

The District Governor, Jerusalem-Jaffa District, and another - *Appellants*

*v.*

Suleiman Murra and another - - - - - *Respondents*

FROM

THE SUPREME COURT OF PALESTINE.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL DELIVERED THE 16TH FEBRUARY, 1926.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

VISCOUNT DUNEDIN.

LORD PARMOOR.

[*Delivered by* THE LORD CHANCELLOR.]

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This is an appeal by the District Governor of the Jerusalem-Jaffa District and the President of the Jerusalem Water Supply Commission from an order of the Supreme Court of Palestine restraining them from taking water from the springs at Urtas, a village in the neighbourhood of Jerusalem.

In the month of May, 1925, the water supply of Jerusalem was causing anxiety; and on the 25th of May the High Commissioner for Palestine, acting under the Palestine (Amendment) Order in Council dated the 4th of May, 1923, promulgated an Ordinance (called the Urtas Springs Ordinance, 1925) empowering the High Commissioner by order published in the Official Gazette to authorise the municipality of Jerusalem or such other authority as undertook the supply of water to Jerusalem to take water from the springs in the village of Urtas for augmenting the supply contained in the reservoirs at Solomon's Pools upon certain conditions set out in the Ordinance. On the same day the High Commissioner, acting under the Urtas Springs Ordinance, published in the Official Gazette an order whereby he authorised the

municipality of Jerusalem to take over for a period not exceeding twelve months from the date of the order the water arising from the spring in Urtas for the purpose mentioned in the Ordinance. It appears that the spring at Urtas is the private property of the inhabitants of that village, who use the water for drinking and other domestic purposes, for watering their animals and for the irrigation of land planted with trees or with vegetables or other crops; and the respondents, who represent the inhabitants and landowners of Urtas, objected to the taking of the water and applied by petition to the Supreme Court for an injunction. The Supreme Court granted the injunction asked for, but stayed the operation of the order pending an appeal to His Majesty in Council, for which special leave has been granted.

A question was at one time raised whether an appeal would lie from the Supreme Court of Palestine to His Majesty in Council; but on the argument of the appeal this point was not pressed, and in their Lordships' opinion there is no doubt as to the competence of such an appeal. The Foreign Jurisdiction Act, 1890, applies to every foreign country in which "by treaty, capitulation, grant, usage, sufferance or other lawful means" His Majesty has jurisdiction, and provides that His Majesty may exercise any such jurisdiction in the same and in as ample a manner as if he had acquired that jurisdiction by the cession or conquest of territory. There can be no question that the jurisdiction exercised by this country under the League of Nations Mandate for Palestine comes within the above description, and accordingly that an appeal lies from the Supreme Court of Palestine to His Majesty in Council. Provision for such appeals has been made by the Palestine (Appeal to Privy Council) Order in Council dated the 9th October, 1924.

Before dealing with the substance of the appeal it is necessary to refer in some detail to the Ordinance which is in question, and to the instruments under which it was made.

By the Mandate for Palestine dated the 24th July, 1922, the Council of the League of Nations, acting under Article 22 of the Covenant of the League, entrusted to Great Britain the administration of the territory of Palestine which formerly belonged to the Turkish Empire. The Mandate contained the following among other provisions:—

"ARTICLE 1.—The Mandatory shall have full powers of legislation and of administration save as they may be limited by the terms of this Mandate.

"ARTICLE 2.—The Mandatory shall be responsible for placing the country under such political administrative and economic conditions as will secure the establishment of the Jewish National Home, as laid down in the Preamble, and the development of self-governing Institutions, and also for safeguarding the civil and religious rights of all the Inhabitants of Palestine, irrespective of race and religion.

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"ARTICLE 11.—The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations.

accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein."

By the Palestine Order in Council dated the 10th August, 1922, provision was made for the administration of Palestine by a High Commissioner with full executive powers; and authority to make Ordinances for the peace, order and good government of Palestine was entrusted to a Legislative Council, subject to a provision that no Ordinance should be passed which should in any way be repugnant to or inconsistent with the provisions of the Mandate. The institution of a Legislative Council did not prove successful; and on the 4th May, 1923, an amending Order in Council was made by which the legislative authority was transferred to the High Commissioner, who was thereby authorised to promulgate such Ordinances as might be necessary for the peace, order and good government of Palestine, subject to a condition that no Ordinance should be promulgated which should be in any way repugnant to or inconsistent with the Mandate. It is under the authority conferred by this Order in Council that the Urtas Spring Ordinance was promulgated.

It is unnecessary to state in full the provisions of the Ordinance, which may be summarised as follows :—

By section 2 the High Commissioner was empowered by order published in the Gazette to authorise the municipality of Jerusalem or such other authority as undertook the supply of water to Jerusalem (therein called the Board) to take for a period not exceeding twelve months the water arising from the Urtas Spring and to use it for augmenting the supply in the reservoirs of the Board at Solomon's Pools, but it was provided that the Board should ensure that there should be available from the spring sufficient water for the daily needs of the inhabitants of the village of Urtas for drinking and other domestic purposes and for their animals as well as for the irrigation of their lands which at the date of the order were planted with trees or other permanent plantations.

By section 3 it was enacted that if an order was made under the preceding section the Board might enter upon private land for the purpose of erecting at or near the spring a pumping engine and other machinery and might lay pipe lines from the spring to the reservoir at Solomon's Pools, provided that the Board should pay to the owner of such land compensation for any direct loss or damage thereby caused.

By section 4 it was provided that if any inhabitant of Urtas suffered loss by destruction of or damage to vegetables or other annual plants or crops planted on land irrigated by the spring, or by reason of his being prevented from planting vegetables and other annual plants or crops on land so irrigated, owing to the diversion of the supply of

water to such land, the Board should pay to such inhabitant compensation for the loss so suffered.

By section 5 it was enacted that if any dispute should arise between the Board and any inhabitant of Urtas regarding the amount of water made available for him for any of the purposes provided for in section 2 or as to the amount of compensation payable to him under section 3 or 4, such dispute should be referred to a single arbitrator appointed by the High Commissioner, and the award of such arbitrator should be final; but it was declared that in any dispute which might arise as to the amount of water made available for any of the purposes specified in section 2 the arbitrator should not award compensation in the form of a money payment but should make an award determining the specific quantity of water which the Board was to make available for the use of the inhabitants.

The effect of this Ordinance was, first to secure to every inhabitant of the village of Urtas a sufficient supply of water for drinking and other domestic purposes and for his animals and for watering his trees and permanent plantations, and secondly to provide compensation for any loss which he might suffer by the use of his land for pumping machinery or the laying of pipe lines or the destruction of his vegetables or other crops or his inability to sow further crops, any question as to the sufficiency of the supply under the first category or as to the compensation payable under the second being referred to arbitration.

The Ordinance was held by the Supreme Court of Palestine (Haycraft C. J. and Corrie J.) to be *ultra vires* and void on grounds which are fully stated in their judgments. They considered it to be their duty to examine the provisions of the Ordinance in order to determine whether it contained anything which was in any way repugnant to the terms of the Mandate, and in particular to Article 2 of that instrument which made the Mandatory responsible for "safeguarding the civil and religious rights of all the inhabitants of Palestine irrespective of race and religion"; and they held that the Ordinance did contain terms repugnant to that provision and was therefore wholly void. Both the learned Judges recognised that the Article quoted could not have been intended to prohibit all interference with any of the civil rights of any inhabitant of Palestine as they existed at the date of the Mandate, for to attach that meaning to the Article would (as Corrie J. said) be to render most of the work of government impossible. But they interpreted the Article as requiring that where in the interest of good government the Administration interfered with the antecedent rights of any inhabitant he should receive full compensation for such interference, this being, as the learned Chief Justice said, a "recognised principle of sound legislation." Having arrived at this interpretation of Article 2, they proceeded to enquire whether full compensation was in fact

provided by the Ordinance for the water taken ; and they held, upon grounds to be hereafter referred to, that it was not, and accordingly that the Ordinance was an infringement of Article 2 and was therefore *ultra vires* and void.

In their Lordships' opinion the Supreme Court was fully justified in entertaining an argument as to the validity of the Ordinance. The Ordinance was made under the authority of the Order in Council of the 4th May, 1923, and if and so far as it infringed the conditions of that Order in Council the local Court was entitled and indeed bound to treat it as void. Among those conditions was the stipulation that no Ordinance should be promulgated which was repugnant to or inconsistent with the provisions of the Mandate, and in view of this stipulation it was the right and duty of the Court to examine the terms of the Mandate and to consider whether the Ordinance was in any way repugnant to those terms.

But it appears to their Lordships that the construction put by the Supreme Court upon Article 2 of the Mandate is not justified by its terms. That Article stipulates that the mandatory shall be responsible for (among other things) "safeguarding the civil and religious rights of all the inhabitants of Palestine irrespective of race and religion." This does not mean—as the Supreme Court recognised—that all the civil rights of every inhabitant of Palestine which existed at the date of the Mandate are to remain unaltered throughout its duration ; for if that were to be a condition of the Mandatory's jurisdiction no effective legislation could be possible. Nor does it, in their Lordships' opinion, mean that in every case of expropriation for public purposes full compensation shall be paid. Their Lordships agree that in such a case, and in the absence of exceptional circumstances, justice requires that fair provision shall be made for compensation. But this depends, not upon any civil right, but (as the Chief Justice said) upon principles of sound legislation ; and it cannot be the duty of the Court to examine (at the instance of any litigant) the legislative and administrative acts of the Administration, and to consider in every case whether they are in accordance with the view held by the Court as to the requirements of natural justice. In their Lordships' opinion the key to the true purpose and meaning of the sentence quoted from Article 2 of the Mandate is to be found in the concluding words of the Article "irrespective of race and religion," and the purpose of the Article is to secure that in fulfilling the duty which is incumbent upon every Government to safeguard the rights from time to time belonging to the inhabitants of the territory the Mandatory shall not discriminate in favour of persons of any one religion or race. There is no suggestion that any such discrimination is to be found in the Ordinance now under consideration.

But even assuming (contrary to their Lordships' opinion) that any legislation providing for the appropriation of property to public uses without proper compensation would be an infringement of the Mandate, and therefore of the Order in Council, it does not appear to their Lordships that the Urtas Springs Ordinance would be invalid on that ground. The view apparently taken by the learned Judges of the Supreme Court was that the Ordinance was open to objection, (a) because any question as to the sufficiency of the supply of water left to the inhabitants for domestic uses and the watering of animals and permanent plantations is under section 5 to be determined by an arbitrator and not by the Courts, (b) because no compensation is provided for any failure to give a sufficient supply for those purposes and (c) because the compensation which is to be paid for damage to or loss of crops is to be assessed (on principles which the learned Judges refer to as generous) by an arbitrator and not by a Court. In their Lordships' view the Ordinance is not open to criticism on any of these grounds. As to (a) the right to sufficient water for the purposes mentioned in the proviso to section 2 of the Ordinance was specifically reserved to the villagers; and it was fully competent to the High Commissioner in reserving this specific right of a somewhat special character to provide for the determination by a specially designated person of any difference which might arise as to the limits of the right.

As to (b) their Lordships think that there is a misapprehension. It is true that no compensation is provided for a breach of the proviso in clause 2 of the Ordinance; but this is because a breach of that clause would be a wrong for which the persons aggrieved would be entitled to recover full damages in the local Courts. As to (c) there is no question of ousting the jurisdiction of the Court. A Court may award damages for a wrong, but cannot (unless expressly authorised by statute to do so) award compensation for a lawful expropriation; and when a right to compensation is given by statute, there can be no objection to the amount being determined in such manner as the statute may provide. No doubt an arbitrator, like everybody else, may go wrong; but it would be contrary to the universal practice to provide compensation for the contingency of an error being made by the assigned tribunal.

It is only necessary to add that, even if objection could be taken to the provisions of clause 5 of the Ordinance, it may be doubted whether that objection would of itself be sufficient to render invalid the Ordinance as a whole; but upon this point it is unnecessary for their Lordships to express a final opinion.

For these reasons their Lordships are of opinion that this appeal should be allowed, and that the order of the Supreme Court should be set aside and the petition dismissed, and that the respondents should pay the costs of these proceedings, including the costs of this appeal; and they will humbly advise His Majesty accordingly.



In the Privy Council.

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DISTRICT, AND ANOTHER

v.

SULEIMAN MURRA AND ANOTHER

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DELIVERED BY THE LORD CHANCELLOR

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