colonisation Association, neither the present Jewish plantation-owners nor the Association had the least scruple about investing funds, although the plantations were situated on land held by hereditary lease. On the contrary it was felt here, as everywhere, as a considerable advantage in the establishing of new farms that there was no need of any expense for the acquisition of the land.

Besides, the Jewish Colonies of the provinces of Cherson and Ekaterinoslav, founded during the first half of last century, are located upon State land held on hereditary lease. At present they are over 4,600 families there, with 34,000 souls, in 39 colonies. About 95,000 hectares (over one million dunam) of land are occupied by them on hereditary lease and cultivated industriously.

Hereditary tenure is thus not an unknown and untried institution. This objection falls to the ground, just like the argument about the peculiar Jewish psychology which is said to be incompatible with this method of tenure. The appreciation of hereditary lease, and that too from the purely practical point of view, requires a profounder study than is usually accorded to it by some critics of this principle of the National Fund.

Let us set ourselves the question which is of such importance for the progress and the financial yield of an agricultural farm: Does the form of hereditary lease, in comparison with that of ownership, involve any disadvantageous effect upon the method of working an estate? If one answers this question in the affirmative, it is probably because of a confusion of hereditary lease with the ordinary short-term lease (or lease for a limited time). Whilst the latter presents a number of insuperable difficulties for the development of a farm, the former offers exactly the same prospects, not only to remain permanently in the enjoyment of the piece of land, but also to be able to bequeath it to one's heirs. This prospect completely removes the obstacles which, in the case of a short-term lease, prevent the undertaking of improvements, the laying out of plantations, etc.

It is particularly worthy of note that, in comparison with the ordinary lease, where the rent depends upon the variable and often fortuitous state of the land market, and upon the competition taking place in it, estates held in hereditary tenure are entirely immune from these influences. The hereditary tenant undertakes to render a definite yearly payment for a certain long period, and is thus not exposed to the risk of its rising within this period. The fixing of the dues payable for a long period offers the hereditary tenant a guarantee that is wanting in the case of the other kind of tenant. A perfectly favourable result is in this respect achieved in the case of those hereditary leases, in which the yearly rental is fixed at a moderate rate. Even in cases of a set-back that occasionally occurs in agricultural farming, for example, during such periods when there is a fall in the prices of products, the rental ought not to be an excessive burden, but, on the contrary, should easily be attainable. The purely speculative exploitation of the soil on the part of the owner must vanish completely, if the land is let on hereditary lease. In the case of State institutions there can no more be fears of exploitation than in the case of our National Fund.

Hereditary lease, which has in common with possession the security of enjoyment, has only one single characteristic of ordinary lease, but one that is the sole good feature about it, and which is absent from private ownership. For the renting of a piece of land on hereditary lease presupposes the existence of a smaller capital than if the land is acquired by purchase. Of what significance to us, who have the task of colonising Palestine, is the possibility, thanks to hereditary tenure, of being able to reduce very appreciably the demand for

considerable funds on the part of the settler? This possibility—if the conditions are otherwise favourable—signifies nothing less than the prospect of a colonisation of masses, in which the land can thus be made accessible to persons with small means.

The poor settler ought not, any more than the richer settler, to bury his own means in the earth before he even begins to make a living. He should rather devote his money to setting up as intensive a farm as possible. In Palestine the value of the land forms a third and even a half of the total amount necessary for establishing a farm. What an enormous relief it would be for a future Jewish settlement of the country if new arrivals, instead of spending a great part of their means upon the purchase of land, could devote them to buildings, live-stock, implements, improvements, and farming expenses.

The possibility of securing at a moderate yearly rental the use of land from the National Fund—provided the latter will be able to invest considerable means in land-purchases—would greatly accelerate the colonisation in Palestine.

Where, in fact, is most use made of hereditary lease? There, where new agricultural farms are to be established, where it is important to attract as large a population as possible, including also people with small means, and where one must aim at spreading intensive cultures upon areas hitherto worked extensively—in a word, in such conditions as exist in Palestine.

It may be said that one can obtain a mortgage or a loan upon a piece of land of which one is the owner, whereas this cannot well be done in the case of land held in hereditary tenancy. The question of obtaining a loan in the latter case certainly assumes a different legal form than in the case of land held in full possession, and the possible extent of the loan is also more limited. But it should not be overlooked that the hereditary lease also includes the hereditary building right, entitling the lessee to take mortgages on buildings and plantations. This possibility opens for him the path to securing credit up to a certain extent. There is a possibility of raising a mortgage upon the buildings erected and the plantations laid out upon the land leased on hereditary tenure, and it can be regulated by special provisions in the agreement just as in the case of landed property. Credit institutes will certainly decide, in each particular case, whether to grant the tenant a loan, after examining the agreement. This is perfectly true, but the agreements need not be so drawn up that the tenant is denied the right of accepting a mortgage. On the contrary, this right must be expressly mentioned and defined in every single agreement, in the manner actually practiced by the National Fund.

The possibility of granting a loan to hereditary tenants can, moreover, become a reality by the lessor—in our case, the National Fund—feeling induced to undertake the guarantee for loans given to its hereditary tenants. We, for our part, have no doubt that in future very reliable colonists, with properly conducted and productive farms on hereditary lease, will settle upon the land of the National Fund, for whom it will be able to undertake the guarantee for certain loans that will be granted to them by credit institutes or colonisation associations.

This question, which is touched on here only briefly, will have to be considered seriously and from all points of view in the financing of many future colonisation projects in Palestine. We are convinced that it will be possible to find favourable solutions of this important problem, and that, only if adequate resources will be available for financing the colonists, the form of hereditary lease will not constitute an obstacle thereto.

But are there not still further hindrances in the case of hereditary tenure? Can a tenant by this method sow and plant what and how he wishes?

Certainly. The restrictions in regard to the use of the land occupied on hereditary lease permit the tenant absolute freedom as regards the manner

in which he cultivates it. Their object, however, on the other hand,—and this is of importance and of great value particularly in colonisation—is to prevent the alienation of newly established colonists' holdings, or their unthrifty division by way of bequests, or their becoming encumbered with too heavy a debt. The absorption of colonists' holdings by forestallers will thus be prevented in advance.

On account of the possibility of securing the use of the land by an agreement of hereditary lease, this system of tenure is exceptionally to be recommended where a missing peasantry is to be created anew, as is the case with us.

The colonist who has a piece of land as property easily succumbs to the danger, sooner or later, of selling it. It has been established in England that a piece of land is seldom handed down through four generations, whereas this occurs much oftener in the case of lands held on hereditary lease. The Committee recently appointed by the British Government to enquire into the question of the settlement of ex-soldiers emphasizes in its recently published report, that the Committee visited a large village community, in which among a considerable number of landed properties only a single one has remained in the course of a hundred years in one and the same family, and that only four such properties have remained in the same hands during the last thirty years. The fact was also ascertained in this community, that one single large farmer has absorbed more than thirty smaller ones.

Can we secure ourselves against such conditions developing in Palestine too, in any other way than by hereditary lease?

From the history of Jewish colonization in Russia we can cite an example similar to the one in England just mentioned. The colony of Dombroveny, situated in the Government of Bessarabia, was acquired in the year 1836 by a group of 40 families upon an estate, about 1,200 hectares in area, acquired by purchase. At present about 300 families live there, of whom 119 are descendants of the first colonists and the others are tradesmen, artisans, teachers, labourers, etc., who have migrated thither. The colonists are engaged in agriculture and tobacco-growing mainly as daily labourers in the employ of some fellow-colonists who have gradually bought up most of the properties of their neighbours. The colonists who have lost their land seize every opportunity that presents itself of emigrating to South America, where they can again obtain some land.

Such great contrasts in regard to landed property as in the colonies of Bessarabia, which have arisen through land-purchase, are not to be found in the numerous colonies of the Government of Cherson and Ekaterinoslav, where the colonists have received their holdings from the State on the basis of hereditary lease.

It is obvious that, from the standpoint of colonization, we must be concerned about the attachment to the soil of the Palestinian settlers. That hereditary tenure is one of the most practical means of promoting this attachment has already been amply proved by numerous facts.

Hereditary lease is also the most effective antidote against a serious evil that would threaten Palestinian colonisation in the form of land-speculation. There are some people who look upon speculation, even in regard to land, as a normal phenomenon. But is it possible to regard a rapid increase in price of the already scanty Palestinian land as a normal phenomenon? If there is any serious intention of extending and strengthening our positions, can a land-policy be maintained that is built up on the principle of "laisser faire, laisser passer?" Are we not rather in duty bound to apply with the utmost energy measures that may contribute to regulate the land-market? Why should we object to hereditary tenure, a system that is of the greatest practical advantage in colonisation undertakings?

Incalculable in every case of colonization are the strokes of fate that cause a rapid increase in the price of land and thereby make it possible for the colonists to become rich quickly by selling their land. If the land becomes in the eyes of the settler an object of merchandise instead of remaining for him a means of production, this view will exercise the most unfavourable effects upon the manner in which he cultivates his plot of land. The arrangements he then makes are of a purely temporary character, and are not so planned that he should remain there with his family all his lifetime and earn his living at whatever cost. He no longer thinks of building up a profitable farm and pleasant home by the toil of his hands and with the help of his intelligence and accumulated experience, but simply of getting rid of his holding at the first advantageous offer. That he will afterwards again procure land for cultivation can hardly be assumed. For this reason, particularly in regard to our projected settlement of Palestine, the possibility of quickly selling the land again at a profit, must rightly be designated as a disintegrating and demoralising factor.

For the present there is a land-famine in the Jewish colonies. But a far-seeing land-policy must nevertheless seek to obviate the danger of a land-satiety, which may possibly arise in the future among individual persons, being relieved by profitable land-sales and thus spreading.

Whether the National Fund can successfully discharge the important tasks of regulating the land-prices and preparing the land for settlement purposes, closely depends upon the application of the principle of hereditary tenure. But in order that this should not be a principle that is merely applied from time to time, but be able to exercise its effect in full measure upon the development of colonisation, two preliminary requisites are necessary first, that the National Fund be enabled by a corresponding influx of money to make large purchases of land, and secondly, that the advantages of taking over land on hereditary tenure become popular. Without enlightening public opinion and propaganda, neither of these requisites can be achieved. Preparations should therefore be made for an energetic propaganda both in Palestine and outside the country, in order to disseminate an appreciation of the advantages of hereditary lease and to procure for the National Fund, upon the broadest possible scale, the material basis for the realisation of its important principle.

The principle of hereditary lease can be applied with a very manifold variation of the conditions of agreement. If one wishes to attain the national economic aims, for the sake of which hereditary tenure deserves to be spread, arrangements must be made in the agreement about a number of points in an explicit and in as incontestable a manner as possible for both sides. The most important of these points are as follows:

1. Duration of Hereditary Lease: This can be limited in time just as one pleases. The land is usually let on hereditary lease for a period of 49 to 99 years.

2. Ground Rent: It is possible to raise the ground-rent gradually, after definite periods (e. g. every 25 years) and in a manner previously determined, or to fix it anew from time to time. The ground-rent should be fixed as low as possible (about 2 per cent. of the normal land-value).

3. Mortgages: A mortgage can be raised on land occupied on hereditary tenure. The tenant can obtain money on a mortgage on condition that the latter is liquidated when the lease lapses. The land-owner generally imposes the undertaking that mortgage is to be raised only with his assent. For the sake of greater security, the creditors so arrange the redemption of the mortgage that it is completed about ten years before the lapse of the hereditary lease.

4. Right of Pre-emption: The landowner can stipulate for a right of pre-emption in respect of buildings and plantations, a matter that, from the national point of view, is especially important for the National Fund.

5. Right of Re-purchase: The landowner can stipulate under definite conditions, for a right of re-purchase in respect of the tenant's plantations an arrangement that under certain conditions can be of value from the point of view of colonization.

6. Compensation for Improvements: To afford the tenant an incentive to preserve buildings, plantations, etc., in good condition until the end, he is granted, upon the reversion of the land to the owner, a compensation, usually amounting to one-fourth of the value that the improvements will have at the time of the reversion. In the case of buildings the compensation varies extraordinarily, and sometimes amounts to three-fourths of the estimated value.

The National Fund has so far concluded only a few agreements for hereditary lease. Experience alone will show the procedure that is to be adopted on many points in the agreements to be made. But many details can already be determined now, upon the basis of agreements of similar institutions. Appended are a draft agreement of the National Fund and examples of other agreements that were concluded in the course of the last decade.

AGREEMENT OF HEREDITARY LEASE

BETWEEN The Jewish National Fund (Keren Kajemeth-Le-Isroel) of the one part and Mr..... of the other part.

1. The Jewish National Fund lets on hereditary lease to Mr..... .....for the period of 99 years, computed from July 1, 1914, the plot of land.....on the Lake of Tiberias, 2,000 acres in area.

2. Mr.....shall pay for the grant of the hereditary lease for the first 49 years of the term thereof annual rent of £.....due on the 1st of July each year. The rent that is to be so paid after 49 years for the hereditary lease shall be fixed upon the basis of a new valuation that shall be carried out. The amount of the rent shall be fixed according to the rate of the rent generally current at that time upon National Fund lands. The valuation of the land shall be carried out by a Commission, consisting of one representative each of the National Fund and of the leaseholder who shall choose a third person as Chairman. The latter shall, if no agreement takes place, be appointed by the Chairman of the Jewish Colonial Trust.

3. Mr....., or his heirs have the right, after the lapse of the lease, to take the land for another 99 years on hereditary lease. They must communicate this demand at the latest one year before the expiration of the lease to the Jewish National Fund.

The rent for this further lease shall be determined on the basis of a new valuation of the land to be carried out in the manner prescribed under Point 2.

For the rest, the provisions of this Agreement hold good for the second period of hereditary lease.

4. If the renewal of the said lease on the part of the heirs or assigns of Mr.....is not desired, the land leased with all the plantations and buildings thereon reverts after expiration of the lease-period of 99 years to the Jewish National Fund (Keren Kajemeth le-Isroel). The latter shall pay a compensation for the buildings of three-fourths of their value, and for timber and fruit-trees, which, at the time of their being taken over by the National Fund, are in sound and proper condition, a compensation of one-fourth of their value.

5. Mr.....is justified in using the plot of land in every way. Sub-leasing is not permitted.

6. In letting the buildings or the products of the plantations.....the previous consent of the National Fund is necessary, but such consent is not to be unreasonably withheld.

7. If the hereditary tenant wishes to enable a third person to conclude in his place an agreement for hereditary lease with the Jewish National Fund, then he has first to surrender his right to the hereditary lease, whereupon the conclusion of a new agreement by the Jewish National Fund with the new hereditary tenant is necessary. The Jewish National Fund, however, has the right of pre-emption in respect of buildings and plantations. The Jewish National Fund is obliged, within a month after notification of surrender of the right to the hereditary lease, to declare whether it wishes to make use of its right of pre-emption if the case arises.

8. All communal taxes that fall upon the leased plot and dues in public law shall be borne by the hereditary tenant.

9. Contains provisions in case of non-observance of the agreement.

10. The hereditary tenant has the right to raise mortgages upon his building right in respect of buildings and plantations, but with the obligation of redeeming the mortgage before the expiration of the hereditary lease.

The mortgages raised must not exceed 75 per cent. of the value of the buildings to be erected and the plantations to be laid out.

11. Contains Arbitration provisions in case of legal disputes.

In the interpretation of the provisions of the agreement both parties are agreed that, above all, the right of ownership of the land by the Jewish National Fund shall remain indefeasible.

AGREEMENT BETWEEN THE NETHERLANDS STATE AND MR. N. N. VEGETABLE-GARDENER IN THE HAGUE.

GRANTED by the State of the Netherlands in hereditary lease to..... .....the plot of garden-land No. 2981, etc., Land Register, Section V, No. 2974 up to 2979 and 2981 inclusive, altogether 1054.60 tares in area, for the period of 35 years, from January 1, 1912, until December 31, 1946, at a rental of 1685 florins for the years 1912, 1913 and 1914, and of 1750 florins for the remaining years.

ARTICLE 1. Pay-day, December 1.

ART. 2. The lessee, without the assent of the State, is not permitted:—

(a) To devote the land let on hereditary lease to any other purpose than the present one, namely, to agriculture.

(b) To cede the land, either wholly or in part, for use by others.

(c) To build upon the land other buildings than those that are necessary for carrying on the farm.

(d) To dispose of his right, to encumber himself with mortgages, or to encumber the land with permanent servitudes or easements.

ART. 3. The stone buildings that are situated upon the land let on hereditary lease, and those that are yet to be built this year, are the property of the hereditary lessee, to wit:—

(a) Club House, on No. 2974.

(b) Two workmen's dwellings, with adjoining cow-shed and a small barn.

(c) Two barns.

The State undertakes, in case the land after expiry of the lease is not used by the lessee himself, but is given to another lessee for his use, to impose upon the new occupant the obligation of taking over the buildings, and upon payment of the value thereof, according to the estimate of three experts, of whom one is to be appointed by the retiring lessee, one by the new lessee, and one by the State. In case the three experts are not agreed, then half of the total of the two estimates that differ least from one another shall be regarded as the compensation that is to be paid. Each leaseholder pays one half of the costs of valuation. The lessee in the above mentioned case, undertakes, after the expiry of his right, to hand over the buildings in this way to the new tenant.

In case, after expiry of the hereditary lease, the land is not let further by the State on hereditary lease, the latter undertakes to take over the said buildings from the hereditary lessee, in return for a payment to be assessed by two experts, of whom one shall be nominated by the State and one by the hereditary lessee, which experts, in case of differences, shall be supplemented by a third expert, who shall be nominated by a.....stipendiary magistrate. The amount of compensation shall be one-half of the total of the two estimates that differ least from one another: each pays half of the costs of valuation. The hereditary leaseholder undertakes in this case, after the expiry of his right, to transfer the buildings in this manner to the State.

ART. 4. The principal bridge, etc.,

ART. 5. The canal No. 2978, etc.,

ART. 6. In case the existing dung-hill, etc.,

ART. 7. The ground-taxes, etc.,

ART. 8. In the event of non-payment and non-fulfillment of the conditions, etc., the hereditary lease lapses.

ART. 9. At the expiration of the lease, etc.,

ART. 10. Through this agreement, contracts, previously concluded and other arrangements, are, as from January 1, 1912, null and void.

ART. 11. The costs of the agreement, etc.

Drafted and signed on July 21, 1911.

For the State

(Signed).....

Hereditary Lease-holder

(Signed).....

Price
10 Cents, 5 Pence

Lipshitz Press, 80 Lafayette St., N. Y.