

Privy Council Appeal No. 43 of 1945

The Attorney-General of Palestine - - - - - *Appellant*

v.

Fakhry Ayyas - - - - - *Respondent*

FROM

THE SUPREME COURT OF PALESTINE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 15TH APRIL, 1947

Present at the Hearing :

LORD UTHWATT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD UTHWATT]

This is an appeal from a judgment of the Supreme Court of Palestine setting aside a judgment of the District Court of Haifa which had dismissed the respondent's claim for the return of certain goods or payment of their value.

The goods in question were claimed by the Government of Palestine (represented in the proceedings by the appellant the A-G for Palestine) to have become forfeited goods under the Export and Customs Powers (Defence) Ordinance 1939. The facts are not in dispute; the only questions for decision relate to the proper construction of the Ordinance.

The respondent in September 1942 bought certain goods in Palestine for export to Syria. He made no effort to obtain a licence for export. On the 18th September 1942 the goods were loaded into two lorries which left Jaffa at 2 a.m. After by-passing Samakh, where there was a customs post, the lorries were stopped by the police about 200 yards from the Syrian border and were then taken to Samakh where the goods were seized. The District Judge who tried the case had no difficulty in drawing the inference of fact that the goods were being carried for purpose of export.

The more directly material provisions of The Ordinance as it stood amended at the date of the seizure of the goods are as follows:—

“ 3.—(1) The High Commissioner may by order make such provisions as he thinks expedient for prohibiting or regulating, in all cases or any specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order, the importation into, or exportation from, Palestine or any specified part thereof, or the carriage coastwise or the shipment as ships' stores, of all goods or goods of any specified description.

(4) For the avoidance of doubt it is hereby declared that, without prejudice to the provisions of the enactments relating to customs with respect to ships and aircraft, the taking into or out of Palestine of ships or aircraft may be prohibited or regulated by an order under this section as an importation or exportation of goods, notwithstanding that the ships or aircraft are conveying goods or passengers, and whether or not they are moving under their own power.

(5) (1) If any goods

(a) are imported, exported, carried coastwise or shipped as ships' stores in contravention either of an order under this Ordinance or of the law relating to trading with the enemy; or

(b) are brought to any quay or other place, or waterborne, for the purpose of being exported or of being so carried or shipped in contravention either of an order under this Ordinance or of the law relating to trading with the enemy,

those goods shall be deemed to be prohibited goods and shall be forfeited; and the exporter or importer of the goods or his agent or the shipper of the goods shall be liable, in addition to any other penalty under the Ordinance relating to Customs, to a penalty of two years' imprisonment or a fine of five hundred pounds or both.

(2) If any such order as aforesaid prohibits the exportation of any goods unless consigned to a particular place or person and such goods so consigned are delivered otherwise than to that place or person, as the case may be, the vessel in which the goods were exported shall be deemed to have been used in the conveyance of prohibited goods.

(3) If any goods are imported, exported, carried coastwise or shipped as ships' stores, or are brought to any quay or other place, or waterborne, for the purpose of being exported or of being so carried or shipped, a customs officer may require any person possessing or having control of the goods to furnish proof that the importation, exportation or carriage coastwise, as the case may be, is not unlawful by virtue either of an order under this Ordinance or of the law relating to trading with the enemy; and if such proof is not furnished to the satisfaction of the Director, the goods shall be deemed to be prohibited goods unless the contrary is proved.

7.—(1) For the purpose of securing compliance with the provisions of this Ordinance or any order made under section 3 of this Ordinance or with any other Ordinance relating to the importation or exportation of goods or with the law relating to trading with the enemy—

(a) a customs officer may at any time refuse clearance to any ship; . . .

8.—(1) Where a person about to export goods from Palestine, in the course of making entry thereof before shipment, makes a declaration as to the ultimate destination thereof, and the Director has reason to suspect that the declaration is untrue in any material particular, the goods may be detained until the Director is satisfied as to the truth of the declaration, and, if he is not so satisfied, the goods shall be forfeited.

(2) Any exporter or shipper of goods which have been exported from Palestine shall, if so required by the Director, satisfy him that those goods have not reached any enemy or any enemy territory, and if he fails so to do, he shall incur a penalty of treble the value of the goods or one hundred pounds at the election of the Director, unless he proves that he did not consent to or connive at the goods reaching an enemy or enemy territory, and that he took all reasonable steps to secure that the ultimate destination of the goods was not other than that specified in the documents shown or furnished to the customs officers in connection with the exportation of the goods."

Purporting to act under the powers conferred by Sect. 3 of the Ordinance the High Commissioner by the Licensing of Exports Order 1940 prohibited the export of all goods from Palestine.

There is one provision of The Interpretation Ordinance which is relevant. That provision runs as follows:—

" 26. Where the words ' or ' ' other ' and ' otherwise ' are used they shall unless a contrary intention appears be construed disjunctively, and not as implying similarity, unless the word ' similar ' or some other word of like meaning is added."

In these circumstances two main questions of construction were debated: first, whether or not the Ordinance when construed as a whole empowered the High Commissioner to prohibit export otherwise than by water; and second, whether assuming it did, head (b) of Sect. 5 applied where export involving only carriage by land was in contemplation. A further point was raised by the respondent that the goods in question were not brought to a "place."

The District Judge took the view that the Ordinance regulated the import and export of goods into and out of the country whether it be by sea, land or air and that to restrict the meaning of "other place" to places *ejusdem generis* with "quay" would not be giving effect to the obvious intention of the legislature as gathered from a general survey of the Ordinance.

The Supreme Court did not express any opinion upon the general effect of the Ordinance but was content to rest its decision on a conclusion that "other place" must refer to some place near or close to or part of a waterside.

For the reasons which they will now state, their Lordships have come to the conclusion that the views expressed by the District Judge are correct.

The first matter to be determined is the general scope of the Ordinance. The respondent contended that as a matter of construction, the powers of the High Commissioner under Sect. 3 (1), as regards exportation, extended only to making orders prohibiting or regulating exportation by sea. It was argued that a consideration of this Ordinance as a whole and in particular the terms of head (b) of Sect. 5 (1) of 5 (2), and Sects. 7 and 8, showed that export by sea alone was under consideration, and that Sect. 3 (1) should accordingly receive a limited construction.

For the purposes of considering this argument, their Lordships are content to assume that head (b) of Sect. 5 (1) applies only to export by sea. As regards Sect. 5 (2) it is clear that read strictly it proceeds on the footing that where goods are exported, a vessel is concerned. The provisions of Sect. 7 (1) do not aid the respondent's argument, for the existence of a particular provision relating to ships, carries the point no further. Sect. 8 (1) is of more assistance to the respondent by reason that it assumes that an entry before shipment will be made whenever goods are about to be exported from Palestine. Their Lordships express no opinion as to the effect of Sect. 8 (2) but again are content to assume in favour of the respondent that it applies only to goods shipped by sea.

The conclusion of the respondent was that on giving due weight to the language and substance of these provisions, the proper inference was that as regards exportation export by sea alone fell within the contemplation of Sect. 3. That Section should as a matter of construction be limited accordingly. The Ordinance would in light of Palestine's land frontiers be somewhat whimsical in character but that, it was argued, was no reason for attributing to the Ordinance a construction repelled by its terms.

In their Lordships' view the argument proceeds upon a false basis. The substantive provision is contained in Section 3. All the provisions on which the respondent relies (other than Sect. 8) are provisions which are ancillary either to Sect. 3 or to some other enactment. Sect. 8 is an independent provision. Their Lordships do not doubt that if Sect. 3 (1) was not clear in its intendment, resort might legitimately be made to ancillary provisions related to Sect. 3 (1) in order to determine its proper meaning and to resolve any ambiguity. But the language of Sect. 3 (1) is clear, unambiguous and sweeping. There is nothing in it to suggest that there is any limitation on the extent of the power to prohibit importation or exportation. There is indeed nothing in it to suggest that methods of export are being considered or dealt with at all. These circumstances taken alone are sufficient to preclude a gloss limiting the power to prohibit export to a power to prohibit export by sea carriage. The matter does not however rest there. First, a gloss cannot be put upon exportation without putting the same gloss on importation, for the two matters are in the section dealt with together and there is nothing in any part of the Ordinance

to suggest that importation by sea alone is in view. Second, under the Act exportation from or importation into or from a part of Palestine may be prohibited. A land-locked part of Palestine might be selected as an area subject to restrictions on importation and exportation, and obviously sea carriage would then be out of the question. And lastly Sub-sect. (4) "for the avoidance of doubt" declares that an order under Sect. 3 (1) may prohibit the taking out of aircraft moving under their own power. The inclusion of any means of export is therefore clear. The result is not that the ancillary provisions suggest a qualification on the terms of Sect. 3 but that some of the ancillary provisions come under the stigma of ineptitude or of incompleteness.

Their Lordships are therefore of opinion that exportation by any means is within the ambit of Sect. 3 (1) and that therefore throughout the Ordinance "export", unless controlled by the context, includes export by land carriage.

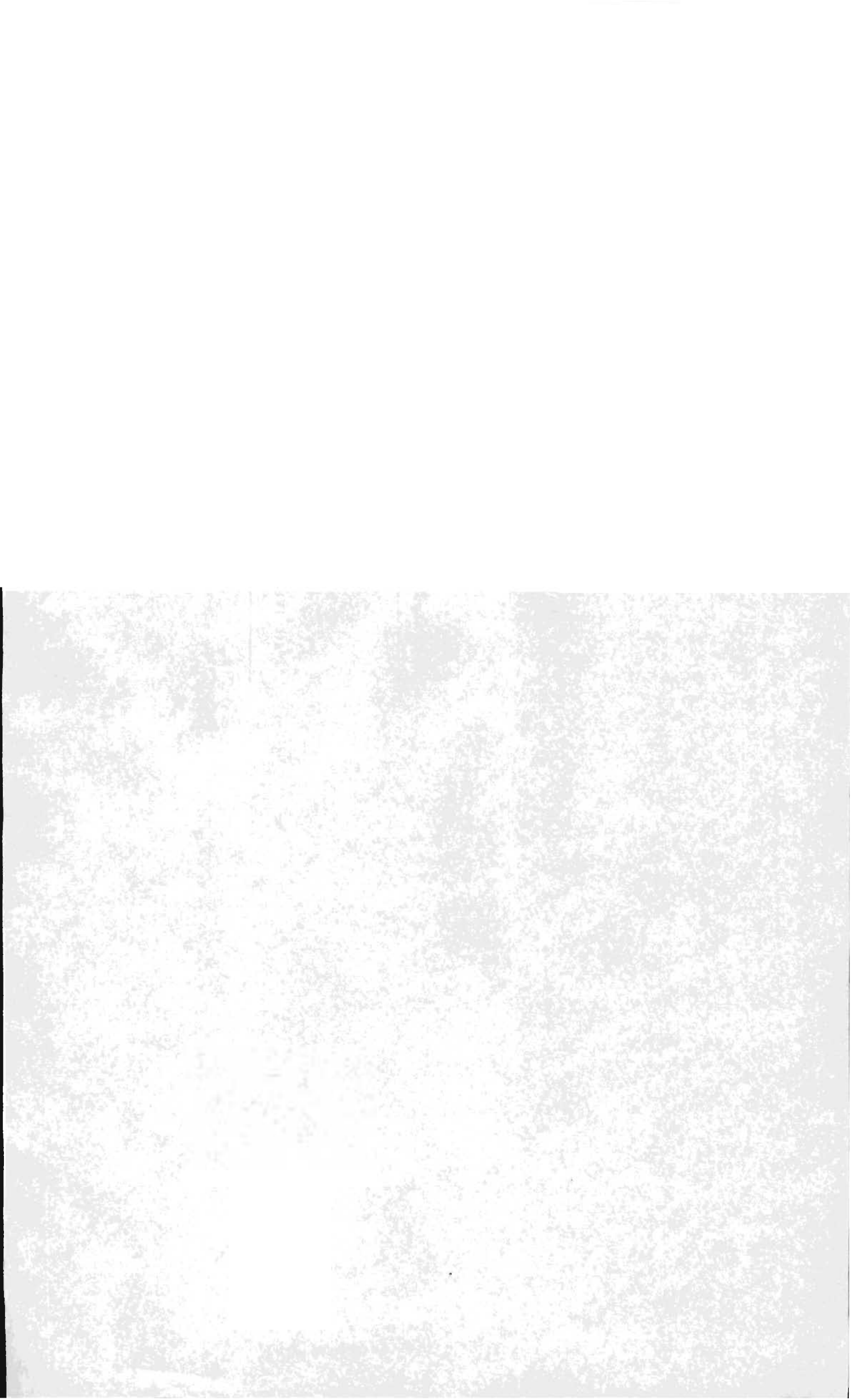
The next question is the proper construction of head (b) of Sect. 5 (1). The contention of the respondent is that head (b) is confined to "the bringing of goods to a quay or other like place for the purpose of being exported by sea". This contention has to be examined on the footing that the word "exported", unless controlled by the context, is quite general in its signification.

It is beyond question that in head (a) of Sect. 5 (1) the word "exported" is not confined in its application to export by sea. No reason can be assigned for putting a limitation on its general scope. Head (b) on its general intendment, picks up the references to export, carriage coastwise and shipping as ships' stores contained in head (a), with the result that the phrase "If any goods are brought to any quay or other place for the purpose of being exported"—and it is the phrase that has to be construed, not particular words contained in it—has to be looked at in light of the general signification of the word "exported". Once the question is stated, the answer is apparent, when the provision of the Interpretation Ordinance quoted above is borne in mind. The meaning of "place" is not limited by the reference to "quay" and the suggestion that sea carriage alone is under contemplation is not inherent in the phrase "quay or other place". The words "quay or other place" afford therefore no context for limiting the meaning of "exported". In their Lordships' view therefore head 5 (1) (b) applies where goods are brought to a place for the purpose of export by land.

The remaining question is whether "place" is confined in its application to a spot which possesses some characteristic other than locality. Their Lordships see no reason for accepting any such limitation.

In the result therefore the goods were, in their Lordships' view, duly forfeited according to law.

Their Lordships will humbly advise His Majesty that the appeal be allowed. The respondent will bear the cost of this appeal and of the proceedings in the Supreme Court.



In the Privy Council

THE ATTORNEY-GENERAL OF
PALESTINE

vs.

FAHRY AYYAS

DELIVERED BY LORD UTHWATT

Printed by His Majesty's STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.
1947