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In the Privy Council.

No. 36 of 1947.

ON APPEAL FROM THE SUPREME COURT
OF PALESTINE

(SITTING AS A COURT OF APPEAL, JERUSALEM)

UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

NAIM MOLVAN the Owner of the Motor Vessel " ASYA "

(Respondent) APPELLANT

AND

THE ATTORNEY-GENERAL, PALESTINE (Applicant) RESPONDENT.

APPENDIX TO CASE FOR THE RESPONDENT

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RESPONDENTS CASE APPENDIX

No. 1.

THE FOREIGN JURISDICTION ACT, 1890
53 & 54 Vict., cap. 37.

1. It is and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has or may at any time hereafter have within a foreign country in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory.

* * * * *

11. Every Order in Council made in pursuance of this Act shall be laid before both Houses of Parliament forthwith after it is made, if Parliament be then in session, and if not, forthwith after the commencement of the then next session of Parliament, and shall have effect as if it were enacted in this Act. 10

* * * * *

14. It shall be lawful for Her Majesty the Queen in Council to make any law that may seem meet for the government of Her Majesty's subjects being in any vessel at a distance of not more than one hundred miles from the coast of China or of Japan, as fully and effectually as any such law might be made by Her Majesty in Council for the government of Her Majesty's subjects being in China or in Japan.

* * * * *

16. In this Act, 20

The expression "foreign country" means any country or place out of Her Majesty's dominions :

The expression "British court in a foreign country" means any British court having jurisdiction out of Her Majesty's dominions in pursuance of an Order in Council whether made under any Act or otherwise :

The expression "jurisdiction" includes power.

No. 2.

THE MANDATE FOR PALESTINE. *24 / 10 July 22*

1. The Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate. 30

* * * * *

4. An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration

of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country.

The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish National home.

* * * * *

- 10 6. The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

No. 3.

THE PALESTINE ORDER IN COUNCIL, 1922 - *order made*

S.R. & O. 1922, No. 1282. 11a

as amended by

- 20 THE PALESTINE (AMENDMENT) ORDER IN COUNCIL, 1923, s. 3. *11a*
S.R. & O. 1923, No. 619. *11a*

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them ;

- 30 And whereas the principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country ;

And whereas the Principal Allied Powers have selected His Majesty as the Mandatory for Palestine ;

And whereas, by Treaty, capitulation, grant, usage, sufferance and other lawful means, His Majesty has power and jurisdiction within Palestine.

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890, or otherwise, in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. This Order may be cited as "The Palestine Order in Council, 1922."

The limits of this Order are the territories to which the Mandate for Palestine applies, hereinafter described as Palestine.

* * * * *

17. (1) (a). The High Commissioner shall have full power and authority, without prejudice to the powers inherent in, or reserved by this Order to His Majesty, and subject always to any conditions and limitations prescribed by any such instructions as may be given to him under the Sign Manual and Signet or through a Secretary of State, to promulgate such Ordinances as may be necessary for the peace, order, and good government of Palestine, provided that no Ordinance shall be promulgated which shall restrict complete freedom of conscience and the free exercise of all forms of worship, save in so far as is required for the maintenance of public order and morals ; or which shall tend to discriminate in any way between the inhabitants of Palestine on the ground of race, religion, or language. 10

(b) No Ordinance shall be promulgated by the High Commissioner until he has consulted the Advisory Council as constituted on the date of commencement of this Order or such other advisory body as may after that date from time to time be constituted by him with the approval of a Secretary of State. 20

(c) No Ordinance shall be promulgated which shall be in any way repugnant to or inconsistent with the provisions of the Mandate and no Ordinance which concerns matters dealt with specifically by the provisions of the Mandate shall be promulgated until a draft thereof has been communicated to a Secretary of State and approved by him, with or without amendment.

No. 4.

30

THE PALESTINE (DEFENCE) ORDER IN COUNCIL, 1937

S.R. & O. 1937, No. 225. *amended, 1931 + 36 (1937)*

2. (1) In this Order, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them :— *instead of all these*

" Palestine " does not include that part of the area under Mandate known as Trans-Jordan ; *the above*

" High Commissioner " includes every person for the time being administering the Government of Palestine ; *including*

1922 & 23. Some of the defence provisions in Council 1922 & 23 were in fact the same as the provisions in the 1922 & 23. Some of the defence provisions in Council 1922 & 23.

“ Law ” includes any order of His Majesty in Council except this Order, and any Ordinance, Ottoman Law, order, rule, regulation, bye-law, or other law for the time being in force in Palestine ;

“ the Order of 1931 ” means the Palestine (Defence) Order in Council, 1931 ;

“ the Order of 1936 ” means the Palestine Martial Law (Defence) Order in Council, 1936.

(2) The Interpretation Act shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

10 (3) For the avoidance of doubts it is hereby declared that any reference to Palestine in this Order or in the Order of 1931 or the Order of 1936 includes a reference to the territorial waters adjacent thereto.

* * * * *

6. (1) The High Commissioner may make such Regulations (in this Order referred to as “ Defence Regulations ”) as appear to him in his unfettered discretion to be necessary or expedient for securing the public safety, the defence of Palestine, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.

20 (2) Without prejudice to the generality of the powers conferred by the preceding subsection, Defence Regulations may—

(a) make provision for the detention of persons and the deportation and exclusion of persons from Palestine ;

(b) authorise—

(i) the taking of possession or control, on behalf of His Majesty, of any property or undertaking ;

(ii) the acquisition on behalf of His Majesty of any property ;

(iii) the doing of work on any land (including the demolition, destruction and removal of property) ;

30 (c) authorise the entering and search of any premises ;

(d) amend any law, suspend the operation of any law, and apply any law with or without modification ;

(e) provide for charging, in respect of granting or issuing any licence, permit, certificate or other document for the purposes of the Regulations, such fee as may be prescribed by or under the Regulations ;

(f) provide for payment of compensation and remuneration to persons affected by the Regulations ;

(g) provide—

40 (i) for the apprehension of persons offending against the Regulations ;

(ii) for the trial by civil courts (including Courts of Summary Jurisdiction) of such persons ;

(iii) for the trial by such military courts as may be established by Defence Regulations, of persons committing offences against Defence Regulations either before or after the date of the establishment of such courts, and of persons committing offences under any other law after that date ;

(iv) for the imposition by any civil court or by any military court established as aforesaid, of such punishments as may be prescribed, in the case of offences against Defence Regulations, by Defence Regulations, and in the case of other offences, by the law for the time being in force ; 10

(v) for the imposition of fines upon bodies of persons or upon corporations and the forfeiture and destruction of property as punitive measures, whether the actual offenders can or cannot be identified ;

(vi) for the procedure and practice of such military courts as aforesaid ;

(vii) for appeals from judgments or orders of such military courts, or that there shall be no such appeal ; and 20

(viii) that judgments, orders and proceedings of such military courts shall not be called in question, whether by writ or otherwise, or challenged in any manner whatever by or before any court, otherwise than by way of any appeal provided for by Defence Regulations.

de present (3) Defence Regulations may provide for empowering such authorities, persons or classes of persons as may be specified in the Regulations to make orders, rules and bye-laws for any of the purposes for which such Regulations are authorised by this Order to be made, and may contain such incidental and supplementary provisions as appear to the High Commissioner to be necessary or expedient for the purposes of the Regulations. 30

1.10 (4) A Defence Regulation or any order, rule or bye-law made in pursuance of such a Regulation shall have effect notwithstanding anything inconsistent therewith contained in any law ; and any provision of a law which may be inconsistent with any Defence Regulation or any such order, rule or bye-law shall, whether that provision shall or shall not have been amended, modified or suspended in its operation under this section, to the extent of such inconsistency have no effect so long as such Regulation, order, rule or bye-law shall remain in force. 40

* * * * *

8. The powers conferred by or under this Order shall be, and the powers conferred by the Order of 1931 and the Order of 1936 shall be, and

shall be deemed always to have been, in addition to, and not in derogation of, the powers conferred upon the High Commissioner by or under the Palestine Order in Council, 1922, and any Orders amending that Order, or otherwise.

* * * * *

12. Any document purporting to be an instrument (whether legislative or executive) made or issued in pursuance of, or for the purposes of,

(1) this Order, the Order of 1931, the Order of 1936,

or

10 (2) any provision contained in, or having effect by virtue of, Defence Regulations or any Regulations made under the Order of 1931 or the Order of 1936, shall be deemed to be an instrument validly made or issued as aforesaid, and the validity of the provisions contained in the document shall not be called in question in any court or in any other manner whatsoever.

No. 5.

THE PALESTINE (AMENDMENT) ORDER IN COUNCIL, 1939.

S.R. & O. 1939, No. 603.

20 2. (1) Article 1 of the Principle Order (Palestine Order in Council, 1922) shall be amended by the insertion therein after the word "applies" of the words "including the territorial waters adjacent thereto."

(2) The foregoing paragraph shall be deemed to have come into operation on the tenth day of August 1922.

No. 6.

THE IMMIGRATION ORDINANCE, 1941

No. 5 of 1941.

5. (1) No foreigner to whom this Ordinance applies shall enter Palestine who :—

(a) is a lunatic, idiot or mentally deficient ;

30 or

(b) is a prostitute ; or

(c) is likely to become a pauper or a public charge ; or

- (d) not having received a free pardon, has been convicted in any country of a murder or an offence for which a sentence of imprisonment has been passed, and, by reason of the circumstances connected therewith, is deemed by the High Commissioner to be an unsuitable person for admission into Palestine ; or
- (e) is deemed by the Director from information officially received by him, to be an unsuitable person for admission into Palestine ; or
- (f) is shown by evidence which the High Commissioner may deem sufficient, to be likely to conduct himself so as to be dangerous to peace and good order in Palestine or to excite enmity between the people and the Government of Palestine or to intrigue against the Government's authority in Palestine ; or 10
- (g) if he desires to enter Palestine as a traveller or as a temporary labourer, has not in his possession a valid passport issued to him by or on behalf of the Government of the country of which he is a subject or citizen, or some other document establishing his nationality and identity to the satisfaction of the High Commissioner, which passport or document must bear if a British passport a valid endorsement and if any passport or similar document other than a British passport a valid visa granted by a British Consular or Passport Control Officer or an immigration officer, to which passport or document must be attached a photograph of the person to whom it relates, unless such person is a Moslem woman ; 20

Provided that in special cases the High Commissioner may grant permission to enter Palestine as a traveller or as a temporary labourer to any person who, either by reason of the fact that he is not recognised as a subject or citizen of any country or otherwise, is *bona fide* unable to obtain such a passport or document but is, in his opinion, a suitable person for admission as a traveller into Palestine ; or, 30

- (h) if he desires to enter Palestine as an immigrant, has not in his possession in addition to a valid passport or similar document as required by paragraph (g) hereof, an immigration certificate or permit granted by the Director in accordance with any rules made under this Ordinance :

Provided that in special cases the High Commissioner may grant permission to enter Palestine as an immigrant to any person who, either by reason of the fact that he is not recognised as a subject or citizen of any country or otherwise, is *bona fide* unable to obtain such a passport or document, but is, in his opinion, a suitable person for admission as an immigrant into Palestine ; and 40

Provided also that immigration certificates shall not be required from the wives and unmarried children under the age of eighteen years, or persons who, having been born in Palestine

and being Ottoman nationals, have failed to acquire Palestinian citizenship ; or

- (i) is suffering from any disease which is declared by rules made under this Ordinance to be such as to disqualify him from entry into Palestine ; or
- (j) refuses to comply with the requirements of any rules made under this Ordinance in the interests of public health ; or
- (k) does not fulfil any other requirements which may be prescribed by rules under this Ordinance.

10 (2) Notwithstanding that he may have in his possession a valid passport or similar document bearing, as may be required, an endorsement or visa for Palestine, and that he may not be under any of the disabilities set out in subsection (1) hereof, no foreigner shall have an absolute right to enter Palestine without the permission of the Director or of an immigration officer at the place of his entry into Palestine.

(3) The High Commissioner may, in his unfettered discretion, by Order in the *Gazette*, exercise all or any of the following powers, that is to say, he may :—

- 20 (a) prescribe the maximum aggregate number of immigration certificates to be granted in any specified period in accordance with the Immigration Rules or with any rules made under this Ordinance ;
- (b) prescribe categories of immigrants and fix by category the maximum numbers of immigration certificates to be granted in any specified period in accordance with the Immigration Rules or with any rules made under this Ordinance.

* * * * *

12. (1) If any person acts in contravention of or fails to comply with any of the provisions of this Ordinance or any order or rule made thereunder, or aids or abets in any such contravention, or harbours any 30 person who he knows, or has reasonable ground to believe, has acted in contravention thereof, he shall be guilty of an offence under this Ordinance. In particular, any person shall be guilty of an offence if :—

- (a) he refuses to answer any question put to him by the Director or by any immigration officer in order to obtain information which will assist him to carry out his duties under this Ordinance or to produce any document in his possession which the officer knows or has reason to believe contains evidence which will assist him to carry out his duties under this Ordinance ;
- 40 (b) he makes any false return or false statement in connection with an application for an immigration certificate, visa or permit to remain in Palestine whether for himself or any other person ;
- (c) he unlawfully alters any certificate or copy of a certificate or any entry made in pursuance of this Ordinance ;

- (d) he obstructs or impedes an officer in the exercise of his duty ;
 - (e) he uses or without reasonable excuse has in his possession any forged, unlawfully altered or irregular immigration certificate or any passport or travel document on which any visa or endorsement has been forged, unlawfully altered or tampered with.
- (2) Any foreigner who—
- (a) enters Palestine in contravention of section 5, or
 - (b) having entered Palestine as a traveller or on a transit visa with permission to remain in Palestine for a limited period remains in Palestine after that period has expired without having obtained permission from the Director, shall on being found in Palestine be guilty of an offence under this Ordinance. 10

In any prosecution under this subsection of any person charged—

with entering Palestine contrary to the provisions of section 5, subsection (1), paragraph (g) or (h), or with having remained in Palestine after the expiry of any period for which he was allowed to enter Palestine as a traveller or temporary labourer or on a transit visa,

the onus shall be on the accused person to show that he is not a foreigner or that he is otherwise lawfully in Palestine.

(3) (i) Any person aiding or abetting any other person in any contravention of this Ordinance or any order or rule made thereunder or harbouring any person who he knows or has reasonable grounds to believe has acted in contravention thereof, shall be liable to a fine not exceeding one thousand pounds or to imprisonment for a term not exceeding eight years or to both, and notwithstanding anything contained in section 3 of the Criminal Procedure (Trial Upon Information) Ordinance shall be triable by a District Court summarily. Any person so aiding, abetting or harbouring more than one person at the same time or by the same means shall be deemed to be guilty of an offence in respect of each person whom he so aids or abets or harbours. 20

(ii) Without prejudice to any of the provisions of this subsection, the following ships or boats not exceeding one thousand tons registered tonnage shall be forfeited to the Government of Palestine :—

- (a) Any ship or boat knowingly used by the owner, agent or master thereof in the aiding or abetting of any person contravening this Ordinance or any order or rule made thereunder, or in harbouring any person contravening this Ordinance or any order or rule made thereunder ;
- (b) Any ship or boat hovering within three nautical miles of the coast and failing to depart after being required so to do by the Director or by an immigration officer. 40

(iii) Without prejudice to any of the provisions of this subsection, any means of conveyance, the value of which does not exceed one thousand

pounds, other than a ship or boat, knowingly used in the aiding or abetting of any person contravening this Ordinance or any order or rule made thereunder or in harbouring any person contravening this Ordinance or any order or rule made thereunder or in harbouring any person contravening this Ordinance or any order or rule made thereunder shall be forfeited to the Government of Palestine.

(iv) Proceedings may be taken before the District Court for the condemnation of any ship exceeding one thousand tons registered tonnage which would be forfeited if it were one thousand tons registered tonnage or less, in a sum not exceeding ten thousand pounds at the discretion of the court, and the ship may be detained until such proceedings are taken and thereafter until the sum awarded is paid or security given for its payment to the satisfaction of the court. Notwithstanding anything in any law or Ordinance contained, any summons in respect of proceedings under this paragraph shall be deemed to have been lawfully served if it is either served on the master of the ship or served on the ship by affixing it to the main mast or the signal mast of the ship.

(v) Any person found guilty of an offence under this Ordinance or any rules made thereunder, other than those set out in the preceding paragraphs of this subsection, shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months or to both.

Liability to a penalty under this Ordinance or any rules made thereunder shall not affect any liability to penalties for the same act prescribed under the Criminal Code Ordinance or any other Ordinance or law, but so that no person shall be punished twice for the same offence.

(4) Any person who having been deported returns to Palestine shall, so long as the deportation order remains in force, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred pounds or to both.

(5) No prosecution for an offence under this Ordinance shall be commenced after the expiration of two years next after the commission of the offence.

No. 7.

THE INTERPRETATION ORDINANCE, 1945

No. 9 of 1945.

2. In this Ordinance, and in all other enactments (as hereinafter defined) now in force or hereafter to be passed, made or issued, the following words and expressions shall have the meanings hereby assigned to them

respectively, unless there is something in the subject or context inconsistent with such construction, or unless it is herein otherwise expressly provided :—

* * * * *

“ Palestine ” includes the territories to which the Mandate applies (except such territories to the East of the Jordan and the Dead Sea as were defined by the Palestine Order in Council, 1922 (Boundaries) Order, 1922) including the territorial waters adjacent thereto.

No. 8.

THE DEFENCE (EMERGENCY) REGULATIONS, 1945

PART IX—PROHIBITED IMMIGRANTS.

10

102. In this Part the term “ prohibited immigrant ” means a person who by reason of the provisions of section 5 of the Immigration Ordinance, 1941 is not entitled to enter Palestine.

103. If any vessel is found in territorial waters of Palestine; whether it came into those waters voluntarily or not, having on board, to the knowledge of the owner, agent or master of such vessel, any prohibited immigrant, a District Court shall, on the application of the Attorney General, declare it to be forfeited to the Government.

104. (1) The owner agent or master of any vessel found in territorial waters of Palestine in contravention of regulation 103 shall be guilty of an offence and liable on conviction to a fine of one thousand pounds or imprisonment for eight years or both. **20**

(2) A prosecution for an offence under this regulation shall not be instituted except by or with the consent of the Attorney General :

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of a prosecution for the offence has not been obtained, but no further proceeding shall be taken until that consent has been obtained. **30**

105. Every prohibited immigrant on board a vessel which is found in territorial waters of Palestine, whether such vessel came into those

waters voluntarily or not, shall be guilty of an offence and liable on conviction to a fine of one hundred pounds or imprisonment for six months or both.

106. (1) Any statement of fact contained in any official communication from a Secretary of State or British Ambassador or Minister addressed to the High Commissioner shall be accepted by all courts in any proceedings under the Immigration Ordinance, 1941 or these Regulations as evidence of the fact so stated.

10 (2) Any communication certified by the Chief Secretary under his hand to be an official communication from a Secretary of State or British Ambassador or Minister shall be deemed to be such and any such certificate purporting to be signed by the Chief Secretary may be given in evidence without proof of such signature.

(3) Notwithstanding any law or rule of evidence to the contrary any statement obtained by an immigration officer in exercise of his powers under the Immigration Ordinance, 1941 or any other Ordinance or regulation shall be admissible as evidence in any proceedings under the Immigration Ordinance, 1941 or these Regulations.

20 **107.** If in any proceedings under these Regulations it is shown that there were prohibited immigrants on board any vessel, the owner, agent or master of such vessel shall be presumed to have had knowledge of that fact.

In the Privy Council.

No. 36 of 1947.

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

=====

BETWEEN

NAIM MOLVAN, the Owner of the
Motor Vessel " ASYA " .
(*Respondent*) APPELLANT

AND

THE ATTORNEY GENERAL,
PALESTINE (*Applicant*) RESPONDENT.

=====

CASE FOR THE RESPONDENT
AND APPENDIX THERETO.

=====

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