

19, 1960

G.H.G. 1

IN THE PRIVY COUNCIL

No. 43 of 1959

ON APPEAL
FROM THE SUPREME COURT OF ST. HELENA

B E T W E E N:-

ABDUL RAHMAN AL BAKER Appellant

- and -

ROBERT EDMUND ALFORD and
PATRICK VINCENT TRUEBODY Respondents

C A S E
FOR THE APPELLANT

UNIVERSITY OF LONDON
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- 7 FEB 1961
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O N A P P E A L

FROM THE SUPREME COURT OF ST. HELENA

B E T W E E N :-

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- and -

ROBERT EDMUND ALFORD and
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C A S E
FOR THE APPELLANT

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| 10 | 1. This is an appeal by special leave from a Judgment of the Supreme Court of St. Helena (Brett J. acting Chief Justice) delivered on the 20th March 1959. | P. 39
P. 31 |
| 20 | 2. By the said Judgment the Appellant's application for a writ of habeas corpus ad subjiciendum directed to the first and second Respondents was dismissed. | P. 31 |
| 30 | 3. The Appellant is now, and has been since the 27th January 1957, a prisoner in the Colony of St. Helena, and is at the present time held in the custody of the second Respondent (being Superintendent of Goals in the said Colony) on the purported authority of a warrant issued by the first Respondent, who since the 12th February 1958 has been, and now is, the Governor and Commander-in-Chief in and over the Island of St. Helena and its dependencies. | P. 2 L. 30
P. 3 L. 37

P. 25 L. 20
P. 26
P. 27 L. 20 |
| 30 | 4. The Appellant is an Arab from the Persian Gulf, and before his imprisonment was normally resident in Bahrain. Bahrain is not part of Her Majesty's Dominions but is a foreign country under Her Majesty's protection, in which by usage and custom Her Majesty has a limited jurisdiction. Subject to such jurisdiction of Her Majesty, which is hereinafter more particularly defined, all | PP. 2, 3 |

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jurisdiction in Bahrain is vested in the Ruler of Bahrain (hereinafter called "The Ruler").

P.17 L.2
P.3 L.13
P.18 L.37
P.23

5. On the 6th November 1956 the Appellant was arrested in Bahrain, and on 23rd December 1956 the Appellant (together with four other men) was brought before a court sitting in Budeya, a village in Bahrain. This court was not one of Her Majesty's courts nor was it one of the permanent courts of the Ruler, but, was a "Special Court" set up by the Ruler by an order dated 22nd December 1956 for the particular purpose of trying the Appellant and the four men charged with him. 10

PP.17,18

6. The Appellant and the four other men aforesaid were charged with attempting to carry out:

(a) The assassination of the Ruler and some of his family and the assassination of his Adviser, (being then Sir Charles Belgrave), and the destruction of the palace of the Ruler and the setting fire to the Airport of Al Moharraq and other places; 20

(b) The overthrow by illegal means of governmental control;

(c) The removal of the Ruler from authority over his principality by deposing him.

P.3 L.32
P.28 L.12

7. The Appellant has at all times protested his innocence of these charges. At the hearing before the said "Special Court" on 23rd December the Appellant objected to the jurisdiction of the court. Nevertheless, the said "Special Court" purported to convict the Appellant and to sentence him to 14 years imprisonment, which sentence was later reduced by order of the Ruler to 13 years imprisonment. 30

P.3 L.37

8. On 28th December 1956 the Petitioner was delivered into the custody of the Captain of H.M.S. Loch Insh and was removed from Bahrain to St. Helena. On his arrival in St. Helena on 27th

P.12 L.1

January 1957 he was delivered into the custody of one Henry Tyler, then Superintendent of Police and Prisons, who had been empowered by Sir James Dundas Harford, then the Governor and Commander-in-Chief, to receive him. He has been continuously in prison 40

P.3 L.42
P.25 L.20

from the time of his said arrival, and since the 22nd December 1958 he has been in the custody as

aforesaid of the second Respondent. Subject to any remission of sentence which may be granted to the Appellant by the Ruler of Bahrain, the first Respondent intends to keep him in prison in St. Helena until 22nd December 1970.

10 9. The removal of the Appellant from Bahrain and his detention in St. Helena as aforesaid purport to be justified in virtue of powers which the Respondents contend are lawfully derived from the provisions of the Colonial Prisoners Removal Act 1869, as extended to apply within the limits of the jurisdiction of the Crown in Bahrain.

10. For the reasons hereinafter appearing, the Appellant contends:

- (a) That his case did not fall within the limits of the jurisdiction of the Crown in Bahrain.
- 20 (b) That whether or not his said case fell within the limits of such jurisdiction, he was not within the category of "prisoners under sentence" within the meaning and provisions of the Colonial Prisoners Removal Act 1869.
- (c) That whether or not he was within such category of "prisoners under sentence", the conditions precedent to the bringing into operation of the powers under the provisions of the said Act of lawfully removing and detaining the Appellant as one of such prisoners were not and never have been fulfilled.
- 30 (d) That the detention of the Appellant is accordingly unlawful, and was unlawful in any event as from the moment of the performance of the first act done in the process of his removal from Bahrain to St. Helena.

11. The provisions of the Colonial Prisoners Removal Act 1869, so far as material, are as follows:-

Section 4.

40 "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

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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.

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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".

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Section 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".

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Section 7.

"Every prisoner shall, upon his delivery to the person having lawful authority to receive him in the colony to which he is removed, be subject within such colony to the same laws and regulations, and shall be dealt with in all respects in the same manner, as if he had been tried and received the same sentence in

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such colony as the sentence which has been passed on him in the colony from which he is removed".

10 12. By the definition contained in Section 2 of the said Act it is provided that for the purposes of the Act the term "colony" shall not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, or within what was formerly British India, "but shall include any plantation, territory, or settlement situate elsewhere within Her Majesty's dominions, and subject to the same local government; and for the purposes of this Act all plantations, territories and settlements under a central legislature shall be deemed to be one colony under the same local government".

13. It is undisputed that the said Act does not in its terms apply to any foreign country, whether or not under Her Majesty's protection. But by the Foreign Jurisdiction Act 1890 it is provided so far as material, as follows:-

20 Section 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.

30 (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".

40 14. The Colonial Prisoners Removal Act 1869 is not one of the enactments described in the First Schedule of the Foreign Jurisdiction Act 1890, but by The Foreign Jurisdiction Act 1913 it is provided that the Foreign Jurisdiction Act 1890 shall have effect as if the Colonial Prisoners Removal Act 1869 were added to the said Schedule.

15. The jurisdiction exercised at all material times by Her Majesty in Bahrain is declared and set out in the Bahrain Order 1952. The provisions of that

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Order, so far as relevant to the questions in issue in this Appeal are as follows:-

Article 4.

" 'Bahrain subject' means a subject of the Ruler of Bahrain. 'Persons subject to this Order' means those persons to whom the powers conferred by this Order extend in accordance with Article 8(1). 'Persons not subject to this Order' means those persons referred to in Articles 8(1) (a) or (b). 'Political Resident' means Her Majesty's Political Resident in the Persian Gulf".

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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".

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Article 10.

"All Her Majesty's jurisdiction exercisable within the limits of this Order for the hearing and determination of criminal and civil matters, or for the maintenance of orders or for the control or administration of persons or property, or in relation thereto, shall be exercised under and according to the provisions of this Order, so far as this Order extends and applies".

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Article 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 (hereinafter referred to as the Court for Bahrain).

(ii) Her Britannic Majesty's Chief Court for the Persian Gulf (hereinafter referred to as the Chief Court).

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- (iii) Her Britannic Majesty's Full Court for the Persian Gulf (hereinafter referred to as the Full Court).
- (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. Mixed cases: Persons not subject to this Order and Persons subject to this Order.

"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".

"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)".

16. There is no evidence that before the Appellant and the four other men were arrested, as hereinbefore

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appears, any measures had ever been adopted for applying to Bahrain the provisions of the Colonial Prisoners Removal Act 1869. Thereafter, however, the following steps were taken for the purpose of achieving that object, that is to say,

P.17 L.27

(1) On the 18th December 1956, Sir Charles Belgrave handed to the Political Resident an Address under the hand and seal of the Ruler, which (translated from the Arabic into the English language) reads as follows:-

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P.20

"18th December 1956"

"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.

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May God keep you in His care.

SALMAN".

P.11 L.21

(2) Likewise on the 18th December 1956, the then Governor of St. Helena, Sir James Dundas Harford aforesaid submitted to Her Majesty an Address in the following terms:-

P.12

"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:

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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 that the desired arrangements may be entered into between Bahrain and St. Helena in pursuance of the said Act.

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

J. D. HARFORD".

(3) On the 19th December 1956, the following Order in Council was made:-

The Bahrain (Removal of Prisoners) Order, 1956. S.I. 1956 No. 2031.

So far as relevant, the said Order provides:

10 "2. The Colonial Prisoners Removal Act, 1869, is hereby extended to Bahrain.

3. (1) In the application of the Colonial Prisoners Removal Act 1869 to persons subject to the Bahrain Order, 1952, as from time to time amended, references to the 'Governor' shall be construed as references to the Political Resident, and in its application to other persons, such references shall be construed as references to the Ruler of Bahrain.

20 (2) For the purposes of paragraph one of this Article, the expressions 'Political Resident' and 'Ruler of Bahrain' have the respective meanings assigned to them by the Bahrain Order, 1952, as from time to time amended".

(4) Likewise on the 19th December 1956, the following Order in Council was made:-

The Prisoners Removal (Bahrain and St. Helena) Order, 1956 S.I. 1956 No. 2032.

30 "The sanction of Her Majesty is hereby given in order that the Ruler of Bahrain and the Governor of St. Helena may in accordance with section four of the Colonial Prisoners Removal Act 1869 (which extends to Bahrain by virtue of the Bahrain (Removal of Prisoners) Order 1956) 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".

(5) On the 22nd December 1956, the Prisoners Removal (Bahrain and St. Helena) Order 1956 was published in St. Helena by being printed in an extraordinary issue

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of the St. Helena Government Gazette bearing the
aforementioned date.

P.23

Notwithstanding the fact that the order whereby the
"Special Court" was set up by the Ruler as aforesaid
for the purpose of trying the Appellant and four other
men was not made until the said 22nd December and that
their trial did not take place until the following
day, there were appended to the text of the Prisoners
Removal (Bahrain and St. Helena) Order 1956 as
appearing in the said extraordinary issue of the St.
Helena Government Gazette the following observations:

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PP.14,15

"NOTE. - An urgent request made on behalf of Her
Majesty's Government was recently received by His
Excellency the Governor, as to the possibility of
arranging for the detention in St. Helena of five
subjects of the Ruler of Bahrain in the Persian Gulf,
convicted of political offences.

After discussing all aspects of this request with
the Executive Council, the Governor informed the
Secretary of State for the Colonies of his concurrence
in the proposed arrangements.

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It is expected that these persons will be brought
to St. Helena in one of Her Majesty's ships in the
latter part of January, and that they will be detained
at Munden's".

P.11 L.31
PP.15,16

(6) On the 24th December 1956, the Governor of St.
Helena sent to the Secretary of State for the
Colonies a dispatch informing the Secretary of State,
with reference to the latter's telegram of the 13th
December, that he, the Governor, concurred in the
proposed arrangements for detention in St. Helena of
five Bahrain subjects after removal from Bahrain under
the terms of the Colonial Prisoners Removal Act 1869.

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P.19 L.8

PP.23,24

(7) On the 26th December 1956, Sir Charles Belgrave
(being then, as aforementioned, the Adviser to the
Ruler) handed to the Political Resident a document of
that date under the hand of the Ruler. The said
document which was in the Arabic language, purported
to testify that the Ruler had agreed with the Governor
of St. Helena for the removal from Bahrain to St.
Helena of three named persons (including the Appellant)
for a period of 14 years or until the Ruler should
agree to their return.

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(8) The Prisoners Removal (Bahrain and St. Helena) Order 1956 was not published in Bahrain until the 28th December 1956, when it was posted on the official notice board at the Political Agency.

P.10 L.23

(9) According, therefore, to the provisions (hereinbefore set out) of sections 4 and 5 of the Colonial Prisoners Removal Act 1869, that Act did not (if at all) come into force in Bahrain until, at the earliest date, the said 28th December 1956.

10 17. Notwithstanding the foregoing circumstances, the Appellant was (as in paragraph 8 hereinbefore appears) delivered into the custody of the Captain of H.M.S. Loch Insh on the 28th December 1956 on the authority of what purported to be a warrant issued by the Ruler in professed pursuance of the Colonial Prisoners Removal Act, 1869, on the 26th December, 1956.

P.3 L.37

PP.24,25

20 18. The Appellant refers to the summary of his contentions in paragraph 10 hereinbefore set out, and makes his submissions respectively in relation to each of his said contentions.

19. The Application of English statute law to a foreign country pursuant to the provisions of Section 5 of the Foreign Jurisdiction Act 1890, is subject to both of two limitations that is to say:

(i) The limitation imposed by the words "to the extent of that jurisdiction" occurring in subsection 2 of the said section.

(ii) The scope of the particular enactment extended to that country.

30 20. The Appellant contends that on a true construction of the words of limitation in the subsection aforesaid, the power to extend the enactments set out in the schedule to the Foreign Jurisdiction Act 1890 as amended is restricted by the extent of Her Majesty's jurisdiction in that country exercised through Her courts.

40 21. Whatever may be the true construction of the said subsection the Appellant will contend that in particular relation to the Colonial Prisoners Removal Act 1869 it is the jurisdiction to deal with prisoners under sentence of one of Her Majesty's courts of criminal jurisdiction overseas which is alone in

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contemplation. That Act has no application to foreign courts applying foreign law, more especially courts over which, and the sentences of which, Her Majesty exercises no supervision or control. The extension of that Act to protected territories has enlarged no more than its territorial scope.

22. Her Majesty's criminal jurisdiction in Bahrain is limited by the provisions of the Bahrain Order, 1952 (the amendments thereto being immaterial), and is exercised exclusively through the courts set up under Article 14 of that Order. It is therefore the contention of the Appellant that only prisoners under sentence of one of those courts can be subject to the provisions of the Colonial Prisoners Removal Act 1869 as extended to Bahrain.

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23. The effect accordingly of the Prisoners Removal (Bahrain and St. Helena) Order 1956, which interms provides exclusively for the removal of prisoners not being persons subject to the Bahrain Order 1952, is to apply the provisions of the Colonial Prisoners Removal Act 1869 to that class of persons which although within the definition in Article 4 of the Bahrain Order 1952 of "persons not subject to this Order", nevertheless includes persons who, in circumstances mentioned in Part VIII of the Order, have become amenable to the jurisdiction of and have been sentenced by one of Her Majesty's Courts in Bahrain. That class does not, in the events which have happened, include the Appellant. He was therefore not a person whose case fell within the limits of the jurisdiction of the Crown in Bahrain.

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24. The Appellant next contends that even if his case fell within the limits of that jurisdiction, the circumstances in which he was condemned were such as to render wholly invalid the sentence passed upon him.

25. The Appellant refers again to paragraph 16 hereof, and more particularly to the terms of the Addresses respectively of the Ruler and the Governor of St. Helena, each dated the 18th December 1956. Those addresses read in the light of the Note appended to the Prisoners Removal (Bahrain and St. Helena) Order 1956 as published in the extraordinary issue of the St. Helena Government Gazette on the 22nd December 1956, and having regard to the fact that the Appellant and the four other men had not by that

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P.20
PP.12,13

PP.14,15

P.3 L.13

10 date even been tried, show plainly that their prospective sentences were being treated by all concerned as a foregone conclusion. In the premises, the so-called "Special Court" was no court at all, and was no more than a committee of persons convened for the purpose of pronouncing condemnation of imprisonment on the Appellant and the four other men. Such condemnation as was pronounced by the said committee on the Appellant was not a sentence within the meaning or contemplation of the Colonial Prisoners Removal Act 1869, and accordingly, the Appellant was not and is not a prisoner under sentence within the meaning of that Act, could not lawfully be removed from Bahrain to St. Helena, and could not and cannot be lawfully detained in St. Helena.

20 26. Further in respect of the same contention, the Appellant refers to Articles 67 and 68 of the Bahrain Order 1952. The offence which he is alleged to have committed included a charge of attempting to carry out the assassination of Sir Charles Belgrave, who was at the material time a person subject to the said Order. His case therefore fell within the provisions of the said Article 68. It was not however a "mixed case" as defined in Article 67, since it did not involve as parties both persons not subject and persons subject to the said Order. Accordingly, the only court in which the Appellant's case could properly have been tried, after having been
30 entertained by the Court for Bahrain was the Joint Court constituted pursuant to the provisions of the said Article 67.

P.17 L.39

40 27. If, contrary to the Appellant's contention, his said case was a "mixed case", it remained obligatory nevertheless for the same to be entertained by the Court for Bahrain before being sent for trial by the appropriate court. Prima facie, the appropriate court was the said Joint Court. But an exception might be made in a case or class of case in which the Political Resident had concurred in permitting the same to be tried by the courts within the general jurisdiction of which the accused was.

28. By a formal Notification dated the 2nd February 1953, the then Political Resident signified his concurrence with the continuance of what was recited as being "the present practice" of the Court for Bahrain in dealing (inter alia) with criminal cases involving a person not subject to the Order who

PP.21,22

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was alleged to have committed an offence in relation to a person subject to the Order. The said practice was therein recited to be that such a person not subject to the Order "may be tried by the court within whose jurisdiction the accused is".

PP.21,22 29. The Appellant contends that the said Notification was not a proper or effective exercise by the said Political Resident of his powers under Article 67(2) of the Bahrain Order 1952, for the following reasons:- 10

(1) That it was not open to the Court for Bahrain to have pursued a practice of permitting on its own authority alone a person not subject to the Order to be tried by any court other than the Joint Court. The only lawful course alternative to sending the case of such a person to the Joint Court was for the Court for Bahrain, having entertained the case, to propose for the concurrence of the Political Resident that it should be otherwise tried in accordance with the provisions of Article 67(2). 20

(2) That a purported concurrence with the continuance of a practice which, if it ever was a practice, was ultra vires the Court for Bahrain, was no exercise of the powers of the Political Resident, and was of no effect.

PP.21,22 30. Even if (contrary to the contention herein last above set out) the said Notification was an effective exercise of the said powers of the Political Resident, the authority thereby given to the Court for Bahrain was permissive only. The effect therefore was no more than to afford to the Court for Bahrain upon entertaining such case as aforesaid, a choice between sending the same to the Joint Court and sending it to the other appropriate court, without the necessity for seeking the further or special concurrence of the Political Resident. It in no way relieved the Court for Bahrain of its mandatory obligation to entertain the case in the first instance itself. 40

P.3 31. The Court for Bahrain never has entertained the case of the Appellant, and he has therefore never been lawfully brought to trial.

32. Yet further in support of his contention that he was not a prisoner under sentence for the

purposes of the Colonial Prisoners Removal Act, 1869, the Appellant contends that if (which he denies) he could nevertheless have been lawfully tried by a court "within the general jurisdiction of which" he was, yet he was not tried by any such court. The "Special Court" aforesaid was ex hypothesi not a court of general jurisdiction, nor was it even in existence at the time of the alleged offence or of the Appellant's arrest.

P.18

10 33. The next contention of the Appellant does not go to his own status in relation to the Colonial Prisoners Removal Act 1869, but to the effective bringing into operation of that Act itself before he was removed from Bahrain to St. Helena in purported pursuance of its provisions.

34. Before the said Act can be lawfully brought into operation, it is first necessary for three effective steps to have been taken, that is to say,

20 (1) For an agreement to have been made between the governors of the two territories concerned.

(2) For the sanction of Her Majesty in Council to have been obtained to such agreement.

(3) For such sanction to have been published in the territory to which it relates.

30 35. In the present case, the requisite agreement was one which should have been made between the Ruler of the one part and the Governor of St. Helena of the other part. There is, however, no evidence of any such agreement ever having been made. It is true that on the 24th December 1956, the Governor of St. Helena, in his dispatch hereinbefore mentioned, informed the Secretary of State for the Colonies with reference to a telegram from the Secretary of State of the 13th December that he concurred in the proposed arrangements for the detention in St. Helena of 5 Bahrain subjects after removal from Bahrain under the terms of the Colonial Prisoners Removal Act 1869. It is also true that the Ruler executed on the 26th December a document which, although headed "Agreement", is in form a proclamation purporting to testify that he had agreed with the Governor of St. Helena upon the removal of the Appellant and two (not four) other named persons from Bahrain to St. Helena. But

P.11 L.31
P.15

PP.23,24

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further and other than this unilateral recital, there is no indication of any such agreement ever having been made.

P.15, PP.23, 24

36. The Appellant contends that the two documents aforementioned, so far from disclosing a consensus ad idem, disclose the opposite. There was plainly no general agreement such as is apparently contemplated by the terms of Section 4 of the Colonial Prisoners Removal Act 1869 for the removal from one of the contracting territories "of any prisoners under sentence" to the other for the purpose of their undergoing punishment there, and for their eventual return. Nor, so far as the alleged agreement purported to be limited to certain special cases, was there identity of intention. The Governor of St. Helena specified "5 Bahrain subjects", whereas the Ruler indicated 3 named persons. That is apart from the fact that Sir Charles Belgrave has deposed to the Appellant's being a subject of the Ruler of Qatar, and accordingly not a Bahrain subject.

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P.15 L.33
PP.23,24
P.17 L.7

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37. It would appear from the provisions of Section 4 of the Colonial Prisoners Removal Act 1869 that it was contemplated by the legislature that the requisite agreement should precede the sanction thereto of Her Majesty in Council. In the present instance, however, the Orders in Council were both made on the 19th December 1956, whereas the aforementioned documents were dated respectively the 24th and 26th December 1956. In any event, in the absence of an agreement, the said Orders in Council do not constitute any "sanction" within the meaning of the Colonial Prisoners Removal Act 1869, and were accordingly of no effect in bringing into operation the provisions of that Act.

P.15, PP.23, 24

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38. The Appellant finally contends that his removal from Bahrain in purported pursuance of the Colonial Prisoners Removal Act 1869 was set in motion before ever the provisions of that Act could possibly have become operative in Bahrain.

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39. The first step in the removal of the Appellant from Bahrain in professed pursuance of the provisions of the said Act was the issuing to the Captain of H.M.S. Loch Insh of what purported to be the warrant of the Ruler. This step was taken on the 26th December 1956. But seeing that the Bahrain

P.19 L.20
P.24,25

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10 (Removal of Prisoners) Order 1956 was not published in Bahrain until the 28th December, the said Act was not (if ever) in force in Bahrain until that date at the earliest. The removal of the Appellant into the custody of the said Captain, which, although it was not effected until the 28th December, had no other authority than that of an invalid warrant as aforesaid, was therefore unlawful. The Appellant was consequently, on any showing, illegally removed from Bahrain. P.10 L.25 P.19 L.19

40. The Appellant respectfully submits that the Judgment of the Supreme Court of St. Helena was wrong and ought to be reversed and that a Writ of habeas corpus ad subjiciendum ought to be directed to both Respondents, for the following (amongst other): P.31

R E A S O N S

- 20 1. BECAUSE the Appellant was neither by reason of the extension to Bahrain of the Colonial Prisoners Removal Act 1869 nor otherwise, brought within or, rendered subject to Her Majesty's jurisdiction.
2. BECAUSE the Appellant was never brought into the category of prisoners under sentence within the meaning of the Colonial Prisoners Removal Act 1869.
3. BECAUSE the Colonial Prisoners Removal Act 1869 was not (if at all) extended to Bahrain so as to render lawful either the removal of the Appellant from Bahrain to St. Helena or his subsequent detention in St. Helena.
- 30 4. BECAUSE the removal of the Appellant from Bahrain was effected under authority given in purported pursuance of powers under the provisions of the Colonial Prisoners Removal Act 1869, exercised before such provisions had been (if ever they were) lawfully extended to Bahrain.

WALTER RAEBURN

ROLAND BROWN