

*Privy Council Appeal No. 43 of 1959*

Abdul Rahman Al Baker - - - - - *Appellant*

v.

Robert Edmund Alford and Patrick Vincent Truebody - - *Respondents*

FROM

THE SUPREME COURT OF St. HELENA

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 1ST JUNE, 1960

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*Present at the Hearing*

LORD RADCLIFFE  
LORD TUCKER  
LORD KEITH OF AVONHOLM  
LORD JENKINS  
LORD MORRIS OF BORTH-Y-GEST

[*Delivered by* LORD JENKINS]

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In this case the appellant Abdul Rahman Al Baker appeals to Her Majesty in Council from a judgment of the Supreme Court of St. Helena dated the 20th March, 1959, whereby Brett, J., sitting as acting Chief Justice, dismissed his application for the issue of a writ of *habeas corpus ad subjiciendum* directed to the first respondent Mr. Robert Edmund Alford as Governor of, and to the second respondent Patrick Vincent Truebody as Superintendent of Gaols in, St. Helena, to have the body of the appellant before a judge in chambers.

It is not in dispute that the appellant is now and has since the 27th January, 1957, been a prisoner in St. Helena, and that he is at the present time held in the custody of the second respondent upon the authority, or purported authority, of a warrant issued by the first respondent who has held the office of Governor and Commander in Chief of the Colony since 1958. The question in the appeal is whether in the circumstances hereinafter stated the appellant is lawfully so imprisoned.

The appellant is a subject of the Ruler of Bahrain or of the Ruler of Qatar—for the purposes of the present case it matters not which—and he was at all material times prior to his removal to St. Helena as hereinafter mentioned resident in the State of Bahrain.

During the first three days of November, 1956, serious disturbances occurred in Bahrain in the course of which rioting and widespread damage to property occurred. These disturbances resulted in the arrest of the appellant and four other men, all five of whom were brought before a special court set up by the Ruler of Bahrain (hereinafter called “the Ruler”) on the 22nd December, 1956, and charged (*inter alia*) with attempting to carry out:—

(a) The assassination of the Ruler and some of his family, the assassination of his Adviser Sir Charles Belgrave, the destruction of the palace of the Ruler, and the setting fire to the airport of al Moharraq and other places;

- (b) The overthrow by illegal means of governmental control ; and
- (c) The removal of the Ruler from authority over his principality by deposing him.

On the 23rd December, 1956, all five men, including the appellant, were convicted by the special court and sentenced in the cases of the appellant and two others to fourteen years, and in the two remaining cases to ten years, imprisonment. The appellant's sentence was later reduced by the Ruler to thirteen years.

Between the arrest of the five men concerned and their conviction and sentence the Ruler appears to have manifested some anxiety (no doubt for reasons of security) lest if convicted and sentenced they should serve their sentences in Bahrain ; for on or about the 1st December, 1956, the Adviser orally informed Sir Bernard Burrows, Her Majesty's Political Resident in the Persian Gulf, of the impending trial, and asked whether in the event of the men concerned being convicted and sentenced to terms of imprisonment Her Majesty's Government would be willing to arrange for them to undergo their sentences in a British possession.

On the 18th December, 1956, the Political Resident orally informed the Adviser that Her Majesty's Government were willing to arrange for the removal of the men to a British possession to undergo any sentences that might be passed upon them, and that the Government of St. Helena had signified its willingness to receive them ; but that Orders in Council would need to be made.

By sections 4 and 5 of the Colonial Prisoners Removal Act, 1869 (which by section 2 defines the term Colony as including, with exceptions and qualifications not here material, any plantation territory or settlement situate within Her Majesty's dominions) it is provided as follows:—

“4. Any two colonies may, with the sanction of an order of Her Majesty in Council, agree for the removal of any prisoners under sentence or order of transportation, imprisonment, or penal servitude from one of such colonies to the other for the purpose of their undergoing in such other colony the whole or any part of their punishment, and for the return of such prisoners to the former colony at the expiration of their punishment, or at such other period as may be agreed upon, upon such terms and subject to such conditions as may seem good to the said colonies.

The sanction of the order of Her Majesty in Council may be obtained, in the case of a colony having a legislative body, on an address of such body to Her Majesty, and in the case of any colony not having a legislative body, on an address of the governor of such colony ; and such sanction shall be in force as soon as such order in council has been published in the colony to which it relates.

The agreement of any one colony with another shall for the purposes of this Act be testified by a writing under the hand of the governor of such colony.

5. Where the sanction of Her Majesty has been given to any such agreement as aforesaid relating to the removal of prisoners from one colony to another for the purpose of undergoing their punishment, any prisoners under sentence or order of transportation, imprisonment, or penal servitude may be removed from such one colony to the other under the authority of a warrant signed by the governor, and addressed to the master of any ship, or any other person or persons ; and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named to such other colony, and to deliver him when there into the custody of any authority designated in such warrant, or empowered by the governor of such last-mentioned colony to receive such prisoner.”

The Foreign Jurisdiction Act, 1890, includes the following provisions:—

“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.

3. Every act and thing done in pursuance of any jurisdiction of Her Majesty in a foreign country shall be as valid as if it had been done according to the local law then in force in that country.

4. If in any proceeding, civil or criminal, in a court of Her Majesty's dominions or held under the authority of Her Majesty any question arises as to the existence or extent of any jurisdiction of Her Majesty in a foreign country, a Secretary of State shall, on the application of the court, send to the court within a reasonable time his decision on the question, and his decision shall for the purposes of the proceeding be final.

(2) The court shall send to the Secretary of State, in a document under the seal of the court, or signed by a judge of the court, questions framed so as properly to raise the question, and sufficient answers to those questions shall be returned by the Secretary of State to the court, and those answers shall, on production thereof, be conclusive evidence of the matters therein contained.

5.—(1) It shall be lawful for Her Majesty the Queen in Council, if She thinks fit, by Order to direct that all or any of the enactments described in the First Schedule to this Act, or any enactments for the time being in force amending or substituted for the same, shall extend, with or without any exceptions, adaptations, or modifications in the Order mentioned, to any foreign country in which for the time being Her Majesty has jurisdiction.

(2) Thereupon those enactments shall, to the extent of that jurisdiction, operate as if that country were a British possession, and as if Her Majesty in Council were the Legislature of that possession.

16. In this Act,—

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

The expression “jurisdiction” includes power.”

The Colonial Prisoners Removal Act, 1869, was not one of the enactments described in the First Schedule to the Foreign Jurisdiction Act, 1890, but was added to that Schedule by the Foreign Jurisdiction Act, 1913.

Accordingly at the time when the disposal of the appellant and his four co-defendants in the event of their being convicted and sentenced to imprisonment was under discussion the position was that, under section 5 of the Act of 1890 and the First Schedule to that Act as amended by the Act of 1913, Her Majesty had power by Order in Council to direct that the Act of 1869 should extend, with or without any exceptions, adaptations, or modifications in the Order mentioned to any foreign country in which for the time being Her Majesty had jurisdiction; and that upon such order being made the Act of 1869 would, to the extent of that jurisdiction, operate as if that country was a British possession and as if Her Majesty in Council were the legislature of that possession.

Bahrain is a foreign country in which “by treaty capitulation grant usage sufferance and other lawful means” (to quote the language of the Foreign Jurisdiction Act, 1890), Her Majesty has, and has had at all times material to this appeal, certain jurisdiction.

By the Bahrain Order, 1952 (replacing the Bahrain Order, 1949), Her Majesty has “by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Acts 1890 and 1913 or otherwise in Her Majesty vested” made provision for the exercise of such jurisdiction to the extent therein appearing.

Reference should next be made to some of the provisions of the 1952 Order. By Article 2 the limits of the Order are defined as "all the territories of the Ruler of Bahrain including the territorial waters thereof, and all other areas over which he has jurisdiction". By Article 4 the expression "Persons subject to this Order" is defined as meaning "those persons to whom the powers conferred by this Order extend in accordance with Article 8 (1)"; and the expression "Persons not subject to this Order" as meaning those persons referred to in Article 8 (1) (a) or (b). By Article 8, "The powers conferred by this Order shall extend to the persons and matters following:—

(1) All persons except the following:—

(a) individuals who are Bahrain subjects and corporations which are incorporated under a law enacted by the Ruler:

(b) individuals who are subjects of the Rulers of Saudi Arabia, the Yemen, Muscat and Oman, Kuwait, Qatar or any of the Trucial States."

By paragraph (2) of Article 8 the powers conferred by the Order are made to extend to the property and liabilities within the limits of the Order of all persons subject to the Order; and by paragraphs (3) and (4) such powers are extended to British ships and aircraft and ships and aircraft belonging to persons subject to the Order and all persons (whether subject or not to the Order) in respect of all acts committed by them on board such ships and aircraft, subject to the proviso that "where the persons committing such acts are persons not subject to this Order all cases wherein they are concerned shall be dealt with in accordance with Part VIII of this Order."

Article 14 of the Order provides as follows:—

"14.—(1) For the purposes of the exercise of jurisdiction under this Order there shall be constituted and maintained:—

(i) Her Britannic Majesty's Court for Bahrain . . .

(ii) Her Britannic Majesty's Chief Court for the Persian Gulf . . .

(iii) Her Britannic Majesty's Full Court for the Persian Gulf . . .

(iv) The Joint Court and the Joint Court of Appeal referred to in Part VIII of this Order.

(2) . . .

(ii) Subject to the provisions of Part VIII of this Order all Her Majesty's jurisdiction in Bahrain, civil and criminal, not under this Order vested exclusively in the Chief Court shall be vested in the Court for Bahrain."

Part VIII of the Order headed "*Mixed cases: Persons not subject to this Order and persons subject to this Order*" includes the following provisions:—

"67.—(1) For the purposes of the exercise of jurisdiction in cases civil and criminal in which both persons not subject to this Order and persons subject to this Order are parties, herein described as Mixed Cases, or in which any person not subject to this Order whom the Political Agent at his discretion registers as being in the regular service of a person subject to this Order is a party there shall be constituted a Joint Court.

(2) However, with the concurrence of the Political Resident and notwithstanding any other provision of this Part of the Order, any mixed case or class of mixed case may be tried by the Courts within the general jurisdiction of which the accused or defendant is.

(3) The Joint Court shall be composed of either a Judge or the Registrar of the Court for Bahrain and the Ruler or any official appointed by him.

## (a) Criminal

68.—(1) When a person not subject to this Order is alleged to have committed an offence in relation to a person subject to this Order, or a person subject to this Order is alleged to have committed an offence in relation to a person not subject to this Order, the Court for Bahrain shall entertain the same and send it to the Joint Court unless the case falls within Article 67 (2).

It is to be observed that the appellant, being a subject of Bahrain or Qatar was under Article 8 a person not subject to the 1952 Order.

To resume the narrative of events, on the 18th December, 1956, Sir James Harford, who held the office of Governor and Commander in Chief of St. Helena from 1953 to 1958, submitted to Her Majesty an address in the following terms:—

Whereas the Ruler of Bahrain has expressed his desire that arrangements should be entered into between Bahrain and St. Helena for removal of certain prisoners from Bahrain to St. Helena.

And Whereas it is proposed to make provision for the extension of the Colonial Prisoners Removal Act, 1869, to Bahrain:

Now therefore I, the Governor of St. Helena, do hereby respectfully submit to Her Majesty this my humble Address praying that sanction be given by Order of Her Majesty in Council in order that the desired arrangements may be entered into between Bahrain and St. Helena in pursuance of the said Act.

Given under my hand at the Castle Jamestown this 18th day of December, 1956.

J. D. HARFORD.

Also on the 18th December, 1956, the Ruler submitted to Her Majesty an address in less formal terms, the text of which as translated for the purposes of the case reads as follows:—

“To Her Majesty the Queen of Britain. May God preserve and keep her.”

“In view of the ancient friendship long existing between Her Majesty’s Government and us we request assistance from time to time in removing certain persons sentenced in our court to a safe place outside Bahrain for imprisonment for the appointed sentence. We beseech you to allow us to make arrangements with the Governor of the island of St. Helena for the reception of the persons who will be sent to that island in accordance with the sentence decided. Always, Your Majesty, placing confidence in a response to our request. May God keep you in His care.

SALMAN.”

On the 19th December, 1956, Her Majesty made two Orders in Council, viz.:—

(i) The Bahrain (Removal of Prisoners) Order, 1956 (S.I. 1956, No. 2031) (hereinafter called “The Extension Order”) which (by Article 1) came into force on the 19th December, 1956, and (by Article 2) extended the Colonial Prisoners Removal Act, 1869, to Bahrain by virtue and in exercise of the powers in that behalf vested in Her Majesty by the Foreign Jurisdiction Acts, 1890 and 1913; and went on to provide (by Article 3 (1)) that in the application of the Colonial Prisoners Act, 1869, to persons subject to the Bahrain Order, 1952, references to the Governor should be construed as references to the Political Resident, and in its application to other persons such references should be construed as references to the Ruler of Bahrain: and

(ii) The Prisoners Removal (Bahrain and St. Helena) Order, 1956 (S.I. 1956, No. 2032) (hereinafter called “The Sanction Order”) whereby after a recital that the Ruler of Bahrain and the Governor of the Colony of St. Helena had presented addresses to Her Majesty requesting the sanction of Her Majesty as thereinafter provided, the

sanction of Her Majesty was given in order that the Ruler and the Governor of St. Helena might in accordance with section 4 of the Colonial Prisoners Removal Act (as extended to Bahrain by the Extension Order) enter into an agreement for the removal of prisoners (not being persons subject to the Bahrain Order, 1952, as from time to time amended) from Bahrain to the colony of St. Helena and for their return.

As already mentioned the appellant and the four other men concerned were on the 23rd December, 1956, convicted and sentenced to imprisonment by the special court set up by the Ruler.

On the 24th December, 1956, the Governor sent to the Secretary of State for the Colonies a despatch under his hand which (omitting formal parts) was in these terms:—

Sir,

With reference to your telegram No. 122 of 13th December, I have the honour to inform you of my concurrence in the proposed arrangements for detention in St. Helena of five Bahrein subjects after removal from Bahrein under the terms of the Colonial Prisoners Removal Act, 1869.

On the 26th December, 1956, the Ruler through the Adviser handed to the Political Resident (as representing Her Majesty) a document which, as translated from the Arabic for the purposes of this case, reads as follows:—

#### AGREEMENT

Whereas sentence of imprisonment for 14 years has been passed on the following persons:—

Abdul Rahman Al Bakir

Abdul Aziz Al Shamlan

Abdullah Al Aliwat

We, Salman bin Hamad Al Khalifa, Ruler of Bahrain, testify by this document that we have agreed with the Governor of St. Helena upon the removal of the said persons from Bahrain to St. Helena for the said period or until we agree to their return to Bahrain.

Executed this 26th day of December, 1956.

(24th day of Jamadi Al Awal, 1376.)

On the 28th December, 1956, the appellant and two of the other men convicted with him were delivered into the custody of the captain of H.M.S. Loch Insh under a warrant issued by the Ruler and in fact not delivered to the captain until that day, though bearing date the 26th December, 1956. The warrant was in these terms:—

#### *To the Captain of H.M.S. "Loch Insh" Warrant*

By this document we, Salman bin Hamad Al Khalifa Ruler of Bahrain authorise you to receive and convey the following persons:—

Abdul Rahman Al Bakir

Abdul Aziz Al Shemlan

Abdullah Al Aliwat

from Bahrain to St. Helena and deliver them to the Governor of the island or his representative.

Executed this 26th day of December, 1956 (24th day of Jamadi Al Awal, 1376).

On the 27th January, 1957, the appellant and the two others arrived at St. Helena in H.M.S. Loch Insh and were there delivered by the captain to the then Superintendent of Police and Prisons whom the Governor had empowered to receive them. The original warrant under which the appellant was brought from Bahrain to St. Helena has apparently been lost and he is now held in the custody of the second respondent under a warrant dated the 22nd December, 1958, issued by the first respondent to the second respondent on his appointment as Superintendent of Gaols.



The appeal was heard in the first instance by three of their Lordships. Mr. Raeburn on behalf of the appellant took a number of points, placing in the forefront of his argument the contention that on the 19th December, 1956, when the extension Order and the Sanction Order were made, Her Majesty's jurisdiction in Bahrain did not include power to extend the Colonial Prisoners Removal Act to subjects of Bahrain or Qatar. It appeared to their Lordships that this contention raised questions as to the existence and extent of Her Majesty's jurisdiction in a foreign country (viz. Bahrain) which ought to be referred to the appropriate Secretary of State for decision under section 4 of the Foreign Jurisdiction Act, 1890, and accordingly after the conclusion of the first hearing their Lordships addressed to the Foreign Secretary the following two questions:—

“1. Did Her Majesty on 19th December, 1956, hold exercise and enjoy legislative jurisdiction in Bahrain over persons being subjects of the Ruler of Bahrain and/or Qatar?”

2. If so, at what date did Her Majesty acquire such jurisdiction and what was its extent?”

To these questions the Secretary of State by letter dated the 8th April, 1960, gave the following answers:—

“1. On 19th December, 1956, Her Majesty held exercised and enjoyed legislative jurisdiction in Bahrain over subjects of the Ruler of Bahrain and subjects of the Ruler of Qatar to the extent indicated hereafter.

2. (a) The legislative jurisdiction held exercised and enjoyed by Her Majesty over such persons has been acquired over a period of years by treaty, grant, usage and other lawful means. Certain changes in the extent of such jurisdiction were made in 1952 and 1953 as a result of discussions with the Ruler of Bahrain and effect was given to these changes by the Bahrain Orders, 1952 to 1956, which were in force on 19th December, 1956. The legislative jurisdiction held by Her Majesty and thereby exercised and enjoyed over subjects of the Ruler of Bahrain and subjects of the Ruler of Qatar on that date extended

(i) to such persons in respect of all acts committed by them on board British and certain other ships, as provided in Article 8 (3) of the Bahrain Order, 1952 ;

(ii) to such persons in respect of all acts committed by them on board British and certain other aircraft, as provided in Article 8 (4) of the Bahrain Order, 1952 ;

(iii) to Mixed Cases (that is to say cases in which such persons and “persons subject to this Order”, as defined in Article 4 thereof, were parties), as provided in Part VIII of the Bahrain Order, 1952 ;

(iv) to any such person registered by Her Majesty's Political Agent at Bahrain as being in the regular service of “a person subject to this Order” as provided in Part VIII of the Bahrain Order, 1952.

(b) On 18th December, 1956, Her Majesty also acquired legislative jurisdiction in Bahrain to extend the Colonial Prisoners Removal Act, 1869, to Bahrain and to exercise the powers conferred on Her by that Act in relation, *inter alia*, to subjects of the Ruler of Bahrain and to subjects of the Ruler of Qatar. On 19th December, 1956, Her Majesty exercised that jurisdiction by making the Bahrain (Removal of Prisoners) Order, 1956, and the Prisoners Removal (Bahrain and St. Helena) Order, 1956.”

Having regard to the language of section 4 of the Act of 1890, it is clear that these answers must be taken as finally deciding the questions raised for the purposes of the present proceedings.

In the circumstances it was thought right that the appeal should be re-heard by five of their Lordships and in due course it was re-heard accordingly.

At the re-hearing the Secretary of State's answers necessarily defeated Mr. Raeburn's argument based on lack of jurisdiction, inasmuch as by virtue of section 4 of the 1890 Act those answers had to be taken for the purposes of these proceedings as embodying a final decision to the effect that on the 19th December, 1956, Her Majesty did have legislative jurisdiction in Bahrain to extend the 1869 Act to Bahrain, and to exercise the powers conferred on her by that Act in relation *inter alia* to subjects of the Ruler of Bahrain and to subjects of the Ruler of Qatar.

But, granting to the full Her Majesty's possession of the legislative jurisdiction described in the Secretary of State's answers, Mr. Raeburn contended that the removal of the appellant to St. Helena and his imprisonment there were nevertheless unlawful because the 1869 Act, albeit validly extended to subjects of Bahrain and Qatar by the Extension Order, and validly put into operation by the Sanction Order, never applied to the appellant for the reason that he was not a prisoner "under sentence" within the meaning of the Act of 1869. This contention was based on submissions to the effect that (i) the Act of 1869 in its application to British colonies is limited to the removal of prisoners under sentence as a result of their conviction by the courts of the colony from which it is sought to remove them, or in other words prisoners convicted by British courts; (ii) the extension of the 1869 Act to a foreign country under the 1890 Act as amended by the 1913 Act only has the effect of enlarging the area in which the 1869 Act is applicable, without altering its subject matter—viz., the removal of prisoners under sentences imposed by British courts; and (iii) in the present case the appellant was not sentenced by a British court, but by a special court set up by the Ruler. This submission postulates the existence in the foreign country to which the 1869 Act is extended of courts comparable to Her Britannic Majesty's courts constituted by the Bahrain Order of 1952 and invested with jurisdiction to try and sentence persons, or some particular class or classes of person, in the foreign country concerned, and limits the potential application of the 1869 Act to prisoners so tried and sentenced by those courts. Their Lordships see no justification for so limiting the effect of the 1869 Act as extended to a foreign country by the 1890 Act. The effect of such extension appears to their Lordships to be to put the foreign country from which prisoners under sentence may be removable in the same position as a British colony from which such prisoners may be removable under the 1869 Act, and to make removable from the foreign country concerned prisoners sentenced under the local law, and by the courts, of that country, just as the 1869 Act makes removable from a British colony prisoners sentenced under the local law, and by the courts, of that colony. Their Lordships find nothing in the terms of the relevant Acts and Orders to warrant the restriction which Mr. Raeburn seeks to impose upon the scope of the 1869 Act as applied to Bahrain by the Extension Order. By way of alternative to, or qualification of, the foregoing submission Mr. Raeburn argued that at all events a person in order to be a prisoner "under sentence" within the meaning of the 1869 Act as extended to Bahrain must have been sentenced by a court recognised by Her Majesty as competent to try and sentence him, and he said that the special court by which the appellant and his four associates were tried and sentenced did not answer this description. For the purposes of this argument Mr. Raeburn relied on the provisions of Articles 67 and 68 in Part VIII of the Bahrain Order of 1952, the part relating to "Mixed Cases". As their Lordships understood his argument, he said that inasmuch as the criminal prosecution of the appellant in the present case included a charge of attempting to assassinate Sir Charles Belgrave (a person subject to the Order) it fell within the provisions of Article 68 (1), but that it did not involve as parties both persons not subject to and persons subject to



the Order and was therefore not a mixed case within Article 67 (1): and accordingly that the only court in which the appellant's case could properly have been tried, after being entertained by the court for Bahrain, was the joint court constituted under the provisions of Article 67 (1), and not the special court before which the trial or purported trial in fact took place. Their Lordships have had great difficulty in following this argument. The jurisdiction of the Joint Court extends exclusively to the trial of mixed cases: see Article 67 (1). If therefore the appellant's case was not a mixed case the Joint Court had no jurisdiction to try it. Moreover, there was no other court constituted by the Order by which he (being a person not subject to the Order) could be tried. Accordingly on this footing the Ruler had jurisdiction to try him in the Ruler's own courts on the ground that all jurisdiction enjoyed by him as Ruler of Bahrain and not surrendered to Her Majesty remained vested in him.

If on the other hand the appellant's case was a mixed case, then with the concurrence of the Political Resident it could properly be tried by the Ruler's own court as the court within the general jurisdiction of which the accused (i.e. the appellant) was: see section 67 (2). Inasmuch as Article 67 (2) provides that the Political Resident's concurrence may be given with respect to "any mixed case or class of mixed cases" their Lordships see no sufficient ground for rejecting as ineffective the standing notification issued by the Political Resident and dated the 2nd February, 1953 whereby under Article 67 (2) he signified his concurrence, pending further or other instructions, with the continuance of "the present practice of Her Britannic Majesty's Court for Bahrain in dealing with the following classes of mixed cases, that is to say:—

*Criminal cases*: A person not subject to the Order who is alleged to have committed an offence in relation to a person subject to the Order may be tried by the court within whose jurisdiction the accused is."

It appears to their Lordships that Article 68 (1) upon its true construction brings into the category of mixed cases any case in which a person not subject to the Order is alleged to have committed an offence in relation to a person subject to the Order. That seems to their Lordships sufficiently plain from the direction in Article 68 (1) to the effect that subject to Article 67 (2) such cases are to be sent to the Joint Court (which is exclusively concerned with mixed cases): and also by the reference to Article 67 (2) (which likewise relates only to mixed cases) as applicable or potentially applicable to cases within section 68 (1). It may be open to doubt whether the inclusion of the attempted assassination of the Adviser, amongst the multifarious charges brought against the appellant and his associates, sufficed to make this a mixed case by virtue of section 68 (1). But their Lordships are satisfied that, whether mixed or not, the appellant's case was properly brought before the special court set up by the Ruler, if a mixed case by virtue of Article 67 (2) and the concurrence of the Political Resident expressed by the notification above referred to, or, if not a mixed case, by virtue of the residual jurisdiction enjoyed by the Ruler in cases not covered by the provisions of the Order. Their Lordships think it is clear that for the purposes of Article 67 (2) the special court was a court within the general jurisdiction of which the appellant was.

Further in support of the submission that the appellant was not a prisoner under sentence within the meaning of the Act of 1869, it was (their Lordships understood) at one stage suggested that the circumstances attending trial before the special court were such as to preclude its recognition as a valid judicial proceeding. This objection was not pressed, and their Lordships are satisfied that it is without substance.

Mr. Raeburn also relied on various procedural defects alleged to have attended the making and carrying into execution of the Sanction Order.

It will be remembered that under the Act of 1869 the sanction of Her Majesty in Council to an agreement between two colonies may be obtained in the case of a colony having a legislative body on an address of such body to Her Majesty, and in the case of any colony not having a legislative body, on an address of the Governor of such colony. It will be

remembered also that the Extension Order provided that in the application of the Act of 1869 to persons subject to the Bahrain Order 1952 references to the Governor should be construed as references to the Political Resident, and in its application to other persons such references should be construed as references to the Ruler of Bahrain. Accordingly it would appear that for the purpose of obtaining the Sanction Order addresses to Her Majesty by the Governor of St. Helena and by the Ruler were required. As already mentioned the Sanction Order recited the presentation of such addresses. The document relied on as the address of the Governor of St. Helena is the document under his hand dated the 18th December, 1956, to which reference has already been made. The document relied on as the address of the Ruler is the document of the same date, signed "Salman", which has also been referred to above. It will be observed that the addresses were thus made the day before the making of the Extension Order, and therefore before Her Majesty was in a position to make the Sanction Order. There is also reason to suppose that the addresses did not actually reach Her Majesty by the following day (viz. the 19th December) when the two Orders were made. But inasmuch as the Ruler's address was handed by the Adviser to the Political Resident as representing Her Majesty on the 18th December, it would seem that the date of its actual receipt in England is immaterial; and *non constat* that if Her Majesty had not actually received the Governor of St. Helena's address by the 19th December she was not aware that it was in fact in existence and in course of transit. Their Lordships are of opinion that the sufficiency of the addresses is not to be impeached on the ground that they were made in contemplation of the making of the Extension Order as a necessary preliminary to the making of the Order sought by the addresses, or on the ground that they were not physically before Her Majesty by the 19th December. Indeed it would be difficult and, as their Lordships think, improper for their Lordships to go behind the recital as to the presentation of the addresses contained in the Sanction Order. Their Lordships would add that, inasmuch as Her Majesty's jurisdiction to make the Extension Order and the Sanction Order did not depend on the existence at the time of making them of any particular prisoners under sentence, the fact that the addresses were presented and the Orders were made before the date of the conviction of the appellant and the other four men, though made a matter of comment on the appellant's side, is immaterial.

The next question calling for consideration is whether the sanction given by Her Majesty under the Sanction Order in order that the Ruler and the Governor of St. Helena might, in accordance with section 4 of the Act of 1869, enter into an agreement for the removal of prisoners (not being persons subject to the Bahrain Order 1952) from Bahrain to St. Helena and for their return, was ever implemented by a concluded agreement to that effect between Bahrain and St. Helena "testified" for the purposes of the Act of 1869 by "a writing under the hand of" the Ruler as regards Bahrain, and of the Governor as regards St. Helena, as required by section 4 of that Act as adapted by the Extension Order. The documents relied on by the respondents as constituting such agreement consist of the Governor's despatch of the 24th December, 1956, and the document headed "Agreement" dated the 26th December, 1956, and executed by the Ruler, to both of which reference has already been made. Mr. Raeburn contended that these documents did not constitute an agreement covered by the sanction given under the Sanction Order. At one stage he was disposed to argue that the Sanction Order postulated a written conditional agreement which was in existence at the date of the Sanction Order and would be brought into operation by virtue of the sanction thereby given. Mr. Raeburn did not, however, in the end seek to maintain this position, and their Lordships find no sufficient justification for it in the language of section 4 of the 1869 Act or in that of the Sanction Order. Mr. Raeburn further conceded (as their Lordships understood his argument) that the agreement need not be contained in a single written instrument or be in any special form, and further that if a concluded agreement could be spelt out of the Governor's despatch

of the 24th December, 1956, and the Ruler's "Agreement" of the 26th December, 1956, the Governor's execution of the former and the Ruler's execution of the latter sufficed to satisfy the requirement of the 1869 Act to the effect that the agreement should be testified as mentioned in section 4 of that Act. But Mr. Raeburn contended that no concluded agreement can be spelt out of these two documents. He pointed out that the Ruler's "Agreement" relates to three named individuals (the appellant and two others), whereas the Governor's despatch relates to "five Bahrain subjects". It clearly was not necessary that the agreement entered into between the Governor and the Ruler under section 4 of the 1869 Act and the Sanction Order should relate to specific individual prisoners, but there seems to their Lordships to be no reason why it should not do so, provided the persons specified were persons to whom section 4 of the 1869 Act (as extended to Bahrain by the Extension Order) and the Sanction Order applied. But the question is whether the Governor's despatch and the Ruler's "Agreement" failed to show the necessary *consensus ad idem* in that the former referred to "five Bahrain subjects" and the latter to three named individuals. In their Lordships' view the reference in the Governor's despatch to "the proposed arrangements for the detention in St. Helena of five Bahrain subjects after removal from Bahrain under the terms of the Colonial Prisoners Removal Act 1869" suffices to justify their Lordships in looking at the Extension Order, the Sanction Order, and the addresses pursuant to which the Sanction Order was made, for the purpose of identifying the persons described in the despatch as "five Bahrain subjects". That brings in the reference in the first recital to the Governor's address to the Ruler's desire that arrangements should be made . . . "for removal of certain prisoners from Bahrain to St. Helena". Having got so far their Lordships think it legitimate to ascertain by extrinsic evidence the identity of the "certain prisoners" referred to in the recital, and this of course puts beyond question the identity of the appellant as one of the five persons mentioned in the Governor's despatch, and as the first of the three persons (being three of the five) named in the Ruler's "Agreement". This conclusion on the question of identification is not, in their Lordships' view, affected by the circumstance that at the date of the Governor's address (*viz.* 18th December, 1956) the five persons referred to were prisoners awaiting trial and not prisoners under sentence, or by the doubt whether the appellant was in fact a subject of Qatar as distinct from Bahrain. Apart from the question of identity thus disposed of, their Lordships see no sufficient ground for impeaching the validity or sufficiency of the agreement between the Ruler and the Governor. It is true that such agreement is in general terms and does not condescend to matters of administrative detail, but their Lordships see no ground for holding that the Act of 1869 or the Sanction Order demand anything more elaborate than this.

The last argument for the appellant which their Lordships find it necessary to notice concerns the warrant executed by the Ruler under which the appellant was delivered into the custody of the captain of the Loch Insh. That document bore date the 26th December, 1956 (that apparently being the date on which it was drawn up) whereas the Sanction Order, as provided by section 4 of the Act of 1869, did not come into force until it had been published in the colony to which it related, Bahrain, of course, being treated for this purpose as a colony by virtue of section 5 of the Act of 1890 as amended and of the Extension Order. The Sanction Order was in fact published in Bahrain on the 28th December, 1956, and thus came into force in Bahrain on that date. Mr. Raeburn claimed that in these circumstances the warrant was a nullity, because at the date when it was drawn up the Sanction Order upon which the power of the Governor (*i.e.* so far as Bahrain was concerned the Ruler) to sign the warrant under section 5 of the 1869 Act depended, was not yet in force. Their Lordships cannot accept this contention. It appears to them that the critical date for this purpose was the date (*viz.* the 28th December) on which the warrant was put into operation by its delivery to the captain of the Loch Insh along with the three prisoners, and not the date

on which it was penned or otherwise brought into existence in a physical sense. The matter can be tested by assuming that the warrant bore no date, but was proved to have been written before the 28th December, though not delivered to the captain of the ship until that date. In that state of facts their Lordships think that the date on which the warrant was delivered to the captain would have been the relevant date, the date on which it was written being immaterial; and their Lordships can draw no valid distinction between that hypothetical case and the case actually before them in which the earlier date appeared on the warrant.

A further argument was raised before their Lordships to the effect that as the serving of the warrant and the coming into force of the Sanction Order by publication in Bahrain took place on the same day (viz. the 28th December, 1956) the latter might have preceded the former event, so that it was not proved that, at the moment of time on the 28th December on which the warrant was issued by service on the captain, the Ruler had power to serve it under section 5 of the 1869 Act. This point (as distinct from the point that the warrant was drawn up before the 28th December) does not appear to have been raised below, and inasmuch as it could only be resolved by evidence as to the precise moments of time at which the publication of the Order and the service of the warrant respectively took place, their Lordships do not think the appellant should be allowed to raise it now.

For all these reasons, which are substantially in accord with those given by the learned Chief Justice, though he lacked the guidance received by their Lordships from the Secretary of State on the question of jurisdiction, their Lordships are of opinion that this appeal fails and should be dismissed, and will humbly advise Her Majesty accordingly.



In the Privy Council

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ABDUL RAHMAN AL BAKER

v.

ROBERT EDMUND ALFORD AND  
PATRICK VINCENT TRUEBODY

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DELIVERED BY LORD JENKINS