

42.1948

No. 36 of 1947.

In the Privy Council.

UNIVERSITY OF LONDON
W.C.1
5 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

APPELLANTS CASE

ON APPEAL

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

A

BETWEEN

NAIM MOLVAN, the owner of the Motor Vessel
"ASYA" (Respondent) *Appellant*,

AND

B THE ATTORNEY GENERAL (Applicant) *Respondent*.

CASE FOR THE APPELLANT.

RECORD.

1. This is an Appeal by the Appellant, Naim Molvan, the owner of the motor vessel "Asya," from a Judgment of the Supreme Court of Palestine sitting as a Court of Civil Appeal at Jerusalem, dated the 11th November, 1946, in Civil Appeal No. 251 of 1946, dismissing an Appeal from an Order of the District Court of Haifa dated the 14th June, 1946, in Motion No. 262 of 1946, whereby the District Court of Haifa granted the application of the Respondent under the provisions of Section 12 of the Immigration Ordinance, 1941, and confirmed and ordered the forfeiture of the said vessel to the Government of Palestine. This Appeal is brought pursuant to final leave to appeal granted by the said Supreme Court dated the 24th February, 1947.

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p. 11.

p. 6.

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p. 21.

2. The facts which give rise to this Appeal are shortly as follows:—

3. On the 27th March, 1946, the "Asya" was sighted by a British destroyer H.M.S. "Chequers" on the high seas some 100 miles south-west of Jaffa. She was flying no flag when first sighted but she hoisted a Turkish flag. Thereafter the destroyer hailed her and asked her destination by signal to which she made no reply. A boarding party of 18 persons was sent from the destroyer and when it arrived on the ship the Turkish flag was hauled down and the Zionist flag was hoisted. Four charts on the ship appeared to have on them a course with fixes

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pp. 2-4.

F

RECORD. from La Ciotet Bay in France to port just north of Tel-Aviv. The boarding party brought the "Asya" to the outer harbour of Haifa escorted by the destroyer.

4. The "Asya" is a freighter with little accommodation for passengers but the hold had been fitted with tiers of bunks. There were 733 persons on board none of whom had any passport or travel document or visa to enter Palestine. A

5. On arrival of the "Asya" at Haifa the police and immigration authorities boarded her on the 28th March at 7.45 p.m. and put the passengers ashore and sent them to a Clearance Camp at Athlit, near Haifa, where the Immigration Officer signed a warrant of detention for them. B

6. It was not disputed that the "Asya" was a Turkish vessel or that the Appellant, the owner thereof, was neither a Palestinian citizen nor domiciled or resident in Palestine nor was he present in Palestine at any material time. C

7. On the 18th April, 1946, the Respondent filed in the District Court of Haifa as Motion No. 262 of 1946 an application by way of p. 1. summons for an order to confirm the forfeiture to the Government of Palestine of the said vessel under the provisions of Section 12 of the Immigration Ordinance, 1941, on the ground that on the 27th March, 1946, 733 persons were on board the said vessel within the territorial waters of Palestine, at Haifa, in circumstances in which the master, owner or agent of the said vessel is deemed to have abetted the unlawful immigration of those persons. D E

8. Although the original application was as aforesaid, during the trial at the said District Court, the Respondent restricted the basis of his application to the owner only being deemed to have abetted the unlawful immigration. There was no suggestion that there was any agent and it was common ground that whoever was the master of the vessel until the control of the vessel passed to the boarding party of H.M.S. "Chequers" ceased thereupon to be the master in accordance with the definition of "master" in Section 2 of the Interpretation Ordinance, 1945, reading as follows:— F

" 'master,' used with reference to a ship, means any G person, except a pilot or harbour master, having for the time being control or charge of the ship."

9. The Respondent's application, which was contested by the Appellant, was tried by the said District Court, consisting of the President thereof, Weldon J., sitting alone, on the 31st May, 1946, and on the 14th June, 1946, the learned Trial Judge delivered his Order in favour of the Respondent.

10. From the aforesaid Order the Appellant on the 12th July, 1946, lodged an Appeal to the said Supreme Court in Civil Appeal No. 251 of 1946. The said Appeal was heard by the said Supreme Court, consisting of the Chief Justice (Sir William Fitzgerald), Mr. Justice Edwards and Mr. Justice Shaw, and on the 11th November, 1946, the said Supreme Court gave its Judgment dismissing the said Appeal. The said Judgment consisted of two judgments, one delivered by the learned Chief Justice and concurred in by the learned Mr. Justice Edwards and the other delivered by the learned Mr. Justice Shaw.

11. The relevant sections of the Immigration Ordinance, 1941, and of the Defence (Emergency) Regulations, 1945, containing amendments thereto (hereinafter collectively referred to as "the Ordinance") will be found in the pocket of the Record.

12. The contentions of the Appellant were rejected by the District Court and Supreme Court and can be summarised as follows :—

(1) That as the Appellant was neither a Palestinian citizen nor domiciled or resident in Palestine nor present in Palestine at any material time and as the "Asya" was not a Palestinian vessel section 12 of the Ordinance does not apply to the Appellant and the Court had no jurisdiction to confirm the forfeiture of the "Asya."

(2) That as the Commander of H.M.S. "Chequers" boarded the "Asya" on the high seas and brought her into Haifa the Appellant cannot be deemed to have abetted the unlawful immigration of any person on board the "Asya" and the Court could not confirm her forfeiture.

(3) That the Ordinance or section 12 thereof is repugnant to or inconsistent with the provisions of the Mandate for Palestine and is, therefore, invalid by reason of Article 3 of the Palestine (Amendment) Order in Council, 1923.

13. It is also contended that the Palestine Admiralty Jurisdiction Order, 1937, confers on the Supreme Court of Palestine exclusive Admiralty

RECORD. jurisdiction in all matters arising on the high seas or elsewhere or upon
 any lake river or other navigable inland waters or otherwise relating to
 ships or shipping : and that section 12 of the Ordinance or that part of
 it which provides for the forfeiture of a vessel is invalid. The Appellant
 will refer to and rely on Sections 10 and 12 of the Foreign Jurisdiction A
 Act, 1890.

14. On the 16th December, 1946, an Order was granted by the
 p. 20. said Supreme Court giving the Appellant Conditional Leave to Appeal
 to His Majesty in Council from the Judgment of the said Supreme Court,
 p. 21. and on the 24th February, 1947, Final Leave to Appeal was granted by B
 the said Supreme Court.

15. The Appellant humbly submits that this Appeal should be
 allowed and the Order of the said District Court and the Judgment of
 the said Supreme Court should be reversed and set aside for the following,
 amongst other C

REASONS.

1. Because the Appellant is not a Palestinian citizen and is neither
 domiciled nor resident in Palestine and was not present therein
 at any material time, and he was at no material time amenable
 to the laws of Palestine or to the jurisdiction of its Courts. D
2. Because the motor vessel " Asya " was not a Palestinian vessel.
3. Because the said vessel was forcibly brought into the territorial
 waters of Palestine by British Naval Authorities who became
 in charge and control of the vessel on the high seas outside the
 territorial waters of Palestine. E
4. Because the Immigration Ordinance, 1941, as amended, and
 particularly sub-section (3) of section 12 thereof, and more
 particularly paragraph (iii) (a) of sub-section (3) of section 12
 thereof are invalid as being repugnant to, or inconsistent with
 the provisions of the Mandate for Palestine. F
5. Because the District Court of Haifa had no jurisdiction to
 entertain the application of the Respondent, and in so far as
 the Ordinance purports to confer such jurisdiction it is invalid.

VALENTINE HOLMES.

JACOB S. SHAPIRO. G

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CASE FOR THE APPELLANT.

INCE, ROSCOE, WILSON & GRIGGS,

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Solicitors for the Appellant.