

In the Privy Council.

UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

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 - (Applicant) *Respondent.*

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL

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

BETWEEN

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

AND

10 THE ATTORNEY GENERAL - - - (Applicant) *Respondent*.

RECORD OF PROCEEDINGS

No. 1.

APPLICATION by way of Summons of the Attorney-General.

(Motion No. 262 of 1946.)

IN THE MATTER of the Vessel M/V " ASYA "

and

IN THE MATTER of an Application for Confirmation of the
Forfeiture of the said Vessel.

SUMMONS.

20 On the 27th day of March, 1946, 733 persons were on board the Vessel
M/V " Asya " 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.

The said vessel is accordingly subject to forfeiture under the provisions
of section 12 of the Immigration Ordinance, 1941.

Application is therefore prayed for an order of this Court confirming
the forfeiture of the said vessel.

Dated the 18th day of April, 1946.

(Sgd.) GIBSON,

Attorney General.

*In the
District
Court of
Haifa.*

No. 1.
Applica-
tion by
way of
summons
of the
Attorney
General,
18th April
1946, and
Notice by
the
Registrar
of the
District
Court,
Haifa, to
the owner
of the M/V
" Asya " -
of the
applica-
tion,
24th April
1946

*In the
District
Court of
Haifa.*

**NOTICE BY THE REGISTRAR OF THE DISTRICT COURT, HAIFA,
TO THE OWNER OF THE M/V "ASYA" OF THE APPLICATION.**

To : The owner of the
M/V "Asya."

No. 1.
Applica-
tion by
way of
summons
of the
Attorney
General,
18th April
1946, and
Notice by
the
Registrar
of the
District
Court,
Haifa, to
the owner
of the M/V
"Asya"
of the
applica-
tion,
24th April
1946,
continued.

TAKE NOTICE that the application set forth in this Summons will come on for hearing before the District Court Haifa on Monday the 13th day of May, 1946, and that you may, if you are so advised, appear and show cause against the making of the order applied for. In default of your entering an appearance such order may be made as the Court may deem fit. 10

Given this 24th day of April, 1946.

(Sgd.) D. H. YOUSEF,

Registrar,
District Court of Haifa.

MINUTES OF EVIDENCE.

(Applicant's.)

Before : THE PRESIDENT JUDGE WELDON.

Hearing of Friday the 31st May, 1946.

For the Applicant : Mr. RIGBY, Crown Counsel.

For the Respondent : Mr. J. SHAPIRO. 20

On application of Crown Counsel the summons amended to read "on 28th March, 1946."

C.C. opens case refers to 107 Defence Regulation amends Immigration Ordinance.

*Applicant's
Evidence.*

No. 2.

EVIDENCE of Dennis Keith Ray.

DENNIS KEITH RAY, *sworn* :

Examined by Mr. RIGBY :

Sub-Lieutenant Royal Naval Volunteer Reserve on destroyer H.M.S. Chequers. On patrol duty off Palestine coast 27th March 1946. 30
Vessel sighted. Flying no flag. Hailed. Destination asked by flag international code to what port bound. No reply received. Boarding party sent. Later another party sent. I was with it. Saw Turkish flag hoisted before ship hailed. Saw it hauled down as first boarding party arrived on that ship and then the Zionist flag was hoisted. Nothing unusual appeared to be happening. I went on board. This is photograph of it (P.1). Saw about 700 passengers on board.

Motor vessel. Freighter accommodation for passengers cramped. Bunks from bottom of hold to top seven or eight tiers about three feet apart. This is a photograph of part of accommodation (P.2). Name of vessel 40

Flag

"Asya." Vessel escorted to Haifa. Boarded by Police party international waters on 28.3.46 at 7.45 p.m. Deputy Superintendent of Police Butcher took charge at the quay. Saw passengers put ashore into buses. Searched wheel house of vessel. Found navigation charts. Produce them (P.3). Four charts appeared to have on them a course with fixes from La Ciotet Bay in France to port just north of Tel-Aviv. Continuous course.

In the District Court of Haifa.

Applicant's Evidence.

Cross-examined by Mr. SHAPIRO :

10 Was on the ship until it arrived in Haifa. Boarding party of 18 in charge of Lt. Woolton. Boarded vessel approximately one hundred miles S.W. of Jaffa. Ordered to board by my captain. Noticed nothing out of ordinary when vessel hailed. No reason to think vessel not Turkish vessel.

No. 2.
Dennis Keith Ray, Examination, continued.
Cross-examination.

No. 3.

EVIDENCE of Philip Coleman Tiley Marnner.

PHILIP COLEMAN TILEY MARNER, *Sworn :*

Examined by Mr. RIGBY :

20 Assistant Superintendent of Police Frontier Control. Exercise powers of Immigration Officer as from 15th March 1946 by warrant of High Commissioner. At 7.15 a.m. on 28th March 1946 I boarded the Motor Vessel "Asya" in water of outer harbour of port Haifa. B/Sgt. Hobbs accompanied me. P.1 is photograph of vessel. Large number of passengers on board about seven hundred. Saw them disembark and put into buses. Accompanied them to Athlit Clearance Camp.

No. 3.
Philip Coleman Tiley Marnner, Examination.

No. 4.

EVIDENCE of Eric Frank Butcher.

ERIC FRANK BUTCHER, *Sworn :*

Examined by Mr. RIGBY :

30 Deputy Superintendent of Police Haifa. At 9.15 a.m. on 28th March, 1946 I boarded M.V. "Asya" in Haifa Port. This is photograph of it. Witness Ray was on board. I took over custody of vessel and passengers. I supervised disembarkation of passengers who were taken to Athlit Clearance Camp where I handed them over to officer in charge of camp.

No. 4.
Eric Frank Butcher, Examination.

*In the
District
Court of
Haifa.*

*Applicant's
Evidence.*

No. 5.
John
Watson
Wilson,
Examina-
tion.

No. 5.

EVIDENCE of John Watson Wilson.

JOHN WATSON WILSON, *Sworn :*

Examined by Mr. RIGBY :

B/Sgt. Police. Stationed Athlit Clearance Camp. On 28th March 1946 convoy of buses under charge of D.S.P. Butcher arrived. Illegal immigrants in buses with their personal effects. Supervised searching of the baggage only. 280 females. Asked them if in possession of valid travel documents. No passports or travel documents produced. No visa to enter Palestine.

10

Cross-
examina-
tion.

Cross-examined by Mr. SHAPIRO :

Asked by personnel speaking Hebrew and German. Know these languages sufficiently to understand they were being asked for such document.

No. 6.
Cyril
Oswald
Kennedy,
Examina-
tion.

No. 6.

EVIDENCE of Cyril Oswald Kennedy.

CYRIL OSWALD KENNEDY, *Sworn :*

Examined by Mr. RIGBY :

British Inspector of Police. On 28th March 1946 a number of persons in buses brought to Athlit Clearance Camp under charge of D.S.P. Butcher. Searched the person and personal effects of all the male persons in this party. 453 persons. Asked them through interpreter for passport or travel documents. None produced. Interpreter P/Sgt. Reider.

No. 7.
Yehuda
Tabori,
Examina-
tion.

No. 7.

EVIDENCE of Yehuda Tabori.

YEHUDA TABORI, *Sworn :*

Examined by Mr. RIGBY :

Appointed Immigration Officer by High Commissioner dated 16th March 1946. On 28th March boarded motor vessel "Asya" in Haifa Port. Many passengers. Saw them disembark and embus at Haifa Port. Saw them debus in Athlit Clearance Camp. I signed a warrant of detention for them. 733 persons. As Immigration Officer. Later interrogated them as to whether they had travel documents or visa. They produced none.

Applicant's evidence closed.

Mr. SHAPIRO—Calling no evidence oral or documentary.

Mr. RIGBY—12 (3) (1) (b) of Immigration Ordinance as amended by Defence Regulation dated 20th January 1946. For Crown to prove a number of persons on board a vessel onus on master owner or agent to disprove. All persons in Palestine are probable immigrants until contrary proved. Proved 733 persons. Immigration Ordinance not ultra vires Mandate. Immigration Amendment Ordinance 1937 (draft objects and reasons 4 (2)). Immigration Ordinance not ultra vires. Under suitable conditions must be some restriction on amount of immigration. Defence Regulation provides for offences committed within the territorial waters of Palestine. Ask for forfeiture to be confirmed as owner deemed to have abetted the bringing of illegal immigrants.

*In the
District
Court of
Haifa.*

Mr. Rigby,
Address.

Mr. SHAPIRO—Onus shifted to Crown. *King v. Beadon* 24 Cr. App. page 59 as they have undertaken to prove the passengers in this ship were illegal immigrants.

Mr.
Shapiro,
Address.

(Court: Section 15 (as amended) applies to passengers not to master of vessel.)

On Crown to prove that the master knew it was used in contravention of the Ordinance. Must prove the person on board intended to enter Palestine.

20 Submit vessel came into territorial waters by virtue of section 13 (2) (3) by order of Commanding officer of H.M.S. Chequers. If vessel compelled to go the passengers are equally compelled to go no question of voluntarily or not arises. Master compelled to go under the orders of C.O. of H.M.S. acting under Immigration Ordinance.

Appeal Case Cr. A. 119/41 P.L.R.441.

30 Submit O.C. authority acting under Immigration Ordinance and voluntarily or not must mean something short of the obedience of an order made by that authority. Something outside master's control but not within the control of the authorities. Section 12 (3) (1) (b) can only apply to owner, master and agent who are within the jurisdiction of the courts of Palestine. Cannot apply to such persons if they are outside the jurisdiction. Owner therefore had not abetted. *McLeod v. A.G. N.S. Wales* [1891] A.C. 455 followed in Cr. A. 63/39 7 P.L.R.1. Master had not abetted. No evidence he was in territorial waters, no evidence he was master. No evidence there was any agent.

40 If any vessel is used to the knowledge of the owner. Knowledge must in fact be of a person within the jurisdiction of Palestine law—law cannot prohibit any person having knowledge if that person outside Palestine. Voluntarily or not in section 15 wording void as in effect enacting that no persons shall be outside the jurisdiction of territorial waters with illegal immigrants in such a position that they are likely to be brought into territorial waters. This is contrary to *McLeod v. A.G. N.S.W.* Therefore these words are void for High Commissioner cannot legislate for matters outside the jurisdiction.

Ordinance ultra vires. 17 (1) (c) Palestine Order in Council. No ordinance shall be in any way repugnant to or inconsistent with the provisions of the Mandate. If so whole ordinance void.

*In the
District
Court of
Haifa.*

“ Inconsistent ” Oxford English Dictionary at variance in any way. Unfettered discretion under 5 (3) inconsistent with Article 4 of Mandate when he must take the advice of the Jewish Agency. Therefore the whole Immigration Ordinance is void as regards prohibited immigration. Ask application be refused.

Mr.
Shapiro,
Address,
continued.
Mr. Rigby,
Reply.

Mr. RIGBY—reply after permission.

Not a criminal procedure but civil proceedings.

We are proceeding against the ship, of abetting and *being deemed to abet.* Kenny Outlines of Criminal Law (p. 491) 15th edn.

Next act is the ship being within territorial waters with persons 10 deemed to be illegal immigrants, but an offence has been committed and owner would be in law deemed to have abetted unless he proves to the contrary.

No such prosecution without consent of A.G.

Judgment reserved.

(Sgd.) WELDON,
President.

No. 8.
Order of
Judge
Weldon,
14th June
1946.

No. 8.

ORDER of Judge Weldon (P.D.C.)

ORDER.

20

This is an application by the Attorney General praying that this Court should confirm the forfeiture of the motor-vessel “ Asya ” and it is based upon the Defence Regulation No. 107 (b) (iii) (c) which was published in Palestine Gazette No. 1470 dated 28.1.46, supplement 2 and is to be found at page 159. By subsection b (iii) of this Regulation it is provided that if any vessel to the knowledge of the master, owner or agent . . . is used in contravention or attempted contravention of this Ordinance (Immigration Ordinance, 1941, as amended by this Regulation) . . . or in the abetment or any contravention or attempted contravention of this Ordinance . . . or if any person is proved to have been on board a vessel in which 30 the master, owner or agent of the vessel is deemed . . . to have abetted the unlawful immigration of that person . . . then the vessel as hereinafter provided . . . be forfeited to Government. This summons is issued against the owner of the motor-vessel “ Asya ” and it avers that on 27.3.46 there were on board the vessel 733 persons and within the territorial waters of Palestine in circumstances in which the master, owner or agent of the said vessel is deemed to have abetted the unlawful immigration of these persons.

Mr. Rigby the learned Crown Counsel who appeared for the Attorney General in this case has intimated that he is only citing the 40 owner of the vessel to show cause why forfeiture under the above-mentioned Regulations should not be ordered by this Court. Learned Crown Counsel relies on subsection (b) (i) (b) of the aforesaid Regulation which provides “ . . . the owner and agent of a vessel . . . are all deemed to have

abetted the unlawful immigration of any person who is proved to have been on board the vessel in territorial waters of Palestine whether that person or the vessel . . . came there voluntarily or not unless it is proved " that the condition set out in subsection (b) (i) (b) 1, 2, 3 to 4 obtain.

*In the
District
Court of
Haifa.*

No. 8.

Order of
Judge
Weldon,
14th June
1946,
continued.

Evidence was led to the effect that a destroyer, His Majesty's ship "Chequers" on patrol off the Palestine coast sighted a small motor-vessel which was flying no flag. On signal being made as to enquire to what port the vessel was bound no reply was received; that the vessel was
10 then hailed and ordered to stop; a Turkish flag was then hoisted. A boarding party was then sent to the vessel from the destroyer and the Turkish flag was hauled down and a flag described as the Zionist flag was hoisted in its place. The officer in charge of the boarding party found on board this vessel more than 700 passengers; that it was a small freighter with little accommodation for passengers but the hold had been fitted with tiers of bunks very close together. A photograph of the vessel and of the accommodation for the passengers was produced to the Court. The vessel bore the name of "Asya." It was escorted to Haifa and there the
20 Police and Immigration authorities took charge. The passengers were disembarked and sent to the Athlit Clearance Camp. None of the passengers had any passport or travel document or visa entitling them to enter Palestine. Their number when checked was found to be 733. This ship was intercepted about 100 miles south-west of Jaffa and was found to be carrying no papers except a set of charts covering the area bounded by the south coast of France and the coast of Palestine.

This, shortly, is the evidence adduced in support of the application and the learned Crown Counsel has submitted that under the provisions of the Defence Regulations I have set out above all that is necessary
30 for the Crown to prove is that there were on this vessel 733 persons who must be deemed to be prohibited immigrants and that, therefore, they came within the territorial waters in contravention and/or attempted contravention of the Immigration Ordinance and that the onus is on them to prove that they came lawfully and that onus is on the owner of the vessel to show cause why confiscation should not be made.

Mr. Shapiro appeared and produced a power of attorney made before the Notary Public at Nice in France by one Naim Molvan. Mr. Shapiro called no evidence whatsoever and he did not in fact attempt to produce any evidence that the person who appointed him as attorney
40 was the owner of the vessel. There is only in the body of the power itself a recital that the power appoints Mr. Shapiro "to represent the appointor before courts of law, particularly before the Court of Haifa in the case of the motor-vessel 'Asya' which is the property of the appointor." Mr. Shapiro has relied on purely legal arguments in his reply showing cause.

His first argument, I understand it, is that the Attorney General having undertaken to prove that the passengers were illegal immigrants, the onus is shifted back upon the Crown to prove that the owner knew the vessel was used in contravention of the Immigration Ordinance and the Crown must prove the persons on board the vessel intended to enter
50 Palestine. *R. v. Beadon*, 24 Cr. Appeal Report 59.] He argues that the vessel was compelled to enter Palestine territorial waters by order of the

*In the
District
Court of
Haifa.*

No. 8.
Order of
Judge
Weldon,
14th June
1946,
continued.

naval officer on board who acted upon instructions of his commanding officer and no question of "voluntary or not" arises. He submits that the words "voluntary or not" must mean something outside the control of the master of the vessel but not something which arises and is within the control of the authorities acting under the Immigration Ordinance, i.e., the boarding of the ship by the naval party and taking of it in to Haifa.

Mr. Shapiro's next argument is that the words "to the knowledge of the owner" in section 12 (3) (iii) of the Ordinance as amended by the Regulation must mean knowledge on the part of a person within the jurisdiction of Palestine Law and that no law in this country can punish any person not having knowledge prohibited by the law of Palestine if that person is resident outside Palestine. He has cited *McLeod v. A.-G. of N.S. Wales* 1891 Appeal Cases, page 455 and he argues that such provision is void for the High Commissioner may not legislate for persons outside his jurisdiction. 10

Mr. Shapiro's third argument is that under section 17 (1) (c) of the Palestine Order in Council as amended by the Order in Council on 4.5.23 "no Ordinance shall be promulgated which shall be in any way repugnant to or inconsistent with the provisions of the Mandate." Mr. Shapiro argues that under Article 4 of the Mandate the High Commissioner must take the advice of the Jewish Agency on matters of immigration. He, therefore, argues that the provisions in section 5 (iii) Immigration Ordinance conferring on the High Commissioner unfettered discretion to exercise certain power under the Immigration Ordinance are void as being inconsistent with the Mandate and, therefore, he argues the whole Immigration Ordinance is void as regards the provision as to prohibited immigrants and therefore this Court may not order confiscation of this vessel. 20

Dealing now with these legal arguments. As regards the shifting of the onus of proof, in my opinion the case cited by Mr. Shapiro of *Rea v. Beadon* is of little help for under subsection (b) (i) (b) of the Defence Regulations the owner is deemed to have abetted the unlawful immigration of persons who are proved to have been on board the vessel. Therefore, there must be at least before this Court some prima facie proof of the presence on board the vessel of such persons. This the Attorney General has undertaken to do and thereafter the onus is on the owner or the persons defined in the section as "that person" to prove that which is necessary for him to prove under the exceptions which are the subject of subsections (1), (2) and (3) to that section. In my opinion from the reading of that Regulation the onus remains on the respondent in this action and is not shifted back by the adducing of the proof of persons being on that vessel and having no papers in their possession. In any case, there is little doubt from the evidence led by the Attorney General as to the circumstances surrounding the interception of this ship, the hoisting of the Zionist flag, the absence of any passenger list on the vessel, of any ship's papers, of any passports or any valid document in the possession of the passengers, that these persons crowded into this small freighter in cramped temporary accommodation, can only be presumed to have been intending to attempt or if possible effect a landing in Palestine illegally. 40

As regards the interpretation which Mr. Shapiro would have this Court place upon the words "knowledge of the owner." I would point 50

out the *Atlantic* case, Cr. A. 63/39, 7 P.L.R. p. 1, and the English authority of *McLeod v. Attorney General of N.S. Wales* are cases where there was a criminal prosecution of persons brought before the Court. These present proceedings are proceedings for the forfeiture of a vessel under the provisions of an enactment in this country which lays down when and under what circumstances the owner is deemed to have knowledge and this enactment goes on to provide safeguards which limit the liability of the owner or other persons who may be residing outside the jurisdiction and provides for what they must prove if they wish to avoid forfeiture or if they come within the jurisdiction of this country, punishment for the commission of an offence under this enactment, in this case provision, whereby the owner may rebut the presumption of law created by the subsection.

*In the
District
Court of
Haifa.*

No. 8.
Order of
Judge
Weldon,
14th June
1946,
continued.

Mr. Shapiro's last argument is that the Immigration Ordinance is ultra vires Article 4 of the Mandate and is therefore void. It seems to me that the answer to this argument is twofold :—

(1) This Ordinance does not apply to Jews only. It applies to all persons who are defined by the Ordinance as foreigners with certain statutory exceptions. Many persons of various nationalities and faiths are daily prosecuted for violation of this provision and I am unable to see that Article 4 of the Mandate is a ground for the excepting of any particular class of persons or any one particular faith from conforming to the Law of Palestine.

(2) Article 4 of the Mandate does not provide for unrestricted immigration and this is quite clear from the provisions of Article 6 and as the learned Crown Counsel has rightly pointed out there must under suitable conditions be some regulation of the amount of immigration.

The object of the Immigration Ordinance, as I see it, is not to restrict immigration altogether but to regulate it and I am, therefore, unable to accept Mr. Shapiro's argument that this Ordinance is ultra vires the Mandate.

Therefore, from the evidence in this case there is no doubt that the 733 persons found on board this freighter as passengers were intending to enter this country illegally and they were in fact prohibited immigrants under the Ordinance and they did come within the territorial waters of Palestine. Therefore, as no good cause has been shown to the Court as to why this vessel should not be forfeited the Court confirms the forfeiture and orders and it is hereby ordered that the motor vessel "Asya" now in Haifa Port be forfeited to the Government of Palestine.

Delivered in open Court this 14th day of June, 1946, in presence of Mr. Pinchassovitch for the Attorney General and of Mr. Shapiro for the respondent.

(Sgd.) S. WELDON,

President District Court.

*In the
Supreme
Court of
Palestine
sitting as
a Court of
Civil
Appeal at
Jerusalem.*

No. 9.

NOTICE and Grounds of Appeal.

Civil Appeal No. 251 of 1946.

NOTICE OF APPEAL.

No. 9.
Notice and
Grounds of
Appeal,
12th July
1946.

Notice of Appeal is hereby given of the Appeal hereby made by the Appellant from the order of the District Court of Haifa given and delivered on the 14th day of June, 1946 in Motion No. 262/46 confirming and ordering the forfeiture to the Government of Palestine of the Motor Vessel "ASYA".

2. The Appellant is a shipowner residing at Istanbul, Turkey, and is the registered and beneficial owner of the Motor Vessel "ASYA".

3. The Appellant will be represented in this Appeal by Mr. Jacob S. Shapiro, advocate, of 11, Ben Yehuda Street, Haifa, and his address for service hereunder will be c/o his said advocate.

4. The Respondent is the Attorney General, Government Offices, Jerusalem.

5. The Appellant instead of filing the bond referred to in Rule 325 and 326 of the Civil Procedure Rules 1938 offers to pay into Court an amount to be fixed by the Registrar of this Court.

GROUND'S OF APPEAL.

20

1. It is submitted that the Immigration Ordinance, 1941, as amended is void as being repugnant to or inconsistent with the provisions of the Mandate, in particular Articles 4 and 6 thereof.

2. Alternatively, it is submitted that the provisions of the Immigration Ordinance, 1941, as amended must be confined in scope and effect to persons, acts done, and knowledge imparted or presumed, within Palestine and the territorial waters of Palestine. Any extension of the scope and effect thereof beyond those limits is ultra vires the powers of the legislating authority of Palestine.

Applying the said principle to the circumstances of this case, it is submitted that the learned District Court erred in confirming and ordering the forfeiture of the vessel. 30

It was neither alleged nor proved that the owner of the vessel was in Palestine or within the territorial waters thereof at all or at any material time.

3. Further and alternatively, it is submitted that the passengers who were on board the vessel were there legally at all material times.

4. Further and alternatively, it is submitted that the Respondent attempted to prove all the facts which it is necessary to establish under the Immigration Ordinance, 1941 as amended for the forfeiture of the 40

vessel, including those facts which the Ordinance presumes in favour of the Respondent, but failed in his attempt.

It is submitted that by the said attempt and failure, the onus was shifted to the Respondent to prove all the said facts and that the said onus was not discharged.

WHEREFORE it is prayed that the said order of the District Court of Haifa confirming and ordering the forfeiture to the Government of Palestine of the Motor Vessel "ASYA" be set aside with costs including advocate's fees.

*In the
Supreme
Court of
Palestine
sitting as
a Court of
Civil
Appeal at
Jerusalem.*

No. 9.
Notice and
Grounds of
Appeal,
12th July
1946,
continued.

No. 10.
Judgments
(a)
Chief
Justice
and
Edwards,
J., 11th
November
1946.

10

(Sgd.) JACOB S. SHAPIRO,
Advocate for Appellant.

No. 10.
JUDGMENTS (a).

THE CHIEF JUSTICE (Sir William Fitzgerald) and
Mr. Justice EDWARDS.

Appeal from the Order of the District Court of Haifa dated 14th day of June, 1946, in Motion No. 262/46.

For Appellant : Mr. J. Shapiro.

For Respondent : Mr. Griffin, Solicitor General and
Mr. Hooton, Crown Counsel.

20

JUDGMENT.

[CHIEF JUSTICE : This is an appeal from the decision of the District Court, Haifa, which confirmed forfeiture of a motor vessel, the "Asya," under Regulation 107 (b) (3) (iii) (c).

Mr. Shapiro's first argument was that the District Court had no jurisdiction as (notwithstanding the Interpretation Ordinance and the Palestine Order in Council Amendment in 1939) no Court has jurisdiction in any part of the territorial waters of Palestine. He bases his contention on the fact that the Palestine Order in Council flows from the jurisdiction conferred by the Foreign Jurisdiction Act of 1890 and the Mandate, and that neither under the Foreign Jurisdiction Act nor the Mandate has the Mandatory been given power to legislate for that part of the high seas not included within the territory. He goes on to say that the only part of the high seas which is included in the territory is that up to low water mark, in other words, what is generally known as the 3-mile limit does not apply to any country in which His Majesty claims jurisdiction under the Foreign Jurisdiction Act. He takes his stand on the decision in the case of the *Queen vs. Keyn* Vol. 2 of Exch. Reports, 1876-1877. That case considered the question of the jurisdiction of the Central Criminal Court in the territorial waters of England. It was not denied that the Central Criminal Court claimed jurisdiction solely as the successor of the Court of the Lord High Admiral. It seems to me that the decision of the majority

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*In the
Supreme
Court of
Palestine
sitting as
a Court of
Civil
Appeal at
Jerusalem.*

No. 10.
Judgments
(a)
Chief
Justice
and
Edwards,
J., 11th
November
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of the judges was based on the fact that it was not established to their satisfaction that the Lord High Admiral ever claimed or ever exercised criminal jurisdiction in the territorial waters, and consequently the Central Criminal Court could not have acquired by succession from the Court of the Lord High Admiral what that Court never had. One principle was never questioned in any of the judgments. That principle has been embodied in the judgment by Lush, J., when he says:—

“I wish, however, to guard myself from being supposed to adopt any words or expressions which may seem to imply a doubt as to the competency of Parliament to legislate as it may think fit for these waters. I think that usance and the common consent of nations which constitute international law have appropriated these waters to the adjacent state to deal with them as the state may deem expedient for its own interests.” 10

Having come to the conclusion that the Court of the Lord High Admiral was not vested by common law with jurisdiction and as there was no legislation conferring jurisdiction it followed that the Central Criminal Court had no jurisdiction. Indeed, as a result of this judgment legislation was passed in 1878, to give jurisdiction within the territorial waters. It must be conceded that in the case before us legislation has been passed (Mr. Shapiro would argue purported to have been passed) giving the High Commissioner the power he claims, that legislation being embodied in section 12 of the Immigration Ordinance. I have therefore now to consider whether the High Commissioner is empowered, as the Parliament of England is in respect of the territorial waters of Great Britain, to enact legislation to control activities within the territorial waters of Palestine. At this point I must emphasize that the High Commissioner exercises jurisdiction in Palestine by virtue of the Order in Council. That Order in Council gives him full power to legislate subject to restrictions set out in the body of the Order. Mr. Shapiro submits that the Order in Council could not have included the territorial waters because the Order was limited, inter alia, by the Foreign Jurisdiction Act. That the Foreign Jurisdiction Act did not claim to include territorial waters he asserts can be inferred from the fact that section 14 of that Act was considered necessary to confer specific power on Her Majesty to make laws for the government of her subjects in any vessel at a distance of not more than 100 miles from the coast of China and Japan. It seems to me that the object of section 14 was to extend jurisdiction to a distance of 100 miles, a distance far beyond any limit ever claimed as territorial water. I am unable to agree that any reasonable inference could be drawn from section 14 that jurisdiction was not confined to legislate for the control of water up to one marine league which had universally come to be recognised as territorial waters. I would observe that when the Foreign Jurisdiction Act was passed in 1890, it had been well established both by international law and by universal usage that sovereignty over a country carried with it the right to legislate for its territorial waters up to the accepted 3 miles limit. 30 40

I turn now to examine whether there are any limitations imposed by the Mandate on the right to legislate for the territorial waters.

His Majesty's authority to occupy and administer Palestine is founded on a Mandate given to him by the principal allied powers who negotiated 50

the peace treaties after the 1914-1918 war. The right of His Majesty rests more on an international act of the allied powers than on conquest, because the fruits of the British conquest had been ceded to the Allied Powers. Now international law for centuries past had recognised the right of nations to legislate for the control of their territorial waters, and I find it impossible to believe that these allied powers were not empowered, when they handed Palestine over to the administration of the King of Great Britain, as Mandatory, to include the territorial waters, and further that it was not their clear intention to include these territorial waters.

10 I need only mention that the primary duty of any administration is the defence of the inhabitants, and it would be difficult to conceive that this duty could be carried out in the absence of power to legislate for the territorial waters. Before leaving this issue there is one more point with which I must deal. Mr. Shapiro invited attention to the fact that in 1939 the Order in Council was amended by adding to the definition of Palestine the words "including the territorial waters adjacent thereto." As to this I accept the explanation given by the Solicitor General that the words "territorial waters" appeared in several ordinances and the object of the Amendment was to clear up doubts.]

20 The next ground of appeal was based on Article 17 (1) (c) of the Order in Council which provides that no Ordinance shall be promulgated which shall be in any way repugnant to or inconsistent with the provisions of the Mandate. He refers to Article 6 of the Mandate which states that 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 the Jews on the land including state lands and waste lands not required for public purposes.

30 His argument is that the provisions of the Immigration Ordinance and the Defence Regulations are so restrictive of Jewish Immigration as to be totally inconsistent with Article 6. Now it is true that the restrictions could be so all-embracing as totally to defeat or suspend the attainment of the original objective. I have therefore to enquire whether Article 6 imposes any legal limit to the restrictions the High Commissioner may from time to time impose. Under Article 6 the facilitation of Jewish Immigration is subject to the provision that it shall be under suitable conditions and that it shall be ensured that the rights and position of other sections of the population are not prejudiced. On a legal interpretation

40 of the Article, and it is hardly necessary to remark that that is the only aspect from which this Court can view it, it is not open to doubt that the law vests the authority to decide what the suitable conditions are, and how the rights of other sections of the population shall not be prejudiced, in the Mandatory. I cannot read into the article any limitation on this discretion, nor can I say that it has been exercised unreasonably or capriciously. If I am right in holding as I do that the discretion is vested in the Mandatory, this Court will not usurp his functions and itself enquire whether the suitable conditions exist or whether the rights of the other sections of the population are prejudiced.

50 I come now to deal with that part of Mr. Shapiro's argument relating to section 12 (3) (iii) Immigration Ordinance, as amended by the Defence

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(Emergency) Regulations, 1946. The argument is that the word "owner" must mean an owner who is in Palestine at the material time and that the sub-paragraph must be read together with section 12 (3) (iii). Mr. Shapiro contends that a vessel can be forfeited only if the circumstances are such that, had the master or agent or owner been tried, he would be deemed to have abetted the offence but not if the owner were out of Palestine. Mr. Shapiro concedes that, if the owner is in Palestine, proof of his knowledge that the ship has illegally entered Palestine is not required, but goes on to argue that, if the owner is not in Palestine when the vessel arrives here, it cannot be forfeited. I think that this contention must fail 10 for various reasons. To begin with, the wording of section 12 (3) (iii) is perfectly clear. The word "owner" is unqualified and must be interpreted as meaning "the owner, wherever he may be." Moreover, there is nothing contrary to natural justice nor inherently harsh in rendering the ship liable to forfeiture even when the owner was not in Palestine when the illegal entry took place. Numerous instances occur to one in the criminal law of England, the most outstanding example being that of a licensee of a public house in Kent, who may be in France for a day during which day his barman permits the sale and consumption of liquor during prohibited hours. In such a case the licensee himself is liable to 20 be convicted. In the case before us there is indeed a very real connection between the owner of the ship and the prohibited act because it is not denied that he was still the owner at the time when the ship entered the territorial waters of Palestine. I also agree with the argument of the learned Solicitor General that the forfeiture provision stands by itself and does not require the conviction of the owner for the offence of aiding and abetting illegal immigration. I agree that the circumstances are different from those in the case of *McLeod vs. Attorney General for New South Wales* (1891) A.C. 455 in which the bigamy alleged to have taken place was actually committed outside the jurisdiction. In this case the 30 illegal entry of the ship took place within the territorial waters of Palestine.

Finally it was contended that the passengers who were on board the vessel were there legally since they were brought in by force majeure. As to this I can only say that section 12 (3) (i) (b) is unambiguous. It provides that the owner is deemed to have abetted the unlawful immigration, whether the person or vessel came into Palestine or the territorial waters thereof voluntarily or not. Indeed, this point has already been decided in favour of the contention of the prosecution in Criminal Appeal 86/41 (8 P.L.R.). It seems to me that the fact that the vessel was brought 40 in by a British naval patrol is immaterial.

For these reasons the appeal must be dismissed.

DELIVERED this 11th day of November, 1946, in the presence of Mr. Krongold (for Mr. Shapiro) for Appellant, and of Mr. Griffin, Solicitor General for Respondent.

(Sgd.) W. J. FITZGERALD,
Chief Justice.

EDWARDS, J. : I agree with the conclusions reached by the learned Chief Justice and with the reasons on which they are based.

(Sgd.) D. EDWARDS,
British Puisne Judge.

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JUDGMENTS (b).

Mr. Justice SHAW.

This is an appeal from the judgment dated 14th June, 1946, of the District Court, Haifa, in Motion No. 262/46, confirming the forfeiture of the motor vessel "Asya" now in Haifa Port.

The summons was issued against the owner of the vessel in question, and it averred that on 27.3.46 733 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. It was further averred in the summons that the said vessel was accordingly subject to forfeiture under the provisions of section 12 of the Immigration Ordinance, 1941.

Evidence was led in the Court of trial to the effect that a destroyer, H.M.'s ship "Chequers," on patrol off the Palestine coast, sighted a small motor-vessel which was flying no flag. No reply was received to a signal enquiring to what port the vessel was bound. The vessel was hailed and ordered to stop, and a Turkish flag was then hoisted. A boarding party was sent from the destroyer, and the Turkish flag was hauled down and a flag, described as the Zionist flag, was hoisted in its place. The officer in charge of the boarding party found on board the vessel more than 700 passengers. The interception of the vessel took place about 100 miles south-west of Jaffa, and the vessel was found to be carrying no papers except a set of maps covering the area bounded by the south coast of France and the coast of Palestine. None of the passengers had any passports or travel documents. The ship was escorted to Haifa, where the police and immigration authorities took charge. It is clear from the evidence that the vessel was taken into the port of Haifa.

The learned Judge found that there was no doubt that the 733 persons found on board this freighter as passengers were intending to enter Palestine illegally, that they were in fact prohibited immigrants under the Ordinance, and that they did come into the territorial waters of Palestine. He also found that no good cause had been shown to the Court as to why the vessel should not be forfeited, and he therefore confirmed the forfeiture to the Government of Palestine.

The application for forfeiture was based on section 12 (3) (iii) of the Immigration Ordinance, No. 5 of 1941, as amended by the Defence (Emergency) (Amendment) Regulations, 1946. (See Supplement No. 2 of 1946, p. 157.)

By subsection (3) (iii) it is provided that if any vessel, to the knowledge of the master, owner or agent . . . is used in any contravention or attempted contravention of this Ordinance or any order or rule made by virtue thereof . . . or if any person is proved to have been on board a vessel . . . in circumstances in which the master, owner or agent of the vessel . . . is deemed to have abetted the unlawful immigration of that person, then the vessel . . . shall, save as hereinafter provided, be forfeited to the Government.

By subsection (3) (i) (b) it is provided that without prejudice to the provisions of this Ordinance relating to actual abetment, the master, owner and agent of a vessel . . . are all deemed to have abetted the unlawful immigration of any person . . . who is proved to have been

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on board the vessel . . . in Palestine or the territorial waters thereof, whether that person or the vessel . . . came there voluntarily or not, unless it is proved that one of the conditions set out thereafter obtain.

Mr. Shapiro, who appeared for the Appellant, has in the first place submitted that the Courts of Palestine have no jurisdiction, whether criminal or quasi-criminal, in the territorial waters of Palestine.

The term "territorial waters" has been defined in the Interpretation Ordinance, No. 9 of 1945, as meaning "any part of the open sea within three nautical miles of the coast of Palestine, measured from low water mark."

"Palestine" has, by the same Ordinance, been defined as including "the territories to which the Mandate applies . . . including the territorial waters adjacent thereto." And Article 1 of the Palestine Order-in-Council, 1922 (Vol. 3, Laws of Palestine, p. 1570), as amended, provides that "the limits of this Order are the territories to which the Mandate for Palestine applies, including the territorial waters adjacent thereto . . ."

Mr. Shapiro submits that the Palestine Order-in-Council, 1922, is governed by the provisions of the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), Section 1 of which provides that—

"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 succession or conquest of Territory."

Mr. Shapiro has drawn attention to the preamble to the Palestine Order-in-Council 1922, where it is stated that His Majesty makes the order "by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890, or otherwise." His argument is really this—that the term "foreign country" does not include any territorial waters other than harbours.

Section 16 of the Foreign Jurisdiction Act defines "foreign country" as meaning "any country or place out of Her Majesty's dominions."

Mr. Shapiro has referred to the case *Rex v. Keyn* (L.R. 2 Ex. D. 63). That case arose out of a collision between a German and a British ship two miles from Dover pier, a passenger in the British ship being drowned as a result of the accident. Keyn, the commanding officer of the German vessel the "Franconia," was indicted and convicted of manslaughter at the Central Criminal Court. The appellate tribunal held that the conviction could not be sustained.

This case led to the enactment, in 1878, of the Territorial Waters Jurisdiction Act (41 & 42 Vict. c. 73). The preamble of that Act reads as follows :—

"Whereas the rightful jurisdiction of Her Majesty, her heirs and successors, extends and has always extended over the open seas adjacent to the coasts of the United Kingdom and all other parts of Her Majesty's dominions to such a distance as is necessary for the defence and security of such dominions ;

"And whereas it is expedient that all offences committed on the open sea within a certain distance of the coasts of the United Kingdom, and of all other parts of Her Majesty's dominions by whomsoever committed, should be dealt with according to law."

And Section 7 provides that the expression "the territorial waters of Her Majesty's dominions," in reference to the sea, means "such part of the sea adjacent to the coasts of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty . . ."

In discussing the case of *Rex v. Keyn* in his book "Great Britain and the Law of Nations" the author, H. J. Smith, says, at page 139:—

10 "It was beyond dispute that in numerous instances Parliament had enacted statutes affecting both British and foreign vessels within territorial waters. None of these statutes expressly conferred the criminal jurisdiction claimed by the Crown in the case before the Court, and the minority differed from the majority chiefly in holding that the jurisdiction was conferred by the common law. Only two Judges (Chief Baron Kelly and Sir Robert Phillimore) were of opinion that a statute conferring such jurisdiction would exceed the rights given to the riparian state by the law of nations. We may therefore take it as clear that in 1876 the great preponderance of judicial opinion in England was in favour of the view now reaffirmed in the British memorandum that the rights which States
20 possess over their territorial waters are rights of sovereignty."

The memorandum to which H. J. Smith refers was contained in a letter, dated 6.12.1928, from Great Britain to the Secretary General to the Assembly of the League of Nations, in reply to a questionnaire (see page 135 of H. J. Smith's book). In the course of their reply to the twelfth question the British Government said:—

"Rights of jurisdiction are, in practice, only exercised where it is necessary to do so in the interests of good government, but the State itself must be the judge whether or not the interests of good government require it."

30 Mr. Shapiro has submitted that the Palestine Order-in-Council, 1922, was made primarily under the authority of the Foreign Jurisdiction Act, and secondly under the authority of the Mandate for Palestine, and that the Mandate does not extend to the territorial waters of Palestine. He has submitted, in the alternative, that the Court had no jurisdiction because the vessel was a foreign vessel, that the words "any vessel" in Section 12 (3) (iii) must mean any Palestinian vessel, and that the words must be read so as not to conflict with international law.

Brierly, in his "Law of Nations," 2nd Edition, page 143, says:—

40 "The doctrine which finds most support in the practice of states is that territorial waters form part of the territory of a state as fully as does its land territory, except that there exists a right of 'innocent passage' through them for the ships of other states."

Again, at page 144, he says:—

"The most reasonable rules on this matter (though they cannot be regarded as settled law) are perhaps those which have been suggested by the Harvard Research in International Law in a draft convention prepared in anticipation of the Codification Conference of 1930:

50 "A state may not exercise jurisdiction in respect of any act committed in violation of its criminal law on board a vessel

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of another state in the course of innocent passage through its marginal seas, unless the act has consequences outside the vessel and tends to disturb the peace, order, or tranquility of the state.’’

* * * * *

“ ‘ A state may exercise jurisdiction over a vessel of another state which is in its territorial waters for purposes other than innocent passage through its marginal sea to the same extent as over a vessel in port.’ ”

And again, at page 145, Brierly :—

“ Whatever doubts may exist as to the status of territorial waters, there is no doubt that the waters of a port are inland waters, as fully a part of a state’s territory as the land.”

Having considered the arguments which have been put forward by both parties I am unable to find that the Foreign Jurisdiction Act, 1890, does not enable H.M. the King to legislate for the territorial waters of Palestine. I agree that the territorial waters of Palestine do not form part of the “ foreign country ” of Palestine, but they adjoin that country and they comprise an area over which the “ foreign country ” of Palestine is entitled to assume such jurisdiction as international law recognises. And in the absence of any words in the Foreign Jurisdiction Act to suggest that such jurisdiction is not to be assumed I find that the Act authorises its assumption. It is impossible to construe the Foreign Jurisdiction Act in such a way as to arrive at the absurd conclusion that His Majesty has no power to legislate, for example, in regard to fisheries and customs, which legislation would naturally extend to the territorial waters, and if it is within the powers of His Majesty to make legislation preventing the unlawful introduction of goods into Palestine it cannot be beyond his powers to make legislation against unlawful immigration.

I find that the Palestine Order-in-Council, 1922, and the Palestine (Defence) Order-in-Council 1937, are valid by virtue of the Foreign Jurisdiction Act, and that the first ground of appeal therefore fails.]

The second ground of appeal is that the Immigration Ordinance, 1941, as amended, is void as being repugnant to or inconsistent with the provisions of the Mandate, in particular Articles 4 and 6 thereof.

Article 6 provides that :—

“ 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.”

It is clear that the provisions of the Immigration Ordinance do purport to give the Government of Palestine complete legal control over the immigration of Jews or other persons who are not nationals of Palestine. It is also a matter of common knowledge that the Government of Palestine is making use of its powers under the Ordinance in order to prevent illegal Jewish immigration. But this does not enable me to find that the Ordinance is ultra vires the Mandate. It is not for this Court to decide whether or not the Ordinance is being used in violation of the terms of the

Mandate. The Ordinance does not contain any provisions against the immigration of Jews as such. Its provisions apply with equal stringency against all unlawful immigration. In my judgment the Ordinance is not in itself repugnant to or inconsistent with the provisions of the Mandate, and I therefore find that this second ground of appeal fails.

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The third ground of appeal is based upon the interpretation to be put on Section 12 of the Immigration Ordinance. Mr. Shapiro has submitted that the Government of Palestine cannot legislate so as to make an offence punishable if it is committed by a foreigner outside the limits of Palestine.

10 So far as concerns an offence committed outside the limits of Palestine and the territorial waters thereof I agree that Mr. Shapiro's submission is correct. But in my view the point does not arise in this case. Under section 12 (3) (i) (b) the owner is deemed to have abetted the unlawful immigration of any person who is proved to have been on board the vessel *in Palestine or the territorial waters thereof*. That is to say, no offence (punishable in Palestine) is committed by the owner if he abets the immigration, unless the would-be immigrant actually comes into Palestine or its territorial waters. It is quite clear that the Ordinance does not purport to make the act of abetment punishable unless the offence is

20 actually committed *in Palestine or in its territorial waters* by the immigrant's actually coming into Palestine or its territorial waters. The fact that the owner was not in Palestine or the territorial waters thereof at the time is immaterial. If he came here subsequently he could be punished under Section 12 (3) (ii). Nor am I able to find that the fact of his being a foreigner would be material. A foreigner is subject to the criminal law of this country to the same extent as a Palestinian citizen, if he commits an offence in Palestine or the territorial waters thereof. If the circumstances are such that the owner is deemed to have abetted the unlawful immigration then the vessel, whether foreign or not, is forfeited under the provisions

30 of Section 12 (3) (iii). I find that this ground of appeal fails.

The fourth ground of appeal is that the passengers who were on board the vessel were there legally at all material times. It is submitted that because the vessel was brought into territorial waters by a British naval vessel the passengers must be held not to have committed an offence. Section 12 (3) (i) (b), however, provides in the clearest terms that the owner is deemed to have abetted the unlawful immigration whether the person or the vessel came into Palestine or the territorial waters voluntarily or not. Criminal Appeal 86/41 (8 P.L.R. 333) is an authority in regard to the meaning to be given to these words. It is for the immigrant to

40 prove that he or she comes within one of the exceptions set out in the subsection. The fact that the vessel which brought the immigrant ship to Palestine was a British naval vessel appears to me to be immaterial. I find that this ground of appeal fails.

The fifth ground of appeal is that the Respondent having taken upon himself the burden of proving certain facts which he need not have proved and having failed to prove these facts, the burden of proof was shifted from the Appellant to him. Mr. Shapiro submits that it was necessary for the Respondent to prove affirmatively that the persons on the ship did not come within any of the exceptions, for example, that they were

50 not Palestinian citizens, or that they were not exempted by virtue of Section 4 of the Ordinance.

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Mr. Shapiro has referred to the case of *Rex v. Beadon* (24 Criminal Appeal Reports, p. 59) in which it was held that though the prosecution might have proceeded at the trial on the basis that under section 1, subsection (4), of the Aliens Restriction Act, 1914, the burden of proving that he was not an alien lay on the Appellant, they had not taken this course but had themselves accepted the burden of proof and endeavoured to discharge it by putting in evidence an inadmissible document, and accordingly the conviction must be quashed. But in that case it was common ground that the Appellant was born in India, that his parents were British subjects, and that he originally was a British subject. There 10 was no proper evidence that he had ever lost that status. In the present case there is no evidence, and it is not admitted, that the immigrants were Palestinian citizens or that they were otherwise exempted from the provisions of the Immigration Ordinance. And there is an uncontroverted finding of fact by the trial Judge that these passengers were intending to enter the country illegally and that they were prohibited immigrants. So the cases are clearly quite dissimilar.

In the result I find that the appeal fails and must be dismissed.

Delivered this 11th day of November, 1946, in the presence of Mr. Krongold (for Mr. Shapiro) for Appellant, and of Mr. Griffin, S.G., 20 for Respondent.

(Sgd.) B. V. SHAW,

British Puisne Judge.

No. 11.

No. 11.

NOTICE OF MOTION applying for Conditional Leave to Appeal to His Majesty in Council with Affidavits of Messrs. S. Friedman and A. Roth in support thereof, showing the value of the M/V "Asya" as over £500, dated 9th December 1946.

(Not printed.)

No. 12.

No. 12.

ORDER Granting Conditional Leave to Appeal to His Majesty in Council, dated 30 16th December 1946.

(Not printed.)

No. 13.

GUARANTEE for LP.300.- for the due prosecution of the Appeal and as Security for Costs, executed by the Anglo-Palestine Bank Limited, Haifa, dated 2nd February 1947.

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No. 13.

No. 14.

NOTICE OF MOTION applying for Final Leave to Appeal to His Majesty in Council with Affidavit of Mr. S. Friedman in support thereof, dated 6th February 1947.

(Not printed.)

No. 14.

No. 15.

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ORDER granting Final Leave to Appeal to His Majesty in Council.

Privy Council Leave Application No. 43/46.

Before : THE CHIEF JUSTICE (SIR WILLIAM FITZGERALD) and
MR. JUSTICE FRUMKIN.

Application for final leave to appeal to His Majesty in Council against the judgment of the Supreme Court of Palestine sitting as a Court of Civil Appeal in Civil Appeal No. 251/46, 11th November, 1946.

For Applicant : Mr. S. Friedman.

For Respondent : Mr. Hooton—Crown Counsel.

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ORDER.

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WHEREAS by order of this Court dated the 16th day of December, 1946, the applicant was granted conditional leave to appeal to His Majesty in Council, subject to the following conditions :—

(i) that the appellant do enter within two months of the date of this order into a bank guarantee from one of the recognised banks to be approved by the Chief Registrar in a sum of LP.300 for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal (as the case may be) ;

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

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AND WHEREAS the applicant has fulfilled the said conditions in that he has filed a letter of guarantee from the Anglo-Palestine Bank Ltd. Haifa, dated 2nd February 1947, as prescribed, and has filed a list of documents which he proposes should constitute the file to be despatched to the Privy Council ;

Now therefore the Court ORDERS, and IT IS HEREBY ORDERED in pursuance of Article 21 of the Palestine (Appeal to Privy Council) Order-in-Council, that final leave to appeal to His Majesty in Council be granted to applicant.

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Given this 24th day of February 1947.

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(Sgd.) W. J. FITZGERALD,
Chief Justice.

(Sgd.) G. FRUMKIN,
Puisne Judge.

No. 16.
List of
Documents
not trans-
mitted.

No. 16.
LIST OF DOCUMENTS NOT TRANSMITTED.

<i>No.</i>	<i>Description</i>	<i>Date of Filing</i>	
11	Notice of Motion applying for Conditional Leave to appeal to His Majesty in Council with affidavits of Messrs. S. Friedman and A. Roth in support thereof, showing the value of the M/V "Asya" as over £500. (<i>Not printed.</i>)	9th December 1946	20
13	Bank Guarantee. (<i>Not printed.</i>)	2nd February 1947	
14	Notice of Motion applying for Final Leave to Appeal to His Majesty in Council with affidavit of Mr. S. Friedman in support thereof. (<i>Not printed.</i>)	6th February 1947	
P.1 and P.2	Exhibits P.1 and P.2—Photographs of the M/V "Asya."	31st May 1946	30
P.3	Exhibit P.3—Navigation Charts produced by witness Dennis Keith Ray.	31st May 1946	

Exhibits.

EXHIBITS.

P.1 and
P.2.
Photo-
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M/V
"Asya."
P.3.
Navi-
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Charts.

P.1 and P.2	Photographs of the M/V "Asya." (<i>Not printed.</i>)	
P.3	Navigation Charts produced by witness Dennis Keith Ray. (<i>Not printed.</i>)	