No. 43 of 1946.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM.

BETWEEN:

ELIEZER ZABROVSKY - - - - - - *Appellant*

— AND —

1. THE GENERAL OFFICER COMMANDING PALESTINE, REPRESENTING THE COMMANDER-IN-CHIEF, MIDDLE EAST.

2. INSPECTOR-GENERAL OF POLICE AND PRISONS, JERUSALEM - - - - - - - - - *Respondents.*

CASE FOR THE APPELLANT.

RECORD.

1. This is an appeal pursuant to an Order in Council granting special leave to appeal to His Majesty in Council and dated the 18th April, 1946. p. 19.

2. The Appellant is the father of one, Arie Ben Eliezer; and his appeal is from an Order of the Supreme Court of Palestine sitting as a High Court of Justice made on the 18th December, 1945, discharging an Order Nisi in the nature of Habeas Corpus made by the said Court on the 6th November, 1945, whereby the Respondents were ordered to show cause why they should not produce the said Arie Ben Eliezer before the said Court on a date to be fixed and to await the further order of the said Court. p. 13. p. 6.

3. The substantive issue in the case (assuming the facts alleged by the Respondents to be sufficiently proved and apart from important procedural points which are stated in paragraphs 11, 12

of his liberty in Eritrea solely by virtue of an Order made by the Chief Administrator of that Territory.

8. BECAUSE the findings of the Supreme Court that the Appellant's son was and is deprived of his liberty in Eritrea by virtue of an Order made by the Chief Administrator of that Territory was against the weight of the evidence.

9. BECAUSE the Supreme Court misdirected itself in holding that it was irrelevant in considering the Order alleged to have been made by the Chief Administrator of the Territory of Eritrea, whether he acted on his own volition or was moved thereto by the Respondents.

10. BECAUSE the Supreme Court misdirected itself in failing to give effect to its own findings that the Respondents had effective control over the Appellant's said son in Eritrea.

11. BECAUSE the Respondents still have the Appellant's son in their power, custody or control.

12. BECAUSE the Supreme Court was wrong in law in refusing to make the said Order Nisi of 6th November, 1945, absolute and in dismissing the Petition of the Appellant.

13. BECAUSE the judgment of the Supreme Court was wrong and ought to be reversed.

(sgd.) PATRICK DEVLIN.

„ I. H. JACOB.

No. 43 of 1946.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM.

Eliezer Zabrovsky - - *Appellant*

v.

1. **The General Officer Commanding Palestine, representing the Commander-in-Chief, Middle East**
2. **Inspector-General of Police and Prisons, Jerusalem** - - *Respondents.*

CASE FOR THE APPELLANT.

KAUFMAN & Co.,
72, New Cavendish Street,
London, W.1.

4918 WITHERBY & CO. LTD., 15, NICHOLAS LANE, LONDON, E.C.4.

No. 43 of 1946.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM

BETWEEN

ELIEZER ZABROVSKY ... ... *Appellant*

AND

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the Commander-in-Chief, Middle East ... ...
2. INSPECTOR-GENERAL OF POLICE AND PRISONS ... ... *Respondents*

CASE FOR THE RESPONDENTS

RECORD

1. This is an appeal by special leave from an order dated the 18th December, 1945, of the Supreme Court of Palestine sitting as a High Court of Justice which discharged a rule nisi granted on the Appellant's petition (dated the 4th September, 1945, but not filed until the 26th October, 1945) for an order in the nature of habeas corpus in respect of Arie Ben Eliezer, the Appellant's son. pp. 13-16 p. 6 pp. 1-2; p. 19, ll. 20-21

2. Arie Ben Eliezer, a Palestinian national of 31 years of age, was arrested in Palestine on the 17th April, 1944. On the 18th October, 1944, the Officer Administering the Government of Palestine made an order requiring Arie Ben Eliezer to leave and to remain out of Palestine, and requiring the Commander-in-Chief, Middle East, and the second Respondent and those under their command to keep Arie Ben Eliezer in custody while awaiting deportation and while being conveyed out of Palestine. p. 4, l. 32 p. 10, l. 6 p. 4, ll. 14-25

CASE FOR THE RESPONDENTS.

JOINT APPENDIX No. 1.

JOINT APPENDIX No. 2.

RECORD

p. 4

The order was expressed as being made under Regulation 15 of the Emergency Regulations, 1936, which on and after the 12th October, 1944, read as follows:—

"Deportation 15. The High Commissioner shall have power to make an order under his hand (hereinafter in these regulations referred to as a Deportation Order) requiring any person to leave and remain out of Palestine.

The High Commissioner shall have power by order under his hand to require any person who is out of Palestine to remain out of Palestine. A person with respect to whom such an order is published shall so long as the order is in force remain out of Palestine. An order under this regulation may be made subject to such terms and conditions as the High Commissioner may think fit.

A person with respect to whom a Deportation Order is made shall leave Palestine in accordance with the order and shall thereafter so long as the order is in force remain out of Palestine.

A person with respect to whom a Deportation Order is made, whilst awaiting deportation and whilst being conveyed to any vessel, train, aircraft or vehicle and whilst on board any vessel, train, aircraft or vehicle in Palestine, shall be liable to be kept in custody in such manner as the High Commissioner may by the Deportation Order or otherwise direct and whilst in that custody shall be deemed to be in legal custody.

The master of a ship or the pilot of an aeroplane about to call at any port or place outside Palestine shall, if so directed by the High Commissioner, receive a person against whom a Deportation Order has been made on board the ship or aircraft and afford him a passage to that port or place, and proper accommodation and maintenance during the passage."

Joint Appendix No. 2, p. 6

Record p. 5

3. Under Regulation 17G of the Defence Regulations, 1939, the Officer Administering the Government of Palestine on the 18th October, 1944, issued a direction which recited that arrangements had been made with the authorities of Eritrea for the reception of persons lawfully ordered to be deported from Palestine and directed that all persons ordered to be deported should be kept while being conveyed from Palestine to Eritrea in the custody of the Commander-in-Chief, Middle East and the second Respondent and those under their command.

p. 7, l. 23

p. 8, ll. 23-29

p. 9

4. Arie Ben Eliezer was duly deported from Palestine, and when the Appellant's petition was filed and at all times thereafter has been detained in Eritrea by virtue of an order dated the 4th October, 1945, made by the Chief Administrator of Eritrea in accordance with his Proclamation No. 54 dated the 23rd June, 1945.

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24th November, 194
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from Palestine reportin
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8. On preliminar
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The Court then heard a
the 18th December, 194
the Appellant's petition.

9. In his judgment
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5. By his petition the Appellant submitted that Arie Ben Eliezer was being unlawfully detained by the Respondents or one of them as they had no power to detain abroad or to order the detention abroad of persons who had been ordered to leave and remain out of Palestine. RECORD p. 2, ll. 20-24

6. On the 6th November, 1945, the Court ordered a summons to issue calling on the Respondents to show cause why they should not produce Arie Ben Eliezer before the Court. An affidavit in support of an application that the Appellant's petition be dismissed was sworn on the 24th November, 1945, by W. A. Curtis, Acting Assistant Superintendent of the Palestine Police, stating amongst other things that to the best of his knowledge information and belief Arie Ben Eliezer was then in Eritrea and there detained under an order of the Chief Administrator of Eritrea. A further affidavit by Major H. A. Wickstead, an officer of Security Intelligence, Middle East, in the office of the Defence Security Officer, Palestine and Transjordan, was sworn on the 3rd December, 1945, stating that he had access to records relating to persons detained in Eritrea and that Arie Ben Eliezer was there detained under an order dated the 4th October, 1945, made by the Chief Administrator of Eritrea under Article 1 of Proclamation No. 54. p. 6 pp. 6-7 p. 7, l. 26 p. 8 p. 9

7. Both Mr. Curtis and Major Wickstead were cross-examined on their affidavits, and Mr. Curtis admitted having knowledge of a number of official and other statements published in the *Palestine Post* newspaper. These statements show the concern of the Government of the United Kingdom at the terrorist activities in Palestine; that the persons deported were in military custody in Eritrea; that letters to and from such persons passed through the Criminal Investigation Department of the Palestine Police; that the High Commissioner for Palestine and the Commander-in-Chief, Middle East Forces, approved of or consented to a committee from Palestine reporting on the welfare of such persons and that the High Commissioner approved and acted on some of the committee's recommendations; and that certain of the detained persons under the procedure for periodically reviewing their cases had been returned to Palestine for release. pp. 10-11 Joint Appendix No. 1 p. 3, l. 11; p. 5, ll. 28-36; p. 8, ll. 16-30 p. 3, l. 25 p. 3, ll. 30-37 p. 4, ll. 28-33 p. 6, ll. 35-41 p. 6, ll. 1-11; p. 7, ll. 9-15

8. On preliminary objections by the Appellant the Court on the 13th December, 1945, refused to reject the affidavits of Mr. Curtis and Major Wickstead or to require affidavits from the Respondents in person. The Court then heard argument and reserved their decision. By order of the 18th December, 1945, the Court discharged the rule nisi and dismissed the Appellant's petition. Record p. 12 Joint Appendix No. 1, p. 10 Record pp. 13-16

9. In his judgment the Chief Justice pointed out that the case involves questions of grave constitutional importance but that no question was raised of the power of the High Commissioner to order the arrest and deportation from Palestine of Arie Ben Eliezer or to direct the Respondents pp. 13-15

JOINT APPENDIX No. 1.

JOINT APPENDIX No. 2.

RECORD

p. 14, ll. 1-19

p. 14, ll. 20-31

p. 14, ll. 31-40

p. 14, l. 40—p. 15, l. 22

p. 15, ll. 22-26

p. 15, ll. 26-33

to convey him in custody to Eritrea. The Chief Justice would agree that if Arie Ben Eliezer's continuing detention in Eritrea was under order of the Palestine Government it would be illegal; and the detention was at the request of the Palestine Government. In Eritrea, however, Proclamation No. 54 gave the Chief Administrator certain powers of arrest and detention, and, purporting to act under that proclamation, the Chief Administrator of Eritrea had ordered the detention of Arie Ben Eliezer. The Chief Justice considered it irrelevant whether the Chief Administrator acted on his own volition or, as was the fact, at the instigation of the Palestine authorities. The reported cases confirmed him in his view. He was satisfied that the orders which were effective to deprive Arie Ben Eliezer of his liberty up to the borders of Eritrea were lawfully made. He also thought the order of the Chief Administrator of Eritrea lawful but did not formally so decide because no writ of habeas corpus could issue from the Court into Eritrea, and the validity of that order could only be questioned in Eritrea.

p. 16

10. Shaw, J., was of opinion that the Government of Palestine had no authority to detain Arie Ben Eliezer in Eritrea and that the Government of Palestine if they so desired could have brought him back to Palestine; but that did not affect the fact that Arie Ben Eliezer was detained in Eritrea under an order of the Chief Administrator of Eritrea not shown to be unlawful. The fact that the detention was at the instance of the Government of Palestine did not make it unlawful and, athough the Government of Palestine could be requested to arrange for Arie Ben Eliezer's release from detention in Eritrea, the Government of Palestine could not be compelled to arrange his release by writ of habeas corpus, in any event so long as the detention in Eritrea was lawful under the laws of Eritrea.

11. The Respondents respectfully make the following submissions:—

(i) The first Respondent is not a proper respondent to an application for a writ of habeas corpus, which must be directed to a person alleged to have control of the person detained; and proceedings could not be properly taken against the Commander-in-Chief, Middle East, by making his subordinate in Palestine a party to the proceedings as representing the Commander-in-Chief.

(ii) While Arie Ben Eliezer was in Palestine, or being deported therefrom or being conveyed to Eritrea, his detention was authorised by lawful orders of the Officer Administering the Government of Palestine, and it was under such orders only that the Respondents or either of them had the custody of Arie Ben Eliezer.

(iii) The fact that Arie Ben Eliezer was detained in Eritrea at the instance of the Government of Palestine (not of the Respondents or either of them) is irrelevant if the detention was, as it was in fact, by order of the competent authority in Eritrea.

(iv) The validity of an order for detention in Eritrea made by the competent authority in Eritrea or by a person purporting to be such authority cannot be raised by habeas corpus proceedings in Palestine.

12. The Respondents accordingly submit that the judgment and order of the Supreme Court of Palestine sitting as a High Court was right and should be affirmed for the following amongst other

REASONS

1. Because Arie Ben Eliezer was at the relevant time detained in Eritrea by virtue of a lawful order of the Chief Administrator of Eritrea.

2. Because the Court in Palestine had no jurisdiction to inquire into the legality of the order of the Chief Administrator of Eritrea or of the detention of Arie Ben Eliezer thereunder.

3. Because at the relevant time Arie Ben Eliezer was not in the custody of the Respondents or either of them.

4. Because the Commander-in-Chief, Middle East, was not within the jurisdiction of the Palestine Court and proceedings could not properly be taken against him by making his sub-ordinate in Palestine a party to the proceedings as representing the Commander-in-Chief.

5. Because of the other reasons given by the Chief Justice of Palestine and Shaw, J.

FRANK GAHAN.

No. 43 of 1946.

In the Privy Council

ON APPEAL FROM THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM

BETWEEN

ELIEZER ZABROVSKY - *Appellant*

AND

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the Commander-in-Chief, Middle East
2. INSPECTOR-GENERAL OF POLICE AND PRISONS - - *Respondents*

CASE FOR THE RESPONDENTS

BURCHELLS,
5, Old Queen Street,
Westminster, S.W.1.
Solicitors for the Respondents.

METCHIM & SON. LTD., Westminster, S.W.1.

No. 43 of 1946.

In the Privy Council

ON APPEAL FROM THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM

BETWEEN

ELIEZER ZABROVSKY - *Appellant*

AND

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the Commander-in-Chief, Middle East
2. INSPECTOR-GENERAL OF POLICE AND PRISONS - - *Respondents*

CASE FOR THE RESPONDENTS

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In the Privy

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JOINT APP

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1. Official Communiqu
1944, published in
2. Statement by the
Churchill, in the Ho
17th November,
"Palestine Post",

No. 43 of 1946.

In the Privy Council.

No. 43 of 1946.

ON APPEAL

IN THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM.

IN THE APPLICATION OF

ELIEZER ZABROVSKY - - - - - - *Petitioner*

v.

1. THE GENERAL OFFICER COMMANDING PALESTINE, REPRESENTING THE COMMANDER-IN-CHIEF MIDDLE EAST.

2. INSPECTOR-GENERAL OF POLICE AND PRISONS

Respondents.

JOINT APPENDIX No. 1 OF ADDITIONAL DOCUMENTS.

INDEX OF REFERENCE.

No.	Description of Document.	Date.	Page.
1.	Official Communique issued 19th October, 1944, published in "Palestine Post" ...	20th October, 1944.	3
2.	Statement by the Prime Minister, Mr. Churchill, in the House of Commons on the 17th November, 1944, published in "Palestine Post"	19th November, 1944.	3

RECORD.

and 13 of this Case) is whether the Government of Palestine which has power under Emergency and Defence Regulations to detain a person without trial in custody in Palestine and to deport him from Palestine, but has no power to detain such a person outside Palestine, can validly detain him in the country to which he is deported (in this case, Eritrea) by procuring the authorities of that country to make a detention order in respect of him and to keep him in detention under such order until such time as the Government of Palestine should request his release. The Appellant respectfully submits that in such circumstances the Government of Palestine retains *de facto* control and custody over the person detained and thus is answerable in Habeas Corpus proceedings upon the principles considered in *Barnardo v. Ford* (1892) A.C.326 and *Rex v. Secretary of State for Home Affairs ex parte O'Brien* (1923) 1 K.B.361.

4. The Appellant's son is a Palestinian Citizen, and had arrived in Palestine at some date prior to the 17th April, 1944, from the United States of America. On the said 17th April, 1944, he was arrested by the Police Authorities in Palestine acting by virtue of an Order made under Regulation 15B of the Emergency Regulations, 1936. He has been in detention ever since.

App. II, p. 2.

5. On or about the 19th October, 1944, the Appellant's said son was removed from Palestine to Eritrea under custody of the Respondents and personnel under their command acting by virtue of an Order of deportation made under Regulation 15 of the Emergency Regulations, 1936, and of a Direction made under Regulation 17G of the Defence Regulations, 1939. From and after his arrival in Eritrea shortly after the said 19th October, 1944, the Appellant's said son was detained in a detention camp, from which he was later transferred for a period of time to a detention camp in the Sudan and then brought back to the said detention camp in Eritrea where he is still detained. Both the said detention camps in Eritrea and in the Sudan are under the supervision of the British Military Authorities.

App. II, p. 2.

App. II, p. 6.

p. 3.

6. On the 28th June, 1945, Messrs. M. Seligman and Co., Attorneys of Tel-Aviv, Palestine, acting on behalf of the Appellant addressed a letter to the Chief Secretary of Palestine alleging that the Appellant's said son (among others) had been deported and was "held in the Sudan by virtue of orders made by His Excellency the "High Commissioner or some other officer of the Palestine "Administration" and requesting "copies of the Orders upon the "strength of which the said persons were deported and are now "detained in the Sudan." On the 23rd July, 1945, a reply was sent by the Acting Chief Secretary of the Government of Palestine to

p. 3.

No.	Description of Document.	Date.	Page.
3.	Official Communique issued 23rd November, 1944, published in "Palestine Post" ...	24th November, 1944.	3
4.	Official Communique issued 5th December, 1944, published in "Palestine Post" ...	6th December, 1944.	4
5.	Official Communique issued 29th January, 1945, published in "Palestine Post" ...	30th January, 1945.	4
6.	Reply of Colonial Secretary published in "Palestine Post"	23rd February, 1945.	5
7.	Official Communique issued 27th February, 1945, published in "Palestine Post" ...	28th February, 1945.	6
8.	Official Communique issued 7th March, 1945, published in "Palestine Post" ...	8th March, 1945.	6
9.	Official Communique issued 19th June, 1945, published in "Palestine Post" ...	20th June, 1945.	7
10.	Official Communique issued 21st June, 1945, published in "Palestine Post" ...	22nd June, 1945.	7
11.	Official Communique issued 17th October, 1945, published in "Palestine Post" ...	18th October, 1945.	7
12.	Official Communique issued 30th October, 1945, published in "Palestine Post" ...	31st October, 1945.	8
13.	Reply of Colonial Secretary published in "Palestine Post"	2nd November, 1945.	8
14.	Notes of Chief Justice Fitzgerald of the Preliminary Argument on 13th December, 1945	Undated.	9
15.	Notes of Chief Justice Fitzgerald of Counsels' Arguments	13th December, 1945.	10

RECORD.

1.

PUBLISHED IN *"Palestine Post"*, 20th October, 1944.

OFFICIAL COMMUNIQUE issued 19th October, 1944, stated:—

"In the interests of public security and the safety of life and property in Palestine, two hundred and fifty-one persons, who have been detained under the Emergency Regulations as terrorists or for complicity in terrorist activity have been transferred to military custody and removed to a place of detention outside Palestine."

No. 1.
Official Communique of 19th October 1944 published in "Palestine Post" 20th October 1944.

2.

PUBLISHED IN *"Palestine Post"*, 19th November, 1944.

Quoting from a statement by the Prime Minister, Mr. Churchill in the house of Commons on the 17th November, 1944:—

"A number of persons suspected of active complicity in the terrorist activities have been arrested, and on October 19th, 251 were deported from their country where their presence, with the possibility of large scale attempts at rescue only led to increased insecurity. Since then numerous further arrests have been made including those of some wanted terrorists."

No. 2.
Quotation from Statement of Prime Minister on 17th November 1944, published in "Palestine Post" 19th November 1944.

3.

PUBLISHED IN *"Palestine Post"*, 24th November, 1944.

OFFICIAL COMMUNIQUE issued 23rd November, 1944.

"The following information is given with regard to the recent deportation of 251 persons from Palestine in connection with terrorist activities:—

1. The persons deported are detained at Eritrea and as was previously announced, they are under military custody.
2. The conditions of detention will approximate as far as possible to the conditions of detention of persons under the Emergency Regulations in Palestine.
3. Correspondence with the persons concerned will be allowed under censorship subject to the restrictions that only two letters can be received by and only two letters sent by, each deportee each month.

No. 3.
Official Communique of 23rd November 1944 published in "Palestine Post" 24th November 1944.

Letters for the persons concerned should be addressed to them:

C/o Assistant Inspector General,
Criminal Investigation Department,
P. O. BOX 850, JERUSALEM.

RECORD.

4. The reason for the deportation was that, having regard to the present situation created by Jewish terrorism in Palestine, they were judged necessary for security reasons.

5. The cases of all the persons concerned were reviewed before the deportations were carried out and will be the subject of periodical review in the future as in the case of persons detained under the Emergency Regulations in Palestine.

The persons concerned will be given the opportunity of submitting in writing any matters which they may desire to submit as affecting their detention."

4.

No. 4.

Official Communique of 5th December 1944 published in "Palestine Post" 6th December 1944.

PUBLISHED IN "*Palestine Post*", 6th December, 1944.

OFFICIAL COMMUNIQUE issued 5th December, 1944, states:—

"In the interest of public security fourteen persons detained under the Emergency Regulations in connection with terrorism were transferred on December 5th to military custody and removed to a place of detention in Eritrea.

Ordinary mail only may be sent to persons detained in Eritrea. Registered letters, parcels, and newspapers, which are not acceptable, will be returned to the senders, it is officially announced."

5.

No. 5.

Official Communique of 29th January 1945 published in "Palestine Post" 30th January 1945.

PUBLISHED IN "*Palestine Post*", 30th January, 1945.

OFFICIAL COMMUNIQUE issued 29th January, 1945.

"The two hundred and seventy-nine Jewish detainees, who were interned in Eritrea, have been removed to Carthaga in the Sudan. They are living in a hutted camp which has been vacated by the R.A.F. and provides excellent accommodation.

With the approval of the High Commissioner for Palestine and the permission of the Commander-in-Chief Middle East Forces a committee will shortly be leaving Palestine to visit the detainees in their camp and report with special reference to their welfare generally and their educational and occupational opportunities in particular.

The committee will consist of:—
Major J. Evers, Deputy Assistant Director of Army Welfare (Chairman).
Dr. W. K. Bigger, O.B.E., M.C., Deputy Director of Medical Services.
Mr. J. S. Bentwich, Assistant Director of Education.
Mr. J. A. Briance, Assistant Superintendent of Police.

In the meantime, pending the committee's report, the Government of Palestine had placed at the disposal of the Military Authorities in the Sudan the sum of LP 350 for welfare service in the detention camp."

6.

PUBLISHED IN *"Palestine Post"*, 23rd February, 1945.

No. 6.

Reply of Colonial Secretary published in "Palestine Post" of 23rd February 1945.

"POLICE ACTION DEFENDED.

London, Thursday (Palcor).

Methods of detention in Palestine were queried in the House of Commons yesterday by Mr. D. R. Grenfell (Labour) in a question to the Colonial Secretary. Mr. Grenfell asked whether the Minister was aware of the methods employed by the police authorities in Palestine, involving the seizure of innocent men, women and children, arrested arbitrarily on suspicion and deported to concentration camps, where no visitors, or inspections by the Red Cross or anybody empowered to undertake an independent report were allowed; that relatives were left without news of young men and women kept for years in such camps and prisons; that detention was extended without investigation upon secret police reports; and whether he was taking steps to end these measures.

The Colonial Secretary in a written reply stated:—

It will be appreciated that the recent outrages culminating in the assassination of Lord Moyne, necessitated the most drastic measures for the suppression of terrorism in Palestine, including the detention under the Palestine Emergency Regulations of persons who were suspected terrorists or for complicity. These cases are periodically reviewed by a Committee which advises on release or further detention. Another Committee has now been inspecting the camp to which internees were deported."

RECORD.

7.

PUBLISHED IN "*Palestine Post*", 28th February, 1945.

No. 7.

Official Communique of 27th February 1945 published in "Palestine Post" of 28th February 1945.

OFFICIAL COMMUNIQUE issued 27th February, 1945.

"Seventeen persons (and not 18 as previously announced in error) have returned from detention in the Sudan and have been released an official communique issued last night states. They are: Abraham Aharoni, David Ehrlich, Zvi Feldman, Yehuda Gabbai, Hananya Goldfarb, Daniel Halperin, Eliezer Kashni, Shalom Levit, Hanoch Linczevsky, Dr. Moshe Lurie, Haim Masarick, Gabriel Moghrabi, Abraham Rashti, Efraim Steinberg, Hillel Tzur, Shmuel Vinersky, and Baruch Volkavitzky."

8.

No. 8.

Official Communique of 7th March 1945 published in "Palestine Post" 8th March 1945.

PUBLISHED IN "*Palestine Post*", 8th March, 1945.

OFFICIAL COMMUNIQUE issued 7th March, 1945.

"The Committee appointed to visit the Jewish detainees in their Camp in the Sudan, which left Palestine by air on the 12th February, returned to this country on the 19th February after making a detailed examination of the Camp in all its aspects. It will be recalled that the object of the Committee was to report on the welfare of the detainees generally and on their educational and occupational opportunities in particular.

According to the Committee's report, the sleeping arrangements at the Camp are first class and no criticism or suggestions for improvement can be offered. The sanitary installations are satisfactory, and the doctor in charge of the hospital and clinic expressed himself satisfied with the medical and sanitary conditions. Arrangements have been made to provide special diet and treatment for serious cases. The water supply is ample for the needs of the detainees. Feeding arrangements are good and the ration scale is similar to that in use at Latrun.

The Committee also reported that amenities are eminently satisfactory both for indoor and outdoor recreation and that the military authorities have placed sufficient facilities at the disposal of the detainees to make the Camp a comfortable one to live in.

The Committee has made certain recommendations which in so far as they affect the Government of Palestine, have been approved by the High Commissioner. Their recommendations included the provision of books and educational facilities together with the supply of tools and materials for handicrafts. Arrangements are now being made for the supply of Matzot and wine for the passover and for the appointment of a Rabbi and ritual slaughterer to the Camp."

RECORD.

9.

PUBLISHED IN "*Palestine Post*" of 20th June, 1945.

No. 9

Official Communique of 19th June 1945 published in "Palestine Post" 20th June 1945.

AN OFFICIAL COMMUNIQUE issued 19th June, 1945, stated:—

"In the interest of public security twelve persons detained under the Emergency Regulations in connection with terrorism were transferred on June 19th to military custody and removed to a place of detention in the Sudan."

10.

PUBLISHED IN "*Palestine Post*", 22nd June, 1945.

No. 10.

Official Communique of 21st June 1945 published in "Palestine Post" 22nd June 1945.

10 OFFICIAL COMMUNIQUE issued 21st June, 1945, stated:—

"Following the normal procedure for periodically reviewing cases of persons detained under the Emergency Regulations, it has been decided to release 30 Jews who have been deported to and held in detention in the Sudan. These persons have arrived in Palestine and will shortly be set at liberty."

11.

PUBLISHED IN "*Palestine Post*", 18th October, 1945

No. 11.

Official Communique of 17th October 1945 published in "Palestine Post" of 18th October 1945.

OFFICIAL COMMUNIQUE issued 17th October, 1945, stated:—

20 "Those persons who were detained under the Emergency Powers on account of suspected complicity in terrorism in Palestine and who were subsequently transferred to Military Custody and held in detention in the Sudan, have now been removed to a detention camp in Eritrea. The camp is situated in healthy surroundings and Government is satisfied that the transfer is in the interest of the health and welfare of the detainees and of good administration.

It will be remembered that people suspected of terrorist activity were deported to Eritrea, in November, 1944, their original number being 251. Their camp was then as they wrote at the time "in the middle of the jungle."

30 Later on, in January, 1945, it was announced that they had been moved to the Sudan and certain welfare arrangements had been made for them."

RECORD.

12.

No. 12.

Official Communique of 30th October 1945 published in "Palestine Post" 31st October 1945.

PUBLISHED IN "*Palestine Post*", 31st October, 1945.

OFFICIAL COMMUNIQUE issued 30th October, 1945, stated:—

"In the interests of public security and the safety of life and property in Palestine, 24 persons who had been detained under the Emergency Regulations as terrorists or for complicity in terrorist activity have been transferred to military custody and removed to a place of detention outside Palestine."

13.

No. 13.

Reply of Colonial Secretary published in "Palestine Post" of 2nd November 1945.

PUBLISHED IN "*Palestine Post*", 2nd November, 1945.

"250 DETAINED WITHOUT TRIAL.

LONDON, Thursday—There were 250 Jews, arrested in Palestine under the Defence (Emergency) Regulations, at present in detention in Eritrea to which they were removed from the Sudan a few weeks ago, stated the Colonial Secretary, Mr. George Hall, in a written Parliamentary reply yesterday.

Captain Charles Smith (Labour) had asked the Minister how many Jews arrested in Palestine under the Defence Regulations without trial were now detained in the Sudan; how long they had been there; and whether there was any plan for their release. Mr. Hall replied:

Some 250 persons in this category have been detained in the Sudan since October, 1944. They were removed a few weeks ago to Eritrea.

Their cases are periodically reviewed by a Committee whose duty it is to advise as to their release or further detention.

Under this arrangement, 48 detainees have been released, and having regard to the present internal security conditions in Palestine, I should not think it would be desirable to go further at present."

14.

NOTES of CHIEF JUSTICE FITZGERALD of the PRELIMINARY ARGUMENT on 13th December, 1945.

No. 14.

Notes of Chief Justice Fitzgerald of the preliminary argument on 13th December 1945.

HIGH COURT No. 89/45.

Seligman and Bloch for Petitioner.

Solicitor General for Respondent.

1st Preliminary objection by Seligman.
No power to detain the Petitioner.
Refer to Regulation 112 of Defence Emergency Regulations 1945.
All Palestine Government may do is to order deportation.
Detained in Eritrea by Palestine Government.
No denial of paragraph 7.
Refers to H. C. 122/43 App. 1944, Vol. 1, p. 17.
Concurrent detention, 129 Law Times, p. 419.

2nd Statements are hearsay.
See Rules—form of Affidavit.
H. C. 67/38.
H. C. 90/44.
H. C. 67/41, p. 321.
H. C. 25/45.
H. C. 40/44, P. L. R. 1944, Vol. 11.

3rd See Paragraph 1 of affidavits, and see Order 38, Rule 10
Solicitor General: as to hearsay: not made as hearsay.
Paragraphs 3 and 4 are the answer.
He alleges it is within his special knowledge.
Same applies to Curtis's affidavit.
In filing affidavits—only inference to be drawn is that deponents acting on behalf of Respondents.

RECORD.

15.

No. 15.

Notes of Chief Justice Fitzgerald of Counsels' arguments 13th December 1945.

NOTES of CHIEF JUSTICE FITZGERALD of COUNSELS' ARGUMENTS on 13th December, 1945.

SOLICITOR GENERAL:

Affidavits, particularly Curtis', make clear originally detained in Palestine under Emergency Powers. Under similar powers deported from Palestine.

Reference Petitioner "General Officer Commanding as representing Commander-in-Chief, Middle East". General Officer Commanding not party.

Question of fact. Who detains Ben Arie? Para. 4. Neither Respondent detains Petitioner's son. Must show they are persons actually detaining Ben Arie. The detaining authority is Chief Administrator of Eritrea. Proclamation in Eritrea.

Respondents no power to order release of Ben Arie. Submits neither Respondents properly named. Court cannot exercise jurisdiction, because Administrator of Eritrea not within jurisdiction.

Ford v. Barnardo, 1890, 24 Q.B., p. 283, p. 297 and p. 298, Law Times Reports 67, p. 1, *R. v. Crew*, 1910, 2. K.B., p. 576-592. O'Brien Case, 2. K.B. 1923, p. 361, pp. 377, 381. Cannot be addressed to persons who have not custody or control. No jurisdiction because no jurisdiction over Chief Administrator of Eritrea.

Art O'Brien case must be distinguished.

Continue to control—control must be legal.

SELIGMAN:

Art O'Brien case, p. 426—discussed—on all fours with this case, Hailsham Vol. 9, para. 1,252, p. 725. Evidence of xx shows Respondents do exercise control. Those persons are being controlled by instructions from Palestine. Official communique show they are released on request. No complaint of detention in Palestine. Respondents are detaining these people—official communiques disclose no denial of control. Palestine authorities can control. Parted with the control. Arie is under the control. No doubt that Palestine Government have control.

Decision reserved.

Intd. W. J. F.
C. J.

13th December, 1945.

No. 43 of 1948.

In the Privy Council.

ON APPEAL

IN THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM.

IN THE APPLICATION OF

Eliezer Zabrovsky - *Petitioner*

v.

1. **The General Officer Commanding Palestine, Representing the Commander-in-Chief Middle East**
2. **Inspector-General of Police and Prisons** - - - *Respondents.*

JOINT APPENDIX OF ADDITIONAL DOCUMENTS.

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RECORD.

Messrs. M. Seligman & Co. "on the subject of five persons" (i.e. including the Appellant's said son) "at present detained in the "Sudan" enclosing copies of the said Order of Deportation and the said Direction. p. 4. p. 5.

7. On 4th October, 1945, it is alleged by the Respondents that the Chief Administrator of Eritrea made a detention order in respect of the Appellant's said son. This order is alleged to have been made under a Proclamation of 23rd June, 1945, which purported to give power to the Chief Administrator to detain after their arrival in Eritrea persons ordered to be detained or deported by the authorities of (*inter alia*) any British mandated territory and transferred to Eritrea. The detention order itself has not been produced by the Respondents and its terms are unknown to the Appellant. p. 9.

8. On the 26th October, 1945, the Appellant filed in the Supreme Court of Palestine, sitting as a High Court of Justice, Jerusalem, a Petition dated the 4th September, 1945, praying for an Order in the nature of Habeas Corpus to be directed to the Respondents in respect of his said son, and he verified the said Petition by Affidavit sworn on the 14th September, 1945. p. 1.

9. On the 6th November, 1945, the said Court made an Order Nisi directing the issue of a Summons in the nature of Habeas Corpus to the Respondents as prayed by the Appellant and ordering the Respondents to file their reply, if they be so advised, within fifteen days from the date of service of the said Order. In answer to the said Petition of the Appellant, Affidavits were made and sworn by two deponents, namely, by one William Alfred Curtis, Acting Assistant Superintendant of Police, on the 24th November, 1945, and by one Henry Arthur Wickstead, Major, the Gloucestershire Regiment, an Officer of Security Intelligence, Middle East, on the 3rd December, 1945, respectively. The former deponent deposed principally to the said Order of deportation. The latter deponent stated that he had "access to records relating to persons in respect "of whom orders of detention have been made in Eritrea" and stated that a detention Order dated 4th October, 1945 (which he did not exhibit) had been made in respect of the Appellant's said son under the Proclamation of 23rd June, 1945, a copy of which he exhibited. p. 6. p. 6. p. 8. p. 8, l. 21. p. 9.

10. On the 13th December, 1945, on the hearing of the return to the said Summons by the Supreme Court of Palestine, sitting as a High Court of Justice, Jerusalem (and consisting of the Chief Justice, Sir William Fitzgerald and Mr. Justice Shaw), it was contended by way of preliminary submissions on behalf of the Appellant App. I, p. 9.

In the Privy Council.

No. 43 of 1946.

ON APPEAL

IN THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM.

IN THE APPLICATION OF

ELIEZER ZABROVSKY - - - - - - *Petitioner*

v.

1. THE GENERAL OFFICER COMMANDING PALESTINE, REPRESENTING THE COMMANDER-IN-CHIEF, MIDDLE EAST.

2. INSPECTOR-GENERAL OF POLICE AND PRISONS

Respondents.

JOINT APPENDIX No. 2 OF ADDITIONAL DOCUMENTS.

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1.	Emergency Regulations, 1936. Regulation 15	2
2.	Emergency Regulations, 1936. Regulation 15B	2
3.	Regulation 17 of the Defence Regulations, 1939	3
4.	Defence Regulations, 1939. Rules made by the High Commissioner under Regulation 17	4
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	Form of Objection to Order made under Regulation 17 (1) of the Defence Regulations, 1939	5
5.	Regulation 17G of Defence Regulations, 1939	6

RECORD.

No. 1.

Emergency Regulations, 1936.

Deportation-Regulation 15.

No. 1.

EMERGENCY REGULATIONS, 1936.

DEPORTATION-REGULATION 15.

The High Commissioner shall have power to make an order under his hand (hereinafter in these regulations referred to as a Deportation Order), requiring any person to leave and remain out of Palestine.

The order made under this regulation may be made subject to any terms or conditions which the High Commissioner may think proper.

A person with respect to whom a Deportation Order is made shall leave Palestine in accordance with the order and shall thereafter so long as the order is in force remain out of Palestine.

A person with respect to whom a Deportation Order is made may be detained in such manner as may be prescribed by the High Commissioner and may be placed on a ship or aircraft about to leave Palestine.

The master of a ship or the pilot of an aeroplane about to call at any port or place outside Palestine shall, if so directed by the High Commissioner receive a person against whom a Deportation Order has been made on board the ship or aircraft and afford him a passage to that port or place, and proper accommodation and material during the passage.

No. 2.

Emergency Regulations, 1936.

Power to order Detention-Regulation 15B.

No. 2.

EMERGENCY REGULATIONS, 1936.

POWER TO ORDER DETENTION-REGULATION 15B.

(1) A District Commissioner may by order under his hand direct that any person named in such order shall be detained for any period not exceeding one year in such place of detention as may be specified by the District Commissioner in the order.

(2) . . . . . .

(3) Any person in respect of whom an order has been made by the District Commissioner under paragraph (1) of this regulation may be arrested by a police officer on that warrant and conveyed to a place of detention specified in such order.

(4) . . . . . .

(5) The Inspector-General of Police may give directions or prescribe regulations as to the internal management of and otherwise in connection with any place of detention specified in any order made under paragraph (1) of this regulation and as to the discipline of all persons detained therein.

RECORD.

No. 3.

No. 3.

Regulation 17 of the Defence Regulations, 1939.

Restriction Orders and Detention Orders.

REGULATION 17 OF THE DEFENCE REGULATIONS, 1939.

17. (1) The High Commissioner, if satisfied with respect to any particular person, that with a view to preventing him acting in any manner prejudicial to public safety or defence, if it is necessary to do so, may make an Order:—

(a) prohibiting or restricting the possession or use by that person of any specified articles;

(b) imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his association or communication with other persons, and in respect of his activities in relation to the dissemination of news or the propagation of opinions;

(c) directing that he be detained:

and so long as there is in force in respect of any person such an Order as aforesaid directing that he be detained, he shall be liable to be detained in such place, and under conditions, as the High Commissioner may from time to time determine, and shall, while so detained, be deemed to be in legal custody.

(2) For the purpose of this Regulation, there may be one or more advisory committees consisting of persons appointed by the High Commissioner, and the Chairman of any such committee shall be a person who holds or has held high judicial office.

(3) The functions of any such committee shall be to consider and make recommendations to the High Commissioner with respect to any objections against an Order under this Regulation which are duly made to the committee by the person to whom the order relates.

(4) The High Commissioner may make rules as to the manner in which objections against such an Order as aforesaid may be made to such an advisory committee, and such rules shall contain provisions for enabling any persons in respect of whom an Order is made under this Regulation to make objections against the Order either in person or by Counsel, Solicitor or agent; and every such person shall be informed of his right to make objections under this Regulation.

RECORD.

No. 4.

Defence Regulations, 1939.

Rules made by the High Commissioner under Regulation 17.

No. 4.

DEFENCE REGULATIONS, 1939.

Rules made by the High Commissioner under Regulation 17.

IN EXERCISE of the powers vested in him by Regulation 17 (4) of the Defence Regulations, 1939, the High Commissioner has made the following rules:—

Citation.

1. These rules may be cited as the Restriction and Detention Orders (Objections) Rules, 1939.

Notice of right to object.

2. Every person against whom an Order under Regulation 17 of the Defence Regulations, 1939, has been made shall be personally served with the Notice and form of objection as set out in Forms I and II in the Schedule to these rules.

Filing objection.

3. Every person against whom an Order under Regulation 17 of the Defence Regulations has been made and who has completed a copy of Form II, hereinafter referred to as an objector, shall sign personally and return the said form directly, or, if the objector be detained, through the officer in charge of his place of detention, to the Chairman of the Advisory Committee appointed by the High Commissioner under Regulation 17 of the Defence Regulations, 1939 (hereinafter referred to as the Advisory Committee).

Right of objector to be represented.

4. Every objector shall be entitled to appear before and to be heard by the Advisory Committee on the consideration of his objection personally or by his advocate or agent.

Notice of consideration.

5. The objector shall be given not more than seven days' notice of the time and place fixed for the hearing of his objection, by leaving a copy of the notice at the address set out by him in Form II.

Production of evidence.

6. The Chairman of an Advisory Committee shall have power to summon any person to give evidence and to compel the production of any document deemed by the Advisory Committee necessary for the consideration of any objection.

Order of production of detainee.

7. The Chairman of an Advisory Committee may make an order for the production of any detained objector who wishes to appear at the consideration of his objection and the officer in charge of the place of such objector's detention shall produce the objector's person at the place and time specified in the order.

SCHEDULE.

Form 1.

NOTICE

under Regulation 17 (4) of the Defence Regulations, 1939.

To

You are hereby given notice of your right to object to the order made by the High Commissioner for your detention

The (restriction .....

(prohibition of your possession of .....

You may make your objection personally or by advocate or agent. If you wish to exercise your right you must complete the enclosed form of objection. You may have the assistance of your advocate or agent in completing the form but it must be signed by you personally. When completed it must be returned (direct

(through the

.....

Chairman.

Form II.

FORM OF OBJECTION TO ORDER

made under Regulation 17 (1) of the Defence Regulations, 1939.

Name of Objector .....

No. of Order objected to .....

Date of Order .....

Effect of Order .....

Place of Detention or Address of Objector .....

The name and address of objector's advocate or agent if any .....

Do you wish to be present and represented at the consideration of your objection? .....

I the above-named give notice that I object to the order specified above on the grounds set out below:

GROUNDS OF OBJECTION.

Signed

Date

RECORD.

No. 5.

Defence Regulations, 1939.

Regulation 17G.

Removal and custody of person ordered to be deported.

No. 5.

DEFENCE REGULATIONS, 1939.

REGULATION 17G.

17G. (i) Where under any Ordinance or any other law for the time being in force in Palestine any person has been lawfully ordered to be deported from Palestine the High Commissioner may make arrangements with the appropriate authority of any territory outside Palestine for the receipt of such person ordered to be deported.

(ii) Where such arrangement has been made the High Commissioner if of the opinion that it is necessary in the interest of public safety or the defence of Palestine so to do may direct that any such person ordered to be deported shall be kept in such custody as may be specified while being conveyed to such other place, and any such custody on board a British ship or aircraft, not being a Dominion ship or aircraft shall be deemed to be lawful custody.

No. 43 of 1948.

In the Privy Council.

ON APPEAL

IN THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM.

IN THE APPLICATION OF

Eliezer Zabrovsky - - *Petitioner*

v.

1. **The General Officer Commanding Palestine, representing the Commander-in-Chief, Middle East**
2. **Inspector-General of Police and Prisons**

Respondents.

JOINT APPENDIX No. 2 OF ADDITIONAL DOCUMENTS.

In the Privy C

IN THE SUPREME

ELIEZER ZABROVSKY

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2. INSPECTOR-GENERA

RECORD

IN

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1	Petition for an Order in respect of one Arie Ber Enclosures :— (A) Letter from M. Selig (B) Letter from the Ch (C) Order of Deportatio (D) Direction under Reg
2	tions 1939 ..
3	Order Nisi .. ..
4	Affidavit by W. A. Curtis, Police ..
4(4)	Affidavit by H

In the Privy Council.

ON APPEAL

IN THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM.

IN THE APPLICATION OF

Eliezer Zabrovsky . . Petitioner

v.

1. The General Officer Commanding, Palestine, representing the Commander-in-Chief, Middle East
2. Inspector-General of Police and Prisons *Respondents.*

JOINT APPENDIX No. 2 OF

ADDITIONAL DOCUMENTS

In the Privy Council.

ON APPEAL

IN THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM.

IN THE APPLICATION OF

ELIEZER ZABROVSKY - - - - - - - - - *Petitioner*

V.

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the COMMANDER-IN-CHIEF, MIDDLE EAST
2. INSPECTOR-GENERAL OF POLICE AND PRISONS - - *Respondents.*

RECORD OF PROCEEDINGS.

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	Enclosures :—		
	(A) Letter from M. Seligman & Co. to the Chief Secretary ..	28th June 1945 ..	3
	(B) Letter from the Chief Secretary to M. Seligman & Co.	23rd July 1945 ..	3
	(C) Order of Deportation	18th October 1944 ..	4
	(D) Direction under Regulation 17G of the Defence Regulations 1939	18th October 1944 ..	5
2	Order Nisi	6th November 1945	6
3	Affidavit by W. A. Curtis, Acting Assistant Superintendent of Police	24th November 1945	6
4	Affidavit by H. A. Wickstead, Major, Defence Security Officer, Palestine and Trans-Jordan	3rd December 1945	8
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NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
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9	Order refusing leave	21st January 1946 ..	18
	IN THE PRIVY COUNCIL.		
10	Order in Council granting special leave to appeal	18th April 1946 ..	19

RECORD.

that having regard to the form and content of the said two Affidavits, the said Order Nisi should be made absolute forthwith.

11. The first preliminary submission made on behalf of the Appellant was that the said two Affidavits ought to be rejected by the said Court as not being in proper form.

By Order 38 r. 10 of the Rules of the Supreme Court (1883) it is provided as follows:—

"There shall be endorsed on every Affidavit a note showing "on whose behalf it is filed and no Affidavit shall be filed or "used without such note unless the Court or a judge shall other- "wise direct". A provision similar in all respects is contained in Rule 8 of the Crown Office Rules. Neither of the said two Affidavits stated nor was there any note indorsed thereon to show on whose behalf it purported to be made or filed. On the contrary, the Affidavit of the deponent Curtis stated that it was
p. 7, l. 29. made "in support of my application that the Petition be "dismissed"; and that of the deponent Wickstead stated that
p. 8, l. 30. it was made "in support of an application that the Petition be "dismissed."

p. 12. This submission was rejected by the Supreme Court on the ground that the clear inference to be drawn from the said Affidavits was that the said deponents dealt with these questions of detentions under the authority of the General Officer Commanding Middle East Forces and the Inspector-General of Police respectively. It is respectfully submitted that the Supreme Court was wrong in rejecting this contention made on the Appellant's behalf. In a matter affecting the liberty of the subject, the Court should expect and demand strict compliance with the provisions of the Rules of Court laid down in that behalf.

12. The second preliminary submission made on behalf of the Appellant was that the said two Affidavits ought not to have been admitted in evidence on the ground that they contained matters which were merely hearsay so far as the deponents were concerned.

Rule 3 of the High Court Rules, 1937, provides with regard to the Affidavit of the Petitioner that "as to the facts within the "Petitioner's own knowledge, the Petitioner shall depose that they "are true, and as to other facts, that they are true to the best of his "knowledge, information and belief." No similar provision is contained in these Rules with regard to Affidavits made by or on behalf of a Respondent. But Rule 59 (1) of the Civil Procedure Rules, 1935, provides as follows:—

	DATE
	13th December 1945
	13th December 1945
	13th December 1945
	18th December 1945
	27th December 1945
	21st January 1946 ..
	18th April 1946 ..

No. 43 of 1946.

In the Privy Council.

ON APPEAL

IN THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE, JERUSALEM.

IN THE APPLICATION OF

ELIEZER ZABROVSKY - - - - - - *Petitioner*

V.

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the COMMANDER-IN-CHIEF, MIDDLE EAST

2. INSPECTOR-GENERAL OF POLICE AND PRISONS - - - - - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

No. 1.

PETITION for an Order in the Nature of Habeas Corpus in respect of one Arie Ben Eliezer the son of Petitioner

4th September, 1945.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 1. Petition for an Order in the Nature of Habeas Corpus in respect of one Arie Ben Eliezer the son of Petitioner, 4th September 1945.

IN THE SUPREME COURT.
Sitting as a High Court of Justice, Jerusalem.

High Court Application.
No. 89/45.

Between ELIEZER ZABROVSKY, of 25, Rashi Street, Tel Aviv, represented by his Attorneys, Messrs. M. SELIGMAN, Dr. J. SUSSMANN, M. KRITZMAN, Dr. W. LANGE, and Y. BLOCH, Advocates, whose address for service is 1, Bialik Street, Tel Aviv Petitioner

and

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing THE COMMANDER-IN-CHIEF, MIDDLE EAST, and

2. INSPECTOR-GENERAL OF POLICE AND PRISONS, JERUSALEM - - - - - Respondents.

PETITION FOR AN ORDER IN THE NATURE OF HABEAS CORPUS IN RESPECT OF ONE ARIE BEN ELIEZER THE SON OF PETITIONER.

The humble petition of Petitioner sheweth :

1. The Petitioner resides at 35, Rashi Street, Tel Aviv, and his address for service is c/o M. Seligman & Co., Advocates, 1, Bialik Street, Tel Aviv.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 1. Petition for an Order in the Nature of Habeas Corpus in respect of one Arie Ben Eliezer the son of Petitioner, 4th September 1945, *continued.*

2. Petitioner is the father of one Arie Ben Eliezer.

3. On or about the 17th April, 1944, Petitioner's said son was arrested by the Police authorities purporting to act by virtue of an order made under Regulation 15B of the Emergency Regulations, 1936, and he has been detained ever since.

4. On or about the 18th October, 1944, Petitioner's said son was removed from Palestine and detained in a detention camp in Eritrea from which he was later on transferred to a detention camp in the Sudan. It is believed that both camps are under the supervision of the British military authorities.

5. On the 28th June, 1945, Messrs. M. Seligman & Co., acting on behalf of Petitioner, addressed a letter to the Chief Secretary requesting copies of the order under which Petitioner's said son was removed from Palestine and held in a detention camp abroad. A copy of the said letter is attached hereto and marked " A."

6. On the 23rd July, 1945, a reply was sent by the Acting Chief Secretary of the Government of Palestine to Messrs. M. Seligman & Co., a copy of which as well as of the enclosures mentioned therein is also attached hereto and marked " B."

7. It is respectfully submitted that Petitioner's said son is being unlawfully detained by Respondents or one of them as they had no power to detain abroad and/or keep in custody abroad and/or order to be kept in custody abroad persons who have been ordered to leave and remain out of Palestine.

8. It is, therefore, most humbly prayed that a summons do issue directed to the Respondents to show cause why they should not produce the said Arie Ben Eliezer, Petitioner's son, before this Honourable Court on a date to be fixed and to await the further order of this Honourable Court.

Sgd. ELIEZER ZABROVSKY,
Petitioner.

AFFIDAVIT.

I, the undersigned, ELIEZER ZABROVSKY, of 35 Rashi Street, Tel Aviv, the Petitioner, hereby make oath and say as follows :—

1. The statements made in paras. 1 and 2 of my Petition above are true.

2. The statements made in paras. 2, 4, 5, 6 and 7 of my Petition above are true to the best of my knowledge, information and belief.

Sgd. ELIEZER ZABROVSKY.

SWORN at Tel Aviv this 14th day of September, 1945, by the above-named Eliezer Zabrovsky

Before me

Sgd. J. SCHIMEL
Magistrate
Tel Aviv.

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A copy of the said letter

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srs. M. Seligman & Co., a
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hat a summons do issue
they should not produce
re this Honourable Court
order of this Honourable

ER ZABROVSKY,
Petitioner.

35 Rashi Street, Tel Aviv,
as follows :—

of my Petition above are

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ion and belief.

IEZER ZABROVSKY.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 1 (a).
Letter from M.Seligman & Co. to Chief Secretary, 28th June 1945.

No. 1 (a).

LETTER from M. Seligman & Co. to Chief Secretary.

Ref. Mr. Seligman

28th June, 1945.

The Honourable The Chief Secretary,
Government Offices,
Jerusalem.

Sir,

We have been instructed by the families of the following persons, viz. Benzion Katzenelenbogen, Arie Ben Eliezer, Eliahu Rapoport, Shimon Lokshin and Yehuda Naor.

All the above-mentioned persons were arrested in Palestine and detained in Latrun and elsewhere for some considerable time under the Emergency Regulations and were subsequently deported from Palestine and are now held in a concentration camp in the Sudan.

We are instructed that these persons were deported and are held in the Sudan by virtue of orders made by His Excellency the High Commissioner or some other officer of the Palestine Administration. Our clients challenge the legality of such orders and have instructed us to institute proceedings in the appropriate Courts.

We should be grateful if you could favour us with copies of the orders upon the strength of which the said persons were deported and are now detained in the Sudan.

We are, Sir,

Yours obediently,

(Sgd.) M. SELIGMAN & CO.

MS/HH

No. 1 (b).
Letter Chief Secretary to M.Seligman & Co., 23rd July 1945.

No. 1 (b).

LETTER Chief Secretary to M. Seligman & Co.

Government of Palestine,
Chief Secretary's Office,
Jerusalem.

C/151/44

23rd July, 1945.

Gentlemen,

I am directed to refer to your letter of the 28th June, 1945 on the subject of five persons at present detained in the Sudan, and to enclose for your information copy of an Order of Deportation under regulation 15 of the Emergency Regulations 1936, extract from the schedules referred to therein and direction under regulation 17G of the Defence Regulations 1939.

I am, Gentlemen,

Your obedient servant,

(Sgd.) DAVIES,

for Acting Chief Secretary.

Messrs. M. Seligman & Co.,
P.O. Box 627,
Tel Aviv.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 1 (a).

LETTER from M. Seligman & Co. to Chief Secretary.

No. 1 (A). Letter from M.Seligman & Co. to Chief Secretary, 28th June 1945.

Ref. Mr. Seligman

28th June, 1945.

The Honourable The Chief Secretary,
Government Offices,
Jerusalem.

Sir,

We have been instructed by the families of the following persons, viz. Benzion Katzenelenbogen, Arie Ben Eliezer, Eliahu Rapoport, Shimon Lokshin and Yehuda Naor.

All the above-mentioned persons were arrested in Palestine and detained in Latrun and elsewhere for some considerable time under the Emergency Regulations and were subsequently deported from Palestine and are now held in a concentration camp in the Sudan.

We are instructed that these persons were deported and are held in the Sudan by virtue of orders made by His Excellency the High Commissioner or some other officer of the Palestine Administration. Our clients challenge the legality of such orders and have instructed us to institute proceedings in the appropriate Courts.

We should be grateful if you could favour us with copies of the orders upon the strength of which the said persons were deported and are now detained in the Sudan.

We are, Sir,

Yours obediently,

(Sgd.) M. SELIGMAN & CO.

MS/HH

No. 1 (b).

LETTER Chief Secretary to M. Seligman & Co.

No. 1 (B). Letter Chief Secretary to M.Seligman & Co., 23rd July 1945.

Government of Palestine,
Chief Secretary's Office,
Jerusalem.

C/151/44

23rd July, 1945.

Gentlemen,

I am directed to refer to your letter of the 28th June, 1945 on the subject of five persons at present detained in the Sudan, and to enclose for your information copy of an Order of Deportation under regulation 15 of the Emergency Regulations 1936, extract from the schedules referred to therein and direction under regulation 17G of the Defence Regulations 1939.

I am, Gentlemen,

Your obedient servant,

(Sgd.) DAVIES,

for Acting Chief Secretary.

Messrs. M. Seligman & Co.,
P.O. Box 627,
Tel Aviv.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 1 (c).
Order of Deportation, 18th October 1944.

No. 1 (c).

ORDER OF DEPORTATION.

THE PALESTINE (DEFENCE) ORDER IN COUNCIL 1937 & THE EMERGENCY REGULATIONS 1936

ORDER OF DEPORTATION
(Under Regulation 15)

WHEREAS by regulation 15 of the Emergency Regulations 1936 it is provided that the High Commissioner shall have power to make an order under his hand (thereinafter in the said regulation referred to as a Deportation Order) requiring any person to leave and remain out of Palestine ;

AND WHEREAS it is necessary and expedient that a Deportation Order be made in respect of each of the persons named in the schedule hereto annexed ;

NOW THEREFORE, I, John Valentine Wister Shaw, Officer Administering the Government of Palestine, do hereby, in exercise of the powers vested in the High Commissioner as aforesaid and of all other powers thereunto enabling me, by this my Order require each of the persons named in the Schedule hereto to leave and thereafter remain out of Palestine.

AND I HEREBY further order that the aforesaid persons shall be kept in the custody of the Commander in Chief, Middle East, and the Inspector General of Police and Prisons, Palestine, and personnel under their command, while awaiting deportation and while being conveyed out of Palestine.

THIS ORDER shall come into force on the date of signature hereof.

Made at Jerusalem this 18th day of October 1944.

(Sgd.) J. V. W. SHAW,
Officer Administering the Government.

SCHEDULE (for endorsement see reverse)

No.	*Names and aliases*	*Age*	*Sex*	*Nationality*	*File No.*
43	ELIEZER, Arie Ben alias Zabrovsky, Lipa	31	M	Palestinian	28742/PS
92	KATZENELENBOGEN, Ben Zion	30	M	Latvian	6484/PS
113	LOKSHIN, Shimon	21	M	Palestinian	25424/PS
143	NOAR, Yehuda	32	M	Palestinian	25817/PS
158	RAPOPORT, Eliahu	26	M	Palestinian	9058/PS

This is page of the Schedule referred to in the Order of Deportation made by me and dated 18th day of October, 1944.

(Sgd.) J. V. W. SHAW,
Officer Administering the Government.

Note : Endorsement in the terms stated occurs on each page of the Schedule to the Order.

No. 1 (d).

THE DEFENCE REGULATIONS 1939.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 1 (d). The Defence Regulations 1939. Direction (under Regulation 17G), 18th October 1944.

DIRECTION

(Under regulation 17G)

WHEREAS by regulation 17G of the Defence Regulations 1939 it is provided that "where under any Ordinance or any other law for the time being in force in Palestine any person has been lawfully ordered to be deported from Palestine, the High Commissioner may make arrangements with the appropriate authorities of any territory outside Palestine for the reception of such person ordered to be deported :"

AND WHEREAS by virtue of an order of deportation dated the 18th day of October, 1944 and made by me, the Officer Administering the Government, in exercise of the powers vested in the High Commissioner by regulation 15 of the Emergency Regulations 1936, and all other powers thereunto enabling me, the persons named in the schedule to the said order of deportation have been required to leave and remain out of Palestine ;

AND WHEREAS such arrangements as aforesaid have been made with the appropriate authorities of the territory of Eritrea ;

AND WHEREAS I am of the opinion that it is necessary in the interests of public safety and the defence of Palestine that the said persons ordered to be deported be kept in custody while being conveyed from Palestine to Eritrea ;

NOW THEREFORE I, John Valentine Wister Shaw, Officer Administering the Government, in exercise of the powers vested in the High Commissioner as aforesaid and all other powers thereunto enabling me, do

HEREBY DIRECT that all the persons ordered to be deported as aforesaid shall be kept, while being so conveyed, in the custody of the Commander-in-Chief, Middle East and the Inspector-General of Police and Prisons, Palestine, and personnel under their command,

AND I DO FURTHER ORDER that the above direction shall come into force on the 18th day of October 1944.

Made at Jerusalem this 18th day of October 1944.

(Sgd.) J. V. W. SHAW,

Officer Administering the Government.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 2.

No. 2.

ORDER NISI.

IN THE SUPREME COURT
Sitting as a High Court of Justice at Jerusalem.

HIGH COURT CASE No. 89 OF 1945.

ELIEZER ZABROVSKY - - - - - - Petitioner

v.

1. THE GENERAL OFFICER COMMANDING, PALESTINE representing the COMMANDER IN CHIEF, MIDDLE EAST
2. INSPECTOR-GENERAL OF POLICE AND PRISONS, JERUSALEM - - - - - - Respondents.

ORDER NISI.

This petition coming on this day before this Court in the presence of Mr. M. Seligman, petitioner's advocate, THIS COURT DOTH ORDER that a summons do issue directed to the respondents calling upon them to show cause why they should not produce the said Arie Ben Eliezer, petitioner's son, before this Court on a date to be fixed and to await the further orders of this Court.

AND IT IS FURTHER ORDERED that the respondents do file their reply, if they be so advised, within fifteen days from the date of service hereof.

Given this 6th day of November, 1945.

BY THE COURT,

Sgd. M. J. E. MORGAN
Ag. Chief Registrar.

YW.

No. 3. Affidavit by W. A. Curtis, Acting Assistant Superintendent of Police, 24th November 1945.

No. 3.

AFFIDAVIT by W. A. Curtis, Acting Assistant Superintendent of Police.

IN THE SUPREME COURT
Sitting as a High Court of Justice at Jerusalem.

High Court Case No. 89 of 1945.

ELIEZER ZABROVSKY - - - - - - Petitioner

v.

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the COMMANDER-IN-CHIEF, MIDDLE EAST.
2. INSPECTOR-GENERAL OF POLICE AND PRISONS, JERUSALEM - - - - - - Respondents.

AFFIDAVIT.

I, WILLIAM ALFRED CURTIS, Acting Assistant Superintendent of Police, make oath and say as follows :—

1. I am a member of the Criminal Investigation Department of the Palestine Police stationed at Police Headquarters, Jerusalem.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 3. Affidavit by W. A. Curtis, Acting Assistant Superintendent of Police, 24th November 1945, *continued.*

2. I have read the Petition of the Petitioner and the Order Nisi of the High Court made thereon in High Court Case No. 89 of 1945.

3. In my capacity as member of the Criminal Investigation Department of the Palestine Police, stationed at Police Headquarters, Jerusalem, I have custody of, and full access to, all records of the Department aforesaid relating to all persons in respect of whom orders have been made in exercise of powers conferred by regulations 15 and 15B of the Emergency Regulations, 1936, and regulation 17G of the Defence Regulations, 1939.

4. On the 18th October, 1944, His Excellency the Officer Administering the Government by Orders of the said date and made in exercise of the powers conferred by regulation 15 of the Emergency Regulations, 1936, and regulation 17G of the Defence Regulations, 1939, directed the deportation from Palestine of the son of the Petitioner, Arie Ben Eliezer (alias Lipa Zabrovsky). Such Orders are referred to in paragraph 6 of the Petition of the Petitioner aforesaid. The copies of such orders attached to the Petition have been read by me and have been compared by me with the originals of the said Orders. Such copies are accurate copies of the said originals in so far as the Orders relate to Arie Ben Eliezer, except in so far that the copy of the Order made under regulation 15 of the Emergency Regulations, 1936 (as attached to the Petition), omits a copy of the schedule (annexed to the original of the said Order) which contains the name of Arie Ben Eliezer.

5. On the 19th October, 1944, Arie Ben Eliezer, in accordance with the Orders referred to in paragraph 4 of this affidavit, was deported from Palestine.

6. To the best of my knowledge, information and belief the said Arie Ben Eliezer is in Eritrea at this date and is there held in detention by virtue of an Order of the Chief Administrator of that Territory.

7. I make this affidavit in support of my application that the Petition be dismissed.

Sgd. W. A. CURTIS
Deponent.

SWORN before me at Jerusalem, this 24th day of November, 1945

Sgd. M. COTRAN
Assistant Registrar
Supreme Court of Palestine.

No. 4.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

AFFIDAVIT by H. A. Wickstead, Major, Defence Security Officer, Palestine and Transjordan.

No. 4.
Affidavit by Major H. A. Wickstead, 3rd December 1945.

IN THE SUPREME COURT.
Sitting as a High Court of Justice at Jerusalem.

High Court Case No. 89 of 1945.

ELIEZER ZABROVSKY - - - - - Petitioner

V.

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the COMMANDER-IN-CHIEF, MIDDLE EAST
2. INSPECTOR-GENERAL OF POLICE AND PRISONS, JERUSALEM - - - - Respondents.

AFFIDAVIT.

I, HENRY ARTHUR WICKSTEAD, Major, The Gloucestershire Regiment, make oath and say as follows :—

1. I am an officer of Security Intelligence Middle East (S.I.M.E.) in the office of the Defence Security Officer, Palestine and Transjordan.

2. I have read the Petition of the Petitioner and the Order Nisi of the High Court made thereon in High Court Case No. 89 of 1945.

3. In my capacity as aforesaid I have access to records relating to persons in respect of whom orders of detention have been made in Eritrea.

4. I have examined the relevant records and find that Arie Ben Eliezer (alias Lipa Zabrovsky) is at this date under detention in Eritrea by virtue of an Order dated 4th October, 1945, made by the Chief Administrator of the territory of Eritrea, such Order being made under the provisions of Article 1 of Proclamation No. 54 of 1945, as published at page 128 of the Eritrea Gazette (Vol. V 1945, Revised Military Legislation). I annex to this affidavit, marked " A," a copy of the said Proclamation No. 54.

5. I make this affidavit in support of an application that the Petition be dismissed.

Sgd. H. A. WICKSTEAD,
Major,
Deponent.

SWORN before me at Jerusalem, this 3rd day of December, 1945.

Sgd. M. COTRAN
Assistant Registrar
Supreme Court of Palestine.

No. 4.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

AFFIDAVIT by H. A. Wickstead, Major, Defence Security Officer, Palestine and Transjordan.

No. 4. Affidavit by Major H. A. Wickstead, 3rd December 1945.

IN THE SUPREME COURT.
Sitting as a High Court of Justice at Jerusalem.

High Court Case No. 89 of 1945.

ELIEZER ZABROVSKY - - - - - Petitioner

V.

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the COMMANDER-IN-CHIEF, MIDDLE EAST
2. INSPECTOR-GENERAL OF POLICE AND PRISONS, JERUSALEM - - - - Respondents.

AFFIDAVIT.

I, HENRY ARTHUR WICKSTEAD, Major, The Gloucestershire Regiment, make oath and say as follows :—

1. I am an officer of Security Intelligence Middle East (S.I.M.E.) in the office of the Defence Security Officer, Palestine and Transjordan.

2. I have read the Petition of the Petitioner and the Order Nisi of the High Court made thereon in High Court Case No. 89 of 1945.

3. In my capacity as aforesaid I have access to records relating to persons in respect of whom orders of detention have been made in Eritrea.

4. I have examined the relevant records and find that Arie Ben Eliezer (alias Lipa Zabrovsky) is at this date under detention in Eritrea by virtue of an Order dated 4th October, 1945, made by the Chief Administrator of the territory of Eritrea, such Order being made under the provisions of Article 1 of Proclamation No. 54 of 1945, as published at page 128 of the Eritrea Gazette (Vol. V 1945, Revised Military Legislation). I annex to this affidavit, marked " A," a copy of the said Proclamation No. 54.

5. I make this affidavit in support of an application that the Petition be dismissed.

Sgd. H. A. WICKSTEAD,
Major,
Deponent.

SWORN before me at Jerusalem, this 3rd day of December, 1945.

Sgd. M. COTRAN
Assistant Registrar
Supreme Court of Palestine.

"Affidavits shall be confined to such facts as the deponent "is able to his knowledge to prove except in interlocutory "applications, on which statements of his belief may be "admitted, provided that the grounds thereof are stated."

With regard to the detention of the Appellant's son in Eritrea by virtue of an Order made by the Chief Administrator of that territory neither of the said two deponents spoke from his own personal knowledge. On the contrary, the deponent Curtis in paragraph 6 of his Affidavit merely stated this to be the fact to the best of his knowledge, information and belief, without stating the source of such information and belief; and the deponent Wickstead merely stated that on his examining the relevant records he found this to be the fact, which was not corroborated either by anyone who spoke from his own knowledge or by the production of the said Order or any copy thereof. p. 7, l. 26. p. 8, l. 23.

This submission was rejected by the Supreme Court on the ground that both Affidavits purported to depose to what was within the particular knowledge of the deponent, and the Affidavits were admitted in evidence. It is respectfully submitted that the Supreme Court was wrong in rejecting this contention made on the Appellant's behalf. p. 12.

13. The third preliminary submission made on behalf of the Appellant was that inasmuch as there was no power in the Respondents to detain the Appellant's son in Eritrea and inasmuch as there was no specific denial in either of the said two Affidavits of the evidence of the Appellant (contained in paragraph 7 of his Affidavit) that his said son was detained in Eritrea by the Respondents, the Supreme Court ought to have accepted and acted upon the evidence of the Appellant and proceeded forthwith to make absolute the said Order Nisi. p. 2, l. 20.

The statements in both the said Affidavits that the detention of the Appellant's son in Eritrea was by virtue of an Order made by the Chief Administrator of that territory does not *necessarily* imply that the Appellant's son was not also being detained in Eritrea by the Respondents. There is nothing in the said Affidavits to suggest that the Appellant's son could not have been or was not being detained in Eritrea concurrently and simultaneously by virtue of an Order made by the Chief Administrator of that territory as well as by the Respondents. The fact is that the said two deponents appear to have chosen not to deny specifically the evidence that the Appellant's son was detained in Eritrea by the Respondents: and it is submitted that the fair inference from such omission on their part is that this fact was not being put in issue by the Respondents. The

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

Annexure "A."

No. 4 (a).
Proclamation No. 54, 23rd June 1945.

No. 4 (a).

DETENTION OF SUSPECTED PERSONS.

PROCLAMATION No. 54.

WHEREAS it is necessary to make provision for the arrest and detention of suspected persons,

NOW THEREFORE I, Charles D'Arcy McCarthy, Officer of the Most Excellent Order of the British Empire, Brigadier, hereby proclaim as follows :—

1. ARREST AND DETENTION OF PERSON ON SECURITY GROUNDS.

The Chief Administrator may order the arrest and detention of any person whom he has reasonable cause to believe to be or to have recently been concerned either inside or outside the occupied territory in acts prejudicial to public safety or to the interests and safety of any of the British or Allied Armed Forces, or in the preparation or instigation of such acts.

2. DETENTION OF PERSONS TRANSFERRED FROM ANOTHER TERRITORY.

Where any person has been ordered to be detained or deported by the authorities of any British Colony or Protectorate or of any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty or of any other territory occupied by the British or Allied Armed Forces and has by order of a competent authority been transferred to the occupied territory, the Chief Administrator may order his detention after arrival in the occupied territory.

3. POWER TO CANCEL OR SUSPEND ORDER OF ARREST OR DETENTION.

The Chief Administrator may at any time cancel any order made hereunder or may direct that the operation of such order be suspended subject to such conditions as he may think fit.

Given under my hand at Asmara,
this 23rd day of June, 1945.

(Sgd.) C. D. McCARTHY,
Brigadier,
Chief Administrator.

Annexure A referred to in para. 4 of the affiavit of Major Henry Arthur Wickstead.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 5 (a).
Record by the Chief Justice—Cross-Examination of the Witness Curtis, 13th December 1945.

No. 5 (a).

RECORD by the Chief Justice

(a) Cross-examination of the Witness Curtis.

WILLIAM ALFRED CURTIS, Sworn—states in reply to XXN. by SELIGMAN on his affidavit :

Arie Ben Eliezer arrested on 17th April, 1944.
I am not certain of date of arrival from America.
I am not in a position to give it.
I am not in a position to answer the question because I don't know.
I have seen the file relating to the detention.
No suggestion in file as to who gave information against him.
In September, 1944, Arie received a visa or was about to receive a visa.
I can't recall whether a visa was produced.
I kept him in detention from October to November in Palestine.
The Military authorities removed him to Eritrea.
Palestinian Passport.
He was removed without notice.
I don't know what arrangements were made.
His case is examined from time to time by an advisory committee.
A number have been released and returned to Palestine.
Reference procedure ; I don't recall any case of objection raised by authorities in Eritrea.
In 1945 I believe the detainees were transferred to Sudan.
I don't know whether any order of release.
Reference para. 6 of affidavit : I have not seen any document.
I know of official communiqué.
I do not know of any orders.
The C.I.D. issues directions to the public ref. letters to detainees, all to be sent through us.
I know of November 24th communiqué. I know of December 6th communiqué. I know of January 30th, 1945 communiqué. I know of February 1945, communiqué.
I know of Report of return of Commission of Inquiry, 8.3.45—it included an officer of C.I.D.

Counsel refers to House of Commons' question-date : Palestine Post : 23.2.45.

On February 28th, 1945, 17 were released.
On 4th March, 1945, communiqué—31 released.

Report of Committee approved by High Commissioner and certain recommendations carried out.

Official communiqué on 20th June, 1945.
Orders were not received from Sudan.
On 22nd June, 1945, release of further 30 Jews " it has been decided."
On 31.10.45, 24 persons removed to detention outside Palestine.
18.10.45 and 2.11.45—House of Commons :—I know no reason why he (Arie) should not be released.

Xnd. By Solicitor-General :

Powers of advisory committee advisory not executive.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 5 (a). Record by the Chief Justice—Cross-Examination of the Witness Curtis, 13th December 1945, *continued.*

No. 5 (b).

RECORD by the Chief Justice
Cross-examination of the Witness Wickstead.

No. 5 (b). Record by the Chief Justice—Cross-Examination of the Witness Wickstead, 13th December 1945.

HENRY ARTHUR WICKSTEAD, Sworn—states in reply to xxn. by Seligman on his affidavit.

I am not familiar with procedure of transfer of persons.
I have access to necessary files.
I have not seen files of other than Ben Arie.
I have not seen files relating to release.
I know procedure of release.
I have not handled release side.
I have seen the committing document of Eritrea in my capacity as S.I.M.E. in Palestine.
I am not aware whether Arie was removed without notice.
I don't know what happened when detainees land in Sudan.
Provision is made by my Headquarters in Cairo.
I don't know exactly what it is.
Document of 4th October, 1945, is an order of detention signed by Chief Administrator, Eritrea.
I don't know if other orders were signed.

XXd. by Solicitor-General :

I don't know whether the Eritrea authorities were asked to send the whole file.

No. 6.

RULING.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

High Court No. 89/45.

RULING.

No. 6. Ruling, 13th December 1945.

Counsel for the petitioner has raised preliminary objections. They were advanced under three heads. The first one was that the affidavits filed in this petition should be rejected because they were merely hear-say. In our opinion both affidavits purport to depose to what was within the particular knowledge of the deponent, and this objection must be overruled.

The second objection was that the affidavit should have been made by the respondents in person, that is by the General Officer Commanding and the Inspector-General of Police, as there was no evidence in the affidavit itself to show on whose behalf the deponent was speaking. As to this we shall refer to the affidavit. First of all Major Wickstead stated that he was an officer in the Security Intelligence of the Middle East (S.I.M.E.) and in that capacity it was part of his official duties to look into the question of detentions under the regulations, which is the issue raised in this case. It is of course well known that in the military organisation the General Officer Commanding delegates his authority, and the clear inference which we must draw from the affidavit is that this officer dealt with these questions of detention under the authority of the General Officer Commanding. The same applies to the affidavit sworn by Mr. Curtis on behalf of the Inspector-General of Police. We do not consider that there is any substance in the preliminary objection.

The third ground of objection was that the Palestine Government had no power to detain in Eritrea ; all they could do was to deport, and the fact of detention in Eritrea was not denied. This appears to be the real issue for trial, and we are unable to dispose of it by way of preliminary objection.

We therefore call upon the Solicitor-General to show cause.

Given this 13th day of December, 1945.

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

(Sgd.) B. V. SHAW
British Puisne Judge.

No. 7.

ORDERS.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 7. Orders, 18th December 1945.

HIGH COURT No. 89/45.

IN THE SUPREME COURT,
Sitting as a High Court of Justice.

Before: THE CHIEF JUSTICE (Sir William FitzGerald) and MR. JUSTICE SHAW.

In the Application of :—

ELIEZER ZABROVSKY - - - - - - Petitioner

V.

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the COMMANDER-IN-CHIEF, MIDDLE EAST
2. INSPECTOR-GENERAL OF POLICE AND PRISONS - - - - - - - Respondents.

Return to a summons in the nature of Habeas Corpus directed to the respondents calling upon them to show cause why they should not produce Arie Ben Eliezer, son of petitioner, before this Court, or to await the further order of this Court.

For Petitioner Mr. M. SELIGMAN.

For Respondents : Mr. GRIFFIN—Solicitor-General.

ORDER.

This is a return to a summons in the nature of Habeas Corpus. The case involves questions of grave constitutional importance. That a Palestine citizen, resident in Palestine, should be exposed to summary arrest, transported to Eritrea and imprisoned there without any conviction or Order of a Court of Justice, is a matter of as serious concern to this High Court of Palestine, as the fact that a British subject, resident in England, should be exposed to a similar summary arrest and transported to Ireland was to the Court of Appeal in England ; and this Court will be no less assiduous in insisting that the Executive Government shall establish step by step legal justification for the arrest, than the English Court of Appeal was in the case of Rex *v.* Secretary of State for Home Affairs, O'Brien Ex parte, 2 K.B. 1923.

The facts of this case are that one Arie Ben Eliezer, was, by order made by the High Commissioner on the 18th day of October, 1944, summarily arrested and ordered to be deported from Palestine. It is not questioned that under regulation 15 of the Emergency Regulations 1936, and regulation 17 (G) of the Defence Regulations, 1939, the High Commissioner was fully empowered to make these orders. A further order was made, the legality of which has not been called in question, directing the respondents to convey Ben Eliezer to Eritrea and to keep him under custody whilst being so conveyed.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 7. Orders, 18th December 1945, *continued.*

It is not denied that the man is still being detained in Eritrea. The liberty of the subject is in question, and the duty of this Court now is to enquire whether or not the legal instruments which effect his detention were lawfully made. Mr. Seligman argues that he is detained in Eritrea by virtue of an order of the Palestine Government, and such order he says is illegal. If in fact he was being so detained, I would agree with him, because I know of no law which enables this Government to detain a Palestine citizen in a foreign territory. In support of his contention he has produced a number of official communiqués, the substance of which quite clearly conveys that this man has been detained at the request of the Palestine Government; the respondents are not in a position to controvert this. In an official communiqué I do not expect to find set out in technical language the nature of the legal steps that will be taken to effect the purpose envisaged by the communiqué. In regard to this part of the argument by counsel, I need only say that despite the language in which they may be couched, all the communiqués that the Palestine Government could issue would be powerless in law to detain this man in Eritrea. If the case could be left at that the rule would be made absolute forthwith. But the fact is that Mr. Seligman was silent as to the vital issue as far as his client is concerned. That is the fact that the legislature of Eritrea has promulgated an enactment (Proclamation No. 54) authorising a person in Eritrea known as the Chief Administrator to arrest and detain any person whom he has reasonable cause to believe to be, or to have recently been concerned, either inside or outside the occupied territory, in activities prejudicial to public safety or to the safety of the British or any of the Allied Armed Forces, or for the preparation or instigation of such an act.

Purporting to act under that proclamation, the Chief Administrator of Eritrea made an order on the 4th day of October, 1945, ordering Arie Ben Eliezer to be detained, and it is by virtue of that legal instrument that Arie Ben Eliezer is to-day deprived of his liberty in Eritrea. It can indeed, it must, be conceded that that instrument was issued at the instigation, persuasion or representation of the Palestine authorities, who are represented for the purpose of this action by the respondents. But this Court is not concerned with the motives that lead a person to exercise a legal right provided it is satisfied that he had that right and that it was lawfully executed by him. It follows that in the exercise of what we conceive to be his legal right it is irrelevant whether the Chief Administrator of Eritrea acted on his own volition or was moved thereto by the Palestine authorities. Mr. Seligman based the whole of his argument on the analogy, as he conceived it, between the case of Art O'Brien and that of his client. I now proceed to examine the principles of law established in the O'Brien case. In that case the Secretary of State for Home Affairs, purporting to act under a Defence Regulation, ordered the arrest of Art O'Brien, his transportation to Ireland and his detention there in the prison of Mount Joy in Dublin. This Order which apparently was in writing under the hand of the Home Secretary was the only instrument by virtue of which Art O'Brien was detained. The Court enquired into the validity of that instrument, and they came to the conclusion that it was illegal that the Home Secretary had no power to make the order, and in consequence they made the rule absolute.

It seems to me to be abundantly clear from the judgments of the learned Lord Justices, particularly from that of the Lord Justice Scrutton, that if the Court were satisfied that the Home Secretary was lawfully entitled to arrest a man in England and deport him to Ireland, and if he was detained in that latter country by virtue of a warrant of detention issued by a person who in that country was authorised to issue it, they would have discharged the rule. I have no doubt that if we, in this Court, were satisfied, as the Judges were in the O'Brien case, that the person who made the order of deportation, in this case the Officer Administering the Government, had no power to make the order, and if, again, as in the O'Brien case, no authority in the country, to which he had been deported had made an order of detention, we would not accept that part of the argument of the Solicitor General which sought to establish that as Arie Ben Eliezer had passed out of the control of the respondents no rule should issue against them. I for one would have followed precedent in the O'Brien case and made the rule absolute, merely for the purpose of testing the truth of the matter, because, as I have indicated, I am persuaded that the Palestine Authorities can exercise far more effective control over the movement of Arie Ben Eliezer than Dr. Barnardo could over the movements of Harry Gossage (in the case of *Barnado* v. *Ford*, Appeal Cases 1892) or than the Home Secretary could in the case of Art O'Brien. But here the further question as to whether the body could be produced does not arise because I am unable to resist the conclusion that the orders made by the Officer Administering the Government, which were effective to deprive this man of his liberty up to the borders of the territory of Eritrea were lawfully made. It appears to me also that the order of detention made by the Chief Administrator in Eritrea was lawfully made, but as to this I make no judicial pronouncement because neither the Chief Administrator nor the Territory of Eritrea is within the jurisdiction of this Court, and no writ of Habeas Corpus could issue out of Palestine by authority of any Judge or Court here into Eritrea. If the petitioner wishes to question the validity of this order he must do so in the courts of Eritrea. The rule is therefore discharged.

Given this 18th day of December, 1945.

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

High Court No. 89/45.

IN THE SUPREME COURT
Sitting as a High Court of Justice.

Before : THE CHIEF JUSTICE (Sir William FitzGerald) and
MR. JUSTICE SHAW.

In the Application of :

ELIEZER ZABROVSKY - - - - - - Petitioner

V.

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing the COMMANDER-IN-CHIEF, MIDDLE EAST
2. INSPECTOR-GENERAL OF POLICE AND PRISONS - - - - - - - - Respondents.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 7.
Orders, 18th December 1945, *continued.*

Return to a summons in the nature of Habeas Corpus directed to the respondents calling upon them to show cause why they should not produce Arie Ben Eliezer, son of petitioner, before this Court, or to await the further order of this Court.
For Petitioner : Mr. M. Seligman.
For Respondents : Mr. Griffin—Solicitor-General.

ORDER.

SHAW J. : This is a return to an Order Nisi dated 6th November, 1945, calling upon the respondents to show cause why they should not produce Arie Ben Eliezer, petitioner's son, before this Court.

An order for deportation was made against Arie Ben Eliezer by the Officer Administering the Government of Palestine, on 18th October, 1944, under the provisions of the Emergency Regulations, 1936, and he is at present held in detention in Eritrea.

The validity of the order for deportation is not contested, but the case for the petitioner is that the detention of Eliezer in Eritrea is in fact a detention by the Government of Palestine, since it is they who sent him there, and who are effectively having him kept there in detention. It is submitted that the Government of Palestine have no authority to detain Eliezer in Eritrea.

I think it cannot be disputed that the last submission is correct, and I also do not think that it can be seriously doubted that if the Government of Palestine so desired, they could have Eliezer brought back to Palestine. But, in my judgment, the question whether the Government of Palestine could arrange for Eliezer to be brought back to Palestine cannot form any part of the ratio decidendi in this case.

Eliezer is being held in Eritrea by virtue of an order dated 14th October, 1945, made by the Chief Administrator of the Territory of Eritrea under the provisions of Proclamation No. 54, dated 23rd June, 1944. It has not been made to appear before this Court that the order of detention is ultra vires the laws of Eritrea. If it is not ultra vires those laws, then the detention in Eritrea is lawful. The fact that it has been brought about at the instance of the Government of Palestine cannot make it unlawful.

I will give an analogy. Let me suppose that the law of Palestine provided for detention in the Jerusalem District but not in the Galilee District. If a person were detained in the Galilee District a writ of Habeas Corpus would doubtless succeed, since the detention would be unlawful. But if the law provided for detention also in the Galilee District no writ would lie, since the detention there would be lawful. In the present instance Eritrea is Galilee. It is true that the Government of Palestine does not legislate for Eritrea, but if the detention is good under the laws of Eritrea, it is, I think, quite beyond doubt that no writ can issue. The Government of Palestine can be requested to arrange for the release of Eliezer from detention in Eritrea in exactly the same way as they could be requested to release him if he were detained in Palestine. But they cannot be compelled to do so by writ of Habeas Corpus, in any event so long as the detention in Eritrea is lawful under the laws of Eritrea.

For these reasons I find that the petition fails, and must be dismissed.

Given this 18th day of December, 1945.

Sgd. B. V. SHAW,
British Puisne Judge.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 8.
Application for Leave to Appeal to the Judicial Committee of the Privy Council, 27th December 1945.

No. 8.

APPLICATION for leave to Appeal to the Judicial Committee of the Privy Council.

IN THE SUPREME COURT, 27th December, 1945.
Sitting as a High Court of Justice, Jerusalem.

P.C.L.A. No. 1/46.

ELIEZER ZABROVSKY, of 35, Rashi Street, Tel Aviv, represented by his attorneys, Messrs. MAX SELIGMAN, Dr. J. SUSSMANN, M. KRITZMAN, Dr. W. LANGE and Y. BLOCH, Advocates, whose address for service is 1, Bialik Street, Tel Aviv - - Applicant

and

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing THE COMMANDER IN CHIEF, MIDDLE EAST, and
2. THE INSPECTOR-GENERAL OF POLICE AND PRISONS, JERUSALEM - - - - Respondents.

Application is hereby made that leave to appeal to the Judicial Committee of the Privy Council be granted under Section 3 (B) of the Palestine (Appeal to Privy Council) Order in Council, 1924, from a judgment of this Honourable Court in High Court, Case No. 89/45 dated the 18th December, 1945, discharging an order nisi for the issue of a writ of Habeas Corpus.

The ground of the application is that this Honourable Court erred in holding that an Order Absolute could not issue from the Court by reason of a Detention Order alleged to have been made by the Chief Administrator of Eritrea.

The matter is one of great general and public importance, affecting the liberty of the subject, and it is one which, it is submitted, ought to be referred to His Majesty in Council for decision.

Sgd. M. SELIGMAN,
Attorney for Applicant.

In the Supreme Court sitting as a High Court of Justice, Jerusalem.

No. 9.
Order refusing leave, 21st January 1946.

No. 9.

ORDER refusing leave.

Privy Council Leave Application No. 1/46.

IN THE SUPREME COURT,
Sitting as a High Court of Justice.

Before: THE CHIEF JUSTICE (Sir William FitzGerald) and
MR. JUSTICE SHAW.

In the Application of:

ELIEZER ZABROVSKY - - - - - - Applicant

V.

1. THE GENERAL OFFICER COMMANDING, PALESTINE, representing THE COMMANDER IN CHIEF, MIDDLE EAST
2. THE INSPECTOR-GENERAL OF POLICE AND PRISONS - - - - - - - Respondents.

Application for leave to appeal to His Majesty-in-Council from the order of this Court, dated the 18th December, 1945, in High Court Case No. 89/45.

For Applicant: Mr. MAX SELIGMAN.
For Respondents: Mr. J. B. GRIFFIN, K.C., Solicitor-General.
ORDER.

This is an application for leave to appeal to the Privy Council against the judgment of this Court sitting as a High Court of Justice in Case No. 89/45. Mr. Seligman appeared for the applicant. He brings his application under Article 3 (B) of the Palestine (Appeal to the Privy Council) Order-in-Council. The Solicitor-General, who appeared for the respondent, confined his argument to a submission that this Court had no power to entertain the application. We have indicated in the course of our judgment in the case that we did regard the question involved as one of great general importance. It follows that if we were satisfied that we were legally empowered to grant this application we would not hesitate to do so. But it appears to us that we have no authority to entertain the application. Article 2 of the Palestine (Appeal to the Privy Council) Order-in-Council, defines "Court" as "the Supreme Court of Palestine sitting as a Court of Appeal." It must, in our opinion, follow that the discretion given to the Court under Article 3 (B) only applies to cases determined by the Court sitting as a Court of Appeal, whereas the case which is the subject-matter of this application was determined by the Court sitting as a High Court of Justice. This, of course, does not debar the applicant from applying direct to the Privy Council for special leave.

In our opinion the application to this Court must be dismissed.

Given this 21st day of January, 1946.

Sgd. W. J. FITZGERALD,
Chief Justice.

B. V. SHAW,
British Puisne Judge.

RECORD.

Supreme Court ought therefore, it is submitted, to have acted upon the usual practice that where there is no denial by one party of a statement of fact given in evidence by the other, such fact ought to be accepted as correct and ought to have proceeded to make the said Order Nisi absolute forthwith.

p. 12. The Supreme Court, however, ruled that they were unable to dispose of this submission by way of preliminary objection, and called upon the Solicitor General to show cause.

14. The Supreme Court thereupon ordered and heard the cross-examination of each of the said two deponents upon their respective Affidavits.

p. 10. In the course of his evidence the deponent Curtis proved or admitted the following (among other) facts:—

(a) that the Palestine Military Authorities had removed the Appellant's son to Eritrea;

(b) that the case of the Appellant's son was examined from time to time by an Advisory Committee, which did not have executive powers;

(c) that a number of persons in the same position as the Appellant's son who had been detained by the Palestine authorities and deported to Eritrea had been released and returned to Palestine;

(d) that in no such case did the authorities in Eritrea raise any objection to the release and the return of such persons;

(e) that he knew of no reason why the Appellant's son should not be released;

(f) that letters to detainees were to be sent through the Criminal Investigation Department in Palestine.

App. I, pp. 3, 4, 5, 6, 7 and 8

15. A number of special communiqués issued by the Palestine authorities, and statements made by Ministers of the Crown in the House of Commons in answer to questions addressed to them, were put to and admitted by the deponent Curtis.

So far as they are relevant for the purposes of this appeal as showing the degree of control exercised by the Palestine authorities, the main facts to be gathered from the said communiqués and statements are:—

(i) That the Appellant's son (amongst others) had been transferred to military custody and removed to a place of

No. 9.

RDER refusing leave.

Privy Council Leave Application No. 1/46.

T,

of Justice.

JUSTICE (Sir William FitzGerald) and

t. Justice SHAW.

Y

V.

Applicant

OFFICER COMMANDING,

resenting The Commander in

AST

-GENERAL OF POLICE

Respondents.

appeal to His Majesty-in-Council from the

he 18th December, 1945, in High Court Case

ELIGMAN.

. Griffin, K.C., Solicitor-General.

r leave to appeal to the Privy Council against

sitting as a High Court of Justice in Case

appeared for the applicant. He brings his

(B) of the Palestine (Appeal to the Privy

The Solicitor-General, who appeared for the

ument to a submission that this Court had no

lication. We have indicated in the course of

at we did regard the question involved as one

It follows that if we were satisfied that we

grant this application we would not hesitate to

s that we have no authority to entertain the

he Palestine (Appeal to the Privy Council

Court" as "the Supreme Court of Palestine

l." It must, in our opinion, follow that the

art under Article 3 (B) only applies to cases

itting as a Court of Appeal, whereas the case

r of this application was determined by the

rt of Justice. This, of course, does not debar

direct to the Privy Council for special leave.

lication to this Court must be dismissed.

January, 1946.

Sgd. W. J. FITZGERALD,
Chief Justice.

B. V. SHAW,
British Puisne Judge.

No. 10.

ORDER IN COUNCIL granting special leave to appeal.

In the Privy Council.

No. 10. Order in Council granting special leave to appeal, 18th April 1946.

AT THE COURT AT BUCKINGHAM PALACE

The 18th day of April, 1946

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT — MR. SECRETARY LAWSON
VISCOUNT SAMUEL — MR. ISAACS

L.S.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 11th day of April 1946 in the words following viz. :—

WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Eliezer Zabrovsky in the matter of an Appeal from the Supreme Court of Palestine, sitting as a High Court of Justice between the Petitioner Appellant and the General Officer Commanding Palestine representing the Commander in Chief Middle East and Inspector General of Police and Prisons Jerusalem Respondents setting forth (amongst other matters): that by a Petition dated the 4th September 1945, but filed on the 26th October 1945 the Petitioner who is the father of one Arie Ben Eliezer presented a Petition to the Supreme Court for an order in the nature of Habeas Corpus in respect of Arie Ben Eliezer and prayed that a summons be issued directed to the Respondents to show cause why they should not produce Arie Ben Eliezer before the Court on a date to be fixed and to await the further order of the Court: that on the 6th November 1945 the Court ordered the issue of a summons as prayed by the Petitioner: that the following facts were (*inter alia*) proved or admitted before the Court:—(*a*) that the Petitioner's son is a Palestinian citizen and was at all material times resident in Palestine; (*b*) that on or about the 17th April 1944 the Petitioner's son was arrested by the Police authorities in Palestine purporting to act by virtue of an order made under Regulation 15B of the Emergency Regulations 1936 and he has been detained ever since; (*c*) that on or about the 18th day of October 1944 the Petitioner's son was removed under custody of the Respondents from Palestine to Eritrea; (*d*) that the Petitioner's son was at all material times and still is detained in a detention camp in Eritrea: that the contention of the Petitioner before the Court was (1) that the Government of Palestine has no lawful right to detain a person or cause him to be detained in any territory outside Palestine and (2) that the detention of his son in Eritrea was and is illegal in that he was or was caused to be and still is detained there by the Respondents: that the contention of the Respondents was that they were not answerable to the Court for the detention of the Petitioner's son in Eritrea in that they alleged that such detention took place under and by virtue of an

In the Privy Council.

No. 10. Order in Council granting special leave to appeal, 18th April 1946, *continued.*

order purporting to have been made by the Chief Administrator of Eritrea under a Proclamation No. 54 of 1945 made by the Chief Administrator of the Territory of Eritrea: that the alleged Order was purported to have been made on the 4th October 1945 more than three months after the legality of the detention of the Petitioner's son outside Palestine was challenged on behalf of the Petitioner and nearly a year after the reception of the Petitioner's son in Eritrea: that throughout the whole of the proceedings before the Court neither the alleged Order nor any copy thereof was produced in evidence nor were its terms or any part thereof ever put before the Court by or on behalf of the Respondents: that on the 18th December 1945 by Order of the Supreme Court the Order of the 6th November 1945 was discharged and the Petition was dismissed: that application was made on behalf of the Petitioner to the Supreme Court for leave to appeal to Your Majesty in Council but the Court held that it had no power to grant such leave but expressed the view that the case involves questions of great importance: And humbly praying Your Majesty in Council to grant the Petitioner special leave to Appeal from the Order of the Supreme Court dated the 18th December 1945 or for such Order as to Your Majesty in Council may seem fit.

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the Supreme Court of Palestine sitting as a High Court of Justice dated the 18th day of December 1945:

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the High Commissioner or Officer administering the Government of Palestine for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

L.S.

At the Court at

The 21st day

PR

THE KING'S MOST

LORD PRESIDENT
EARL OF LISTOWEL

WHEREAS there was this day read
Committee of the Privy Council date
words following, viz.:—

"WHEREAS by virtue of His
Order in Council of the 18th day
this Committee the matter of
Palestine Sitting as a High C
Eliezer Zabrovsky Appellant an
Palestine representing the Comm
General of Police and Prisons
Appeal No. 43 of 1946) and likev
setting forth: that by a Petition
on the 26th October 1945 the App
Court for an Order in the nature
Ben Eliezer the Appellant's son
directed to the Respondents to sh
the said Arie Ben Eliezer before t
to await the further Order of the

L.S.

At the Court at Buckingham Palace

The 21st day of December, 1946

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
EARL OF LISTOWEL
MR. ALEXANDER
SIR ALAN LASCELLES

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 4th day of December 1946 in the words following, viz.:—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee the matter of an Appeal from the Supreme Court of Palestine Sitting as a High Court of Justice at Jerusalem between Eliezer Zabrovsky Appellant and (1) The General Officer Commanding Palestine representing the Commander-in-Chief Middle East (2) Inspector General of Police and Prisons Jerusalem Respondents (Privy Council Appeal No. 43 of 1946) and likewise the humble Petition of the Appellant setting forth: that by a Petition dated the 4th September 1945 and filed on the 26th October 1945 the Appellant presented a Petition to the Supreme Court for an Order in the nature of habeas corpus in respect of one Arie Ben Eliezer the Appellant's son and prayed that a Summons be issued directed to the Respondents to show cause why they should not produce the said Arie Ben Eliezer before the said Court on a date to be fixed and to await the further Order of the Court: that on the 6th November 1945 the Court ordered the issue of a Summons: that on the 13th December 1945 on the return of the Summons the Respondents resisted the making absolute of the Order nisi and contended that the same should be discharged: that by Order made on the 18th December 1945 the Supreme Court discharged the Order nisi and dismissed the Appellant's Petition: that the Appellant obtained special leave to appeal to Your Majesty in Council by Order in Council dated the 18th April 1946: And humbly praying Your Majesty in Council to take this Appeal into consideration and that the Order of the Supreme Court dated the 18th December 1945 may be reversed altered or varied or for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the Appeal and humble Petition into consideration and having heard Counsel on behalf of the Parties on both sides Their Lordships do this day agree humbly to report to Your Majesty as their opinion that this Appeal ought to be dismissed and the Order of the Supreme Court of Palestine dated the 18th day of December 1945 affirmed."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the High Commissioner or Officer Administering the Government of Palestine for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

[27]

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DRURY LANE, W.C.2.

(55003) Wt. 8015—7 17 1/47 D.L. G. 338

Privy Council Appeal No. 43 *of* 1946

Eliezer Zabrovsky - - - - - - - - - *Appellant*

v.

The General Officer Commanding Palestine and another - - - - - - - - - - *Respondents*

THE SUPREME COURT OF PALESTINE AT JERUSALEM

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH DECEMBER, 1946

Present at the Hearing:

LORD WRIGHT
LORD PORTER
LORD UTHWATT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD WRIGHT]

In this appeal Their Lordships, after hearing arguments from counsel on both sides, announced that they had decided to advise His Majesty that in their judgment the appeal should be dismissed, and added that they would give their reasons later. This they now proceed to do.

The appeal was brought by special leave from an Order dated the 18th December, 1945, of the Supreme Court of Palestine sitting as a High Court of Justice which discharged a rule nisi granted on the appellant's petition for an Order in the nature of habeas corpus in respect of Arie Ben Eliezer, the appellant's son.

The appellant's son is a Palestinian citizen, and had arrived in Palestine at some date prior to the 17th April, 1944, from the United States of America. On that date he was arrested by the Police Authorities in Palestine acting by virtue of an Order made under Regulation 15B of the Emergency Regulations, 1936, and on or about the 19th October, 1944, was removed from Palestine to Eritrea under custody of the respondents and personnel under their command acting by virtue of an Order of deportation made under Regulation 15 of the Emergency Regulations, 1936, and of a Direction made under Regulation 17G of the Defence Regulations, 1939. From and after his arrival in Eritrea he was detained in a detention camp in that country but was later transferred for a period of time to a detention camp in the Sudan from which he was eventually brought back to the detention camp in Eritrea where at the inception of these proceedings he was and he still is detained.

On the 26th October, 1945, the appellant filed in the Supreme Court of Palestine, sitting as a High Court of Justice, Jerusalem, a petition dated the 4th September, 1945, praying for an Order in the nature of habeas corpus to be directed to the respondents in respect of his son and on the 6th November, 1945, that Court made an Order nisi directing the issue of a summons in the nature of habeas corpus to the respondents as prayed by the appellant and ordering the respondents to file their reply, if so advised, within fifteen days from the date of service of the Order.

Before referring to the documents and Orders in the case it may be useful to indicate shortly what is the Constitutional or international position of Palestine. That topic was discussed by this Board in *Jerusalem-*

detention outside Palestine shortly before 20th October, 1944;

(ii) that the cases of all persons concerned (i.e., including that of the Appellant's son) would be the subject of periodical review in the future as in the case of persons detained under the Emergency Regulations in Palestine;

(iii) that such persons would be given the opportunity of submitting in writing any matters which they might desire to submit as affecting their detention;

(iv) that such periodical review would be made by an Advisory Committee whose duty it was to advise as to their release or further detention; App. II, p. 3.

(v) that under this arrangement, 48 detainees had been released up to 2nd November, 1945;

(vi) that the detainees (i.e., including the Appellant's son) who were interned in Eritrea had been removed to Carthaga in the Sudan shortly before the 30th January, 1945;

(vii) that the said detainees had been removed from the Sudan to a detention camp in Eritrea shortly before 18th October, 1945;

(viii) that the Government of Palestine were satisfied that such transfer was in the interests of the health and welfare of the said detainees and of good administration;

(ix) that the High Commissioner for Palestine in conjunction with the Commander-in-Chief, Middle East Forces, assumed responsibility for the welfare of the said detainees in their detention camp, including their eductional, occupational and religious activities and opportunities;

(x) that to this end a Committee was appointed to visit the said detainees in their camp in the Sudan and to report upon their welfare, which they did; and in their report, they made recommendations, with regard to the welfare of the detainees, certain of which were approved and acted upon by the High Commissioner for Palestine;

(xi) that also to this end the Government of Palestine placed at the disposal of the Military authorities in the Sudan the sum of £P350 for welfare services in the detention camp in the Sudan.

16. On 18th December, 1945, the Supreme Court (having on 13th December, 1945, delivered a Ruling dismissing the Appellant's preliminary objections as hereinbefore set out) delivered judgment dismissing the Appellant's petition. p. 12.

RECORD.

Fitzgerald C.J. dealing with the contention that detention of the Appellant's son in Eritrea by virtue of an order of the Palestine Government was illegal said:—"If in fact he" (i.e., the Appellant's
p. 14. l. 6. son) "was being so detained I would agree with him" (i.e., the Appellant's Counsel) "because I know of no law which enables this "Government to detain a Palestine citizen in a foreign territory. "In support of his contention he has produced a number of official "communiqués, the substance of which quite clearly conveys that "this man has been detained at the request of the Palestine Govern- "ment; the Respondents are not in a position to controvert this." 10

The Chief Justice then said that the vital issue in the Case related to the detention order made by the Chief Administrator of
p. 14. l. 30. Eritrea. "It is by virtue of that legal instrument that Arie Ben "Eliezer is to-day deprived of his liberty in Eritrea. It can indeed, "it must, be conceded that the instrument was issued at the instiga- "tion, persuasion or representation of the Palestine authorities, who "are represented for the purpose of this action by the Respondents. "But this Court is not concerned with the motives that lead a person "to exercise a legal right provided it is satisfied that he had that "right and that it was lawfully executed by him. It follows that in 20 "the exercise of what we conceive to be his legal right it is irrelevant "whether the Chief Administrator of Eritrea acted on his own "volition or was moved thereto by the Palestine authorities" . . .
p. 15, l. 22. The Chief Justice distinguished the case of *ex parte O'Brien* (1923) 1 K.B. 361 on the ground that in that case no authority in the country to which the deportee had been deported had made an order of detention. The validity of the detention order made in Eritrea could be questioned only in the Courts of Eritrea, and the rule must therefore be discharged.

p. 16, l. 15. Shaw J. said: "The validity of the order for deportation is not 30 "contested, but the case for the petitioner is that the detention of "Eliezer in Eritrea is in fact a detention by the Government of "Palestine, since it is they who sent him there, and who are effec- "tively having him kept there in detention. It is submitted that the "Government of Palestine have no authority to detain Eliezer in "Eritrea.

"I think it cannot be disputed that the last submission is "correct, and I also do not think that it can be seriously doubted "that if the Government of Palestine so desired, they could have "Eliezer brought back to Palestine. But, in my judgment, the 40 "question whether the Government of Palestine could arrange for "Eliezer to be brought back to Palestine cannot form any part of "the *ratio decidendi* in this case.

"Eliezer is being held in Eritrea by virtue of an order dated "14th October, 1945, made by the Chief Administrator of the "Territory of Eritrea under the provisions of Proclamation No. 54, p. 9.
"dated 23rd June, 1945. It has not been made to appear before this "Court that the order of detention is *ultra vires* the laws of Eritrea. "If it is not *ultra vires* those laws, then the detention in Eritrea is "lawful. The fact that it has been brought about at the instance of "the Government of Palestine cannot make it unlawful."

17. The Appellant humbly submits that the judgment of the Supreme Court should be reversed and that the said Order Nisi should be made absolute or such other order made as in the circumstances may be just for the following among other

REASONS.

1. BECAUSE the Supreme Court of Palestine was wrong in law in accepting and acting on the Affidavits filed in answer to the Appellant's Petition.

2. BECAUSE there was no evidence admissible in law before the Supreme Court that any Order respecting the detention of the Appellant's said son in Eritrea was ever made or signed duly or validly or at all by the Chief Administrator of that Territory.

3. BECAUSE the Supreme Court was wrong in law in admitting evidence as to an Order alleged to have been made by the Chief Administrator of the Territory of Eritrea respecting the detention of the Appellant's son in that territory.

4. BECAUSE the ruling of the Supreme Court given on 13th December, 1945 was wrong for the reasons given in paragraphs 11, 12 and 13 of this Case.

5. BECAUSE the Respondents have no power to detain the Appellant's son in territory outside Palestine and such detention is illegal.

6. BECAUSE the Respondents are in fact detaining the Appellant's son in territory outside Palestine, namely, Eritrea.

7. BECAUSE the Supreme Court was wrong in law in holding that the Appellant's son was and is deprived