

9, 1946

In the Privy Council

No. 80 of 1945.

Privy Council Leave Application No. 26/44.

**ON APPEAL FROM THE SUPREME
COURT OF PALESTINE SITTING
AS A COURT OF CIVIL APPEAL
AT JERUSALEM.**

UNIVERSITY OF LONDON
W.C.1.
-3 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

ISRAEL MARGOLIS

Appellant

44214

AND

SARKIS IZMIRILIAN

Respondent

RECORD OF PROCEEDINGS

No. 1.

Statement of Claim.

In the
District Court,
Tel-Aviv.

SARKIS IZMIRILIAN

Plaintiff

No. 1.
Statement of
Claim,
2nd August,
1942.

versus

ISRAEL MARGOLIS

Defendant

Value of Subject Matter:—L.P. 4526.542 mls.

1. On or about the 1st day of March, 1942, one, Charles Schlick, of Alexandria, entered into an agreement with the Defendant for the sale of 1,000 tons of Sudanese cotton seed upon the terms and conditions set out in the agreement, copy of which is attached hereto and marked "A."

2. The seller in the agreement was the said Charles Schlick, "or substitute people from the Sudan."

3. The agreement was subsequently transferred to the Plaintiff, being a person intended by the words "substitute people from the Sudan" above referred to.

RECORD OF PROCEEDINGS.

In the
District Court,
Tel-Aviv.

No. 1.
Statement of
Claim,
2nd August,
1942
—continued.

4. The said agreement was made subject to the seller's export licence and buyers' import licence being obtained.

5. The Defendant, upon application for an import licence, was informed on the 24th day of March, 1942, that a licence to import cotton seeds from Sudan could not be granted.

6. Upon failure of the Defendant to secure an import licence, the Plaintiff, through his agent in Palestine, attempted to secure an import licence and succeeded in securing the same.

7. The said import licence had been promised by a competent authority in March, 1942. Again, in April, 1942, written advice was received that the licence will be granted and it was actually issued on the 5th day of May, 1942, numbered 70.989. 10

8. The period of delivery of the said cotton seed in accordance with the said agreement was during March until the 31st day of August, 1942.

9. The Defendant regretted having entered into the agreement and verbally informed the representative of the Plaintiff that he would not carry out the terms of the agreement.

10. On or about the 1st day of May, 1942, the Plaintiff addressed a notary public notice to the defendant calling upon him to carry out the terms of the said agreement and further informing him that an import licence was available for the Defendant. 20

11. On the 4th day of May, 1942, Mr. Lebel, Advocate on behalf of the Defendant, sent a reply to the Plaintiff informing him that he was instructed to inform Plaintiff that his client considered the said agreement was cancelled as per the 26th of March, 1942, because the import licence had been refused to his client by the competent authorities.

12. Owing to the failure of the Defendant to take over the said cotton seed when the same arrived in Palestine, the Plaintiff was forced to sell the same for the price of L.E.8.500. ^{per ton} As the original price set out in the agreement was 12 Egyptian pounds per ton, the Plaintiff is entitled to the difference between the agreement price and the price at which he sold the said to another buyer, together with expenses. 30

13. This Court has jurisdiction because the Defendant has his place of business in Tel Aviv.

The Plaintiff therefore claims damages to be fixed by the Court on the basis of the difference in agreement price and the price at which the goods were sold to another buyer. The Plaintiff also claims costs and advocate's fees and interest on the sum awarded from the date of the lodging of this action.

2 August, 1942.

(Sgd.) DR. R. WEYL,
For the Plaintiff.

No. 2.**Defence.***(Translation from Hebrew.)*In the
District Court,
Tel-Aviv.No. 2.
Defence,
29th September,
1942.

Preliminary points:—

(A) The power of attorney to the advocates who represent the Plaintiff was given by a person who had no authority for the purpose and therefore the claim was not filed in order and should be dismissed.

(B) There is no binding contract or other obligation between the parties and therefore there is no privity between them and the Plaintiff is
10 in no way a litigant with the Defendant.

(C) The Defendant denies that the agreement dated 1 March, 1942, was transferred to the Plaintiff. The Defendant did never agree to the transfer of the above-mentioned agreement by Mr. Charles Schlick, of Alexandria, to the Plaintiff or somebody else and this agreement is not assignable without the express consent of the defendant.

The claim should therefore be dismissed with costs and advocates fees.

The alternative submissions of the Defendant regarding the subject matter of the claim are:—

(D) The above agreement was dependant on the obtaining of an import
20 licence by the Defendant and as from the date when the required licence was refused (*i.e.* from 24th March, 1942), the Defendant was discharged from the agreement and was no longer liable to receive the goods. In the notice refusing the licence it was stated that if the goods would be imported into Palestine they would be confiscated, futhermore the Defendant was discharged by the statements and conduct of the Plaintiff.

(E) The Plaintiff did not deliver nor produce to the Defendant the licence mentioned in clause 7 of the statement of claim. The Defendant denies therefore that such a licence was issued in the name of Israel Margolis. It is generally surprising how Plaintiff could apply for and
30 obtain a licence ~~from~~^{for} the Defendant and it is to be assumed that if such licence was ever obtained it was received in an irregular way and no doubt it was dangerous to make use of it.

(F) The 24 hours notice given to the Defendant in the notarial notice referred to in clause 10 of the Statement of Claim is unreasonably short.

(G) The above notarial notice was sent and delivered to the Defendant on 1st May, 1942, and the time allowed therein expired on 2 May, 1942 (which was Saturday) while the licence mentioned in clause 7 of the Statement of Claim was granted to the Plaintiff or his agent (if such a licence was ever granted) only on 5th May, 1942, *i.e.*, three days after the
40 expiration of the notarial notice.

(H) The Plaintiff had no right at all to forward the goods prior to the receipt of an import licence and especially after he was informed that the required licence was refused to the defendant.

In the
District Court,
Tel-Aviv.

No. 2.
Defence,
29th September,
1942
---continued.

(I) The defendant denies that the goods, if ever such goods were forwarded, were goods intended for the defendant in accordance with the terms of the agreement, and the defendant further argues that it was not in the power of the plaintiff to forward at that time all the goods agreed upon in the agreement.

(J) The sale of the goods in question was on the c.i.f. condition and the Defendant denies that the Plaintiff fulfilled all the duties and conditions which apply in a sale of c.i.f. agreement. Bills of lading, insurance certificates and accounts were never produced to the Defendant as required in a c.i.f. sale.

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(K) The Defendant denies that any damages were caused to the Plaintiff or that he is entitled to damages in the sum mentioned in the statement of claim or any other sum.

In consideration of the above I request that the claim be dismissed with costs and advocates fees.

(Sgd.) S. LEBEL,
Attorney for the Defendant.

No. 3.
Issues,
15th February,
1943.

No. 3.

Issues.

(Translation from Hebrew.)

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1. Whether the agreement, mentioned in paras. 1 and 2 of the Statement of Claim was transferred to Plaintiff, and whether it was at all possible to transfer the agreement to Plaintiff.

2. Whether the Plaintiff, through his agent in Palestine, succeeded in obtaining an import licence for the goods in question.

3. Whether the permit was issued on 5th May, 1942, under No. 70,989, and whether Plaintiff has ever shown Defendant the licence.

4. Whether Defendant went back on the agreement and notified Plaintiff's attorney that he was not prepared to comply with the agreement.

5. Whether Plaintiff was compelled to sell the goods at L.P. 8.500 per ton; whether Plaintiff has suffered any loss and, if so, to what extent; and whether he is entitled to the difference between the price at which they were sold and that agreed upon.

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6. Whether Plaintiff's power of attorney is in order.

7. Whether there is privity between the parties.

8. Whether Defendant has been released from the contract on 24th March, 1942, or on any other date, on the ground that he did not until then obtain an import licence: and whether Defendant has been released of his liabilities by Plaintiff's conduct.

- 9. Whether the period allowed in the Notice is a reasonable delay.
- 10. Whether Plaintiff was entitled to forward the goods prior to the issue of the import licence, particularly in view of the fact that the Defendant had been refused the required licence.
- 11. Whether the goods forwarded, if forwarded, were in conformity with the contract, and whether Plaintiff could, at all, forward such goods.
- 12. Whether, in selling the goods, Plaintiff complied with the terms of the contract, particularly the terms of the clause.

In the
District Court,
Tel-Aviv.
No. 3.
Issues,
15th February,
1943
—continued.

15th February, 1943.

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No. 4.

Record.

(Translation from Hebrew.)

No. 4.
Record.
19th October,
1943.

FOR PLAINTIFF: Goitein and Hochman.

FOR DEFENDANT: Lebel.

Hearing of—19th October, 1943.

DEFENDANT'S ADVOCATE: My colleague's power of attorney is not in order.

PLAINTIFF'S ADVOCATE: The power of attorney is in order. It is a general power of attorney.

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DEFENDANT'S ADVOCATE: I withdraw my objection.

PLAINTIFF'S ADVOCATE: Repeats statement of claim. Refers to the words " substitute people from Sudan " and the words " Order for Sarkis Izmirilian, Khartum (Sudan) " There is privity between the parties. Condition re price. 12 E. ~~Watson~~ ^{Pravda} (sic). Condition re export and import licences. —Condition re date of delivery, 31st August, 1942. My client succeeded in obtaining for Defendant an import licence in the middle of April. Defendant could not have cancelled the contract. The period allowed Defendant within which to pay the price of the goods was sufficient (reasonable). In any case in reply to the Notarial Notice, Defendant says he did not obtain the licence and the contract was cancelled. The goods were sold to Shemen at L.P.8.500 mils per ton.

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Mindgeretsky
YEHIEL NAHARI ~~MINDGERETSKY~~, SWORN.

Plaintiff's
Evidence.
Yeihel Nahari
Mindgeretsky's
Examination.

I am Plaintiff's agent. Plaintiff forwarded the goods to Palestine. Defendant informed me he received no import licence. I wired Plaintiff, and received this wire in reply. P/I. It is dated 13th April, 1942. I made

In the
District Court,
Tel-Aviv.

No. 4.
Record.
Plaintiff's
Evidence.
Yehiel Nahari
Mindgeretsky's
Examination
—continued.

an application to the Food Controller, and myself went to see Mr. Arnott (sic) who is the Assistant Controller. As a result of that conversation, I received this letter, P/2. I informed Defendant that an import licence would be granted to him. I served a Notarial Notice on Defendant, P/3. I got a reply, P/4, from Defendant's advocate: or from Plaintiff or from Mr. Schlick. I received this letter from Mr. Schlick, P/5, on Defendant's paper dated 9th April, 1942. This is a letter from Defendant, dated 15th March, 1942, P/6. Having got to know that Defendant refused to receive (the goods) which had already arrived in this country, I got in touch with some firms—"Shemen," "Itzhar," and others.

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Eventually I sold the goods to Shemen at L.P.8.500 mils per ton. I could not obtain a better price. This is Shemen's bill, P/7. I had no difficulty in obtaining a licence ~~from~~ Shemen.

Subsequent to letter P/2 there was no difficulty in obtaining a licence in the name of Defendant, or any other purchaser. The goods delivered to Shemen were 1,000 tons of cotton seeds, new and old crops, according to the contract. This is the original contract which I received from Plaintiff P/8.

Cross-
examination.

CROSS-EXAMINED: The goods were sent from Sudan in April, 1942. The documents concerning the goods were sent in the name of Barclays Bank. I received an intimation from the Bank that the documents had been received. I saw the documents in the bank. I do not know who the consigner was. The documents were for 1,000 tons. The goods arrived in two lots—one of 800 tons and the other 200 tons. I saw the goods in Haifa at the end of April or beginning of May. I did not get the documents for the Defendant. The first time I applied to the Food Controller was on 14th April, 1942. I obtained no licence; the purchaser obtained it. I did not ask for a licence on behalf of Defendant. Licences were being issued by the Customs Department. I did not apply to the Customs Department. I was not aware that the Customs Department could refuse a recommendation for the grant of an import licence by the Controller. I did not give Defendant letter P/2, but I showed him the letter ~~of~~ ^{on} 26th or 27th April in my office. He then told me he would give me a reply; and later, over the telephone, he gave me a nasty answer in Yiddish. Three months prior to this purchase, I started dealing in cotton seeds. The price was L.P.9.500. Mr. Schlick bought from Palestine at L.P.9 per ton, plus insurance, transport and commission, Plaintiff paid Mr. Schlick for the transfer of the contract. I know advocate Sha'oni. I gave him a power of attorney in this matter. I had a power of attorney to serve a Notarial Notice. I have a general power of attorney which is with my advocate. I do not know whether my advocate wishes to produce the power of attorney. I am acquainted with these goods. I cannot distinguish between last year's and present year's product. I showed the goods to Itzhar and Shemen, and Shemen told me the goods were excellent. I offered the goods

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to Shemen after that Defendant had refused to accept them. On 6th April, 1943, I received a telegram and knew that Defendant did not want to receive the goods. Subsequent to the Notarial Notice, we offered the goods to "Shemen." I did not at that time find out what the price of the said goods was in Egypt and Sudan. I do not know that prices dropped. The goods weighing 800 tons arrived prior to the 1st May. The documents were received by Barclays Bank, Tel-Aviv. This bank is closed on Saturdays.

In the
District Court,
Tel-Aviv.

No. 4.
Record.
Plaintiff's
Evidence.
Yehiel Nahari
Mindgeretsky's
Cross-
examination
—continued.

RE-EXAMINED: I did not deliver the documents to Defendant, because he had not paid and had no licence. I applied first to the Permits Section, but they referred me to the Food Controller. I did not apply for a licence in my name. I applied for a licence in the name of the purchaser. The contract was never altered. I am not an expert in such goods. But I know that the goods in question were composed of new and old goods, according to the contract.

Re-examination.

PLAINTIFF'S ADVOCATE: This is my case.

DEFENDANT'S ADVOCATE: I have witnesses.

Adjourned to hear Defendant's witnesses.

(Sgd.) I. MANY,

Judge.

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NICOLA KATTEINI, sworn.

I am an employee of the Haifa Shipping Agency. We are agents of the s.s. *Fred*. This ship arrived in Haifa on 27th April, 1942. This was the only occasion this ship touched Haifa in 1942. This ship unloaded cotton seeds of which the Plaintiff in this case was the consigner. There were no other goods from Plaintiff on this ship. According to the documents in my possession the "Shemen" Company received the transport. This is a Bill of Lading, D/I. D/I was in Barclays Bank, as appears from the seal thereon and the number 6/12700. D/I was presented to us by the Shemen Company on 15th/16th May, 1942, and not before. The order of delivery to Shemen Co. was given on 5th May, 1942, against a guarantee by the Anglo-Palestine Bank, Haifa. I know from experience that such goods are not subject to demurrage for four days. After four days, 100 mils per diem is payable on such goods per each ton for the first seven days, and 200 mils in respect of each additional day; and thereafter an additional 100 mils per day per ton every week. According to D/I, the goods were forwarded on 15th April, 1942.

Defendant's
Evidence.
Nicola Katteini's
Examination.

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CROSS-EXAMINED: It appears from Exhibit D/I, that the transfer to the Shemen Co. was made on 14th May, 1942. D/I was made to order. There was on the ship another transport of cotton seeds for Shemen Co.,

Cross-
examination.

In the
District Court,
Tel-Aviv.

No. 4.
Record.
Defendant's
Evidence.
Nicola Katteini's
Examination
—*continued*.
Re-examination.

and one for " Itzhar." D/1 is in respect of 176.010 tons. The transport in favour of Shemen was 528.970 tons; and that of Itzhar was 381.722 tons. We are also customs clearers, and as such we know that demurrage is payable. The price I quoted is payable on all goods free of customs dues. We did not clear cotton seeds from the Customs. The load sent direct to " Shemen " Co., was not sent by the Plaintiff.

RE-EXAMINED: We are agents of the s.s. *Reedpool*. On this ship goods arrived from Plaintiff, and were delivered to Shemen. All particulars are shown on D/2. There were other goods for other companies, of a total weight of 6,000 tons.

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Yehoshua
Rahamim's
Examination.

YEHOSHUA RAHAMIM, sworn.

I am an employee of Barclays Bank, Tel-Aviv, Documents Section. This form, D/3, came to Haifa from Khartoum. Sent from Khartoum on 1st May, 1942, for " Shemen," Haifa, in two ships *Fred* and *Reedpool*. The number on D/1 appears on D/3 (6/18700). The Khartoum number on D/3 is 5081 and this same number appears on D/1 and D/2, that is to say that the two Bills of Lading pertain to Exhibit D/3. D/1 and D/3 were in Barclays Bank and were transferred to Shemen Co. The (sheet torn) was received here on 11th May, 1942. They were received at Barclays Bank in Haifa. We received this letter from Barclays, Haifa, D/4. These documents make no mention of Defendant.

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Cross-
examination.

CROSS-EXAMINED: Where the purchaser is well known to us, we deliver the goods to him against a Bank Guarantee.

Re-examination.

RE-EXAMINED: The instructions of 1st May, 1943, were to deliver the documents to " Shemen."

Israel Margolis's
Examination.

DEFENDANT—ISRAEL MARGOLIS, sworn.

I signed Exhibit P/8. The intention was that the supplier should be anyone in Sudan, but that the Vendor should be Mr. Schlick. I agreed to his transferring the contract to someone else, provided he informed me of the name of the transferee, and that I gave my consent. I did not agree to the transfer of the contract to Plaintiff. Plaintiff did not inform me that he undertook to be responsible for fulfilment of the contract. I do not know Plaintiff; nor did I hear of his name. The contract would be invalid so long as I received no import licence, Mr. Schlick asked me to confirm the contract P/8. I received this telegram, D/5. I did not confirm the contract, because I did not obtain an import licence. I applied to the Customs Department at Haifa for an import licence on 6th March, 1942. This is a copy of the letter I sent, D/6. I got no reply. I sent another application by post on 15th March, 1942. I received a negative reply, D/7. I informed Mr. Schlick by telegram and letter of the refusal. This is a copy of the telegram, D/8, and this is a copy of the letter, D/9. Mr. Schlick informed me that the contract would be cancelled if I was refused

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- an import licence, D/10. I was asked by Schlick to open a credit. I did not, because I had no import licence. The bank does not open a credit where there is no import licence. The Customs House used to issue import licence. I once applied to the Food Controller at Jerusalem to assist me in another matter. He recommended, but to no avail. Mr. Nahari once came and told me it was not worth while cancelling the contract, because on payment of L.P.500 a licence could be had, I so testified before the Commission of Enquiry. I never saw Exh. P/2. Mr. Nahari never told me an import licence had been received: he sent me the Notarial Notice.
- 10 No documents concerning the goods were shown to me: and no goods can be taken out without documents. I do not know whether the goods were insured. That was a condition in the contract. The goods were to be of the new and the old crops. I have been a merchant since the beginning of the war. When we made the contract, part of the goods was not in existence. The credit I was asked to open was to have been in the name of Schlick and not in that of Plaintiff. The credit would have cost me about L.P.500 in expenses and interest. On many occasions I imported raw materials through Haifa. Cotton seeds are not subject to customs dues. Such goods can remain in the Customs four days only, after which
- 20 100 mils is payable per ton per day. I received P/3 on Friday at 1 p.m. the day it was sent. The Notice was sent by Advocate Shaoni. I handed the Notice to Mr. Lebel, and instructed him to clear the matter. Mr. Lebel's reply was that Mr. Shaoni was ill.

In the
District Court,
Tel-Aviv.

No. 4.
Record.
Defendant's
Evidence.
Israel Margolis's
Examination
—continued.

- CROSS-EXAMINED: The first time I heard of Plaintiff's name as a vendor was on 23rd/24th March, 1942, from a telegram which I received from him. I did not reply, because he is not my party. Mr. Schlick also informd me by letter that the vendor was Plaintiff, P/9. I do not know this man (Emerent). I do not remember that he spoke to me about this contract. When I was refused an import licence, I was not interested in
- 30 this business because it had become the monopoly of the Government.

Cross-
examination.

DEFENDANT'S ADVOCATE: I have two more witnesses.

Adjourned to hear the witnesses and complete the pleading.

2nd December, 1943.

(Sgd.) I. MANY,
Judge.

7th March, 1944. Parties advocates appear. At their request, hearing adjourned to 9th March, 1944.

(Sgd.) I. MANY,
Judge.

40 ARIEH WEINBERG, SWORN.

I am in charge of the documents and credits section of the Anglo-Palestine Bank, Tel-Aviv. Between the 1st March, 1942, and 31st August,

Arieh
Weinberg's
Examination.

In the
District Court,
Tel-Aviv.

No. 4.
Record.
Defendant's
Evidence.
Arieh
Weinberg's
Examination.
—continued.

Cross-
examination.
Re-examination.

1942, an import licence was necessary in order to open a credit account in Egypt. We had instructions in this behalf from the Controller of Foreign Exchange. Our bank did not open a credit account where there was no import licence: and I think all the banks followed this procedure. There was a circular letter, at the end of 1939, from the Controller of Foreign Exchange. There were other circulars: all were in such terms that we could not grant a credit without an import licence. On an L.P.12,000 credit, expenses of the bank are about L.P.150; and the total expenses up to L.P.250.

CROSS-EXAMINED: I saw no such circular letter in Barclays Bank. 10

RE-EXAMINED: We can open a credit for Barclays Bank.

DEFENDANT'S ADVOCATE: This is my defence. I plead lack of privity. Art. 1461 of the Mejelleh. C.A.190/37, L.11, 142. "Someone from Sudan," not specified. Plaintiff never wrote to us that he accepted the contract. A contract may not be transferred without consent of the parties. Chitty, 966. Halsbury 7, 302. I say the contract was not complete and binding because there was a stipulation about import and export licences. Refers to D/5. Mr. Schlick, in a telegram, calls for confirmation of the purchase, but we did not confirm. On the contrary we said an import licence was refused us. As to the question of the licence. The only 20 competent institution to grant licences was the Director of Customs at Haifa, until 24th December, 1943. War Legislation 11, p. 15. On 24th December, 1943, an amendment appeared at p. 1946 of *Palestine Gazette*, 1239. It was proved from the evidence that Defendant applied to the Director of Customs at Haifa on 6th March, 1942, and 15th March, 1942, and that he received a negative reply on 24th March, 1942, (D/7). It follows that Defendant did what he was bound to do. Plaintiff applied to the Food Controller instead of the Director of Customs. Refers to P/2. The question is whether P/2 constitutes an import licence. Moreover, my client did not see P/2. Mr. Nahari should not be believed in this regard. He lied 30 because the goods were sent in the name of Shemen. Refers to evidence of Barclays Bank employee. My client was not bound to endanger 12,00 on an assurance of a recommendation in P/2. It was not proved that a licence was given in connection with these goods. Had Plaintiff been interested to furnish me with a licence, he should have furnished me with an actual one: but he did not do so. In any event, the goods arrived in the name of "Shemen" and not in my name. The licence was, possibly, given in the name of "Shemen." Refers to D/7 and D/8. Refers to the Notice of 30th April, 1942, No. 1190, about the import of cotton seeds. Had my client, in spite of it brought (imported) the goods, there would 40 have been a danger of the goods being confiscated. Refers to form of licence which appeared in *Palestine Gazette*, 1218, p. 954. Plaintiff was not entitled to forward goods before receipt of the import licence. P/8. Plaintiff did not comply with the majority of the conditions of P/8. C.i.f. He sent no documents. The Notarial Notice was of no avail, the documents

having been in Khartoum (*sic*) on 1 May, 1944, and this appears from the evidence of the employee of Barclays Bank, P/2. The documents were received on 14th May, 1943. In a c.i.f. contract I must get documents and not goods. C.i.f. Contracts for ~~Coilon~~ ^{GOITEN} (*sic*), p. 4. The Bill of Lading is to order. The Notarial Notice was sent after sale of goods to "Shemen." Chitty 18, 839. Plaintiff failed to prove the old and new crops dealt with in the contract. The result of the non-receipt by me of the documents together with the goods was a great loss in the form of demurrage. The contract becomes cancelled (extinct) in the event of (illegible).

- 10 Chitty —, 829. At the moment I got no licence, the contract became extinct. The basis of the contract was the obtainment of a licence. Halsbury 7, p. 213. And the moment I received the refusal, I was entitled to cancel the contract. Refers to D/10. There was no waiver of a Notarial Notice, and the time allowed in the Notice was unreasonable. It was received in the afternoon of a Friday and 24 hours only were allowed: the Bank was closed on Saturday. C.A.42/26, Ap.42(2), p. 623. According to the power of attorney produced Mr. Nahari was not empowered to serve a Notarial Notice. Alternatively, the damage could only have been 500 per ton as per evidence of Nahari; that is to say L.P.500 and not 4.900.
- 20 Ownership on 1st September, 1944, was in Shemen Co. Ask that case be dismissed with costs and advocate's fees.

PLAINTIFF'S ADVOCATE:

- There is one point only in this case, namely, whether the letter Defendant received from the Director of Customs released the Defendant from the contract. Rogers Effect and Power ^{is there on} (*sic*) in Contract. A reasonable time must be given. Defendant should have waited from 24th March, 1942, until 22nd April, 1942, because an unreasonable time had not elapsed, particularly since the goods had to be delivered in August. Refers to reply to Notarial Notice, P/4. In that reply, Defendant did not allege lack of
- 30 privity, or that the time of 24 hours were not sufficient. There is an estoppel here. All the arguments are an afterthought. K.B.D., 1916 (1), p. 402-414. Refers to P/2. C.A.58/40, L.7, p. 141. Ask judgment as per statement of claim.

Adjourned for delivery of judgment to 12th March, 1944.

(Sgd.) ISRAEL MANY,
Judge.

No. 5.
Judgment.
(Translation from Hebrew.)
Before

No. 5-
Judgment,
12th March,
1944.

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Their Honours, Judge ISRAEL MANY and Judge P. KORNGRUEN.

This is an action for L.P.4526 damages. The facts in this case are as follows:—

In the
District Court,
Tel-Aviv.

No. 5.
Judgment,
12th March, 1944
—continued.

On 1st March, 1942, a contract (Exhibit P/8) was made between Charles Schlick and the Defendant for the sale of 1,000 tons of Sudanese cotton seeds. In that contract, Mr. Charles Schlick or substitute people from Sudan appears as the Vendor. The contract was later transferred to the present Plaintiff, who replaced the Vendor, in accordance with the contract.

The contract was subject to an export and import licence being obtained.

The Defendant applied to the Director of Customs at Haifa for an import licence, but according to a letter from Director of Customs at Haifa, 10 dated 24th March, 1942 (Exhibit D/7) the application for a licence was refused.

Plaintiff contends that Defendant not having succeeded in obtaining a licence, Plaintiff himself applied directly to the Food Controller, who assured him that a licence would be granted—as per letter of 22nd April, 1942 (Exhibit P/2)—and that a licence was in fact granted on 5th May, 1942.

As a matter of fact, the last date, under the contract, for delivery of the goods was 31st August, 1942, and, according to Plaintiff, the goods were forwarded and arrived in Palestine in two loads at the end of April 20 and commencement of May.

Plaintiff served upon Defendant a Notarial Notice through his agent in this country on 1st May, 1942, in which he called upon Defendant to accept the goods within 24 hours, failing which he would sell the goods to other purchasers and reserved the right to claim from Defendant the differences between the price agreed upon and the price at which the goods would be sold to other purchasers.

In reply to the Notarial Notice Defendant, in his letter of 4th April, 1942, addressed to Charles Schlick at Alexandria, a copy of which was sent to the Plaintiff, replied that the contract between them had become 30 void on the ground that his application for an import licence had been refused by the competent authority. Defendant having refused to receive the goods, Plaintiff sold them to the Shemen Co. at L.E.8.500 per ton; and he now asks that this Court do adjudge Defendant to pay the difference between that price and the price agreed upon in the contract.

The Defendant, in his defence, alleged lack of privity inasmuch as the contract was not made with the present Plaintiff, but with Mr. Charles Schlick. The Court finds that this contention fails, because under the contract Defendant agreed that the seller could be any person whatsoever in Sudan, and that the Plaintiff is from Sudan. Moreover, Defendant 40 accepted him, for in his reply to the Notarial Notice he, as stated, sent a copy to the present Plaintiff.

The main argument of the Defendant is that the contract, the subject-matter of this action, was subject to an import licence being obtained; and that whereas the competent authorities have refused the desired licence, the contract became void.

In the
District Court,
Tel-Aviv.

No. 5.
Judgment,
12th March, 1944
—continued.

Defendant, further, argued that even Plaintiff had not obtained an import licence in his name, but, perhaps, in the name of someone else. At the same time, Defendant argued that the time allowed in the Notarial Notice, *i.e.*, 24 hours, was too short and unreasonable. Defendant went on to argue that the Notarial Notice had been served on Defendant on 10 1st May, 1942, and that the delay allowed therein had expired on 2nd May, 1942, which fell on a Saturday, while the licence, referred to in Clause 7 of the Statement of Claim was given to Plaintiff or his agent on 5th May, 1942, only, that is to say, three days after the expiration of the period in the notarial notice. Defendant denied that the goods forwarded were those intended for the Defendant under the terms of the contract. Sale of the goods was made per c.i.f. conditions, and the Defendant, therefore, denies that Plaintiff had fulfilled the obligations and stipulations in a sale under a c.i.f. contract applicable to him, and that Defendant has never been presented with Bills of Lading, insurance and accounts, as is required in 20 the case of c.i.f. sale.

Having heard the evidence and pleadings of the parties, the Court finds:—

(a) That the Defendant was entitled to consider the contract as null and void when the competent authorities refused to grant an import licence. There is no doubt that at that time the sole authority competent to issue import licences was the Director of Customs at Haifa (See War Legislation, vol. 2, p. 10): and the letter of the Director of Customs dated 24th March, 1942, Exhibit D/7, contains a final refusal to grant Defendant an import licence and a threat to confiscate 30 the goods if the goods were brought without an appropriate licence.

Defendant was not bound to try and obtain a licence after such refusal, particularly as under a Notice dated 30th April, 1942, and published in the *Palestine Gazette*, No. 1,190, import of cotton seeds became the monopoly of Government, and no import licences would be granted for such goods to private individuals (importers). There was therefore no use in an additional effort by Defendant to obtain an import licence.

Upon this ground alone can Plaintiff's action be dismissed, but the Court finds it necessary to express its views on the other points.

40 The Court finds that Plaintiff failed to obtain an import licence in the usual way, and that the licence was not obtained in the name of the Defendant in this case but in that of "Shemen" Company. Further, the goods were not sent in the name of Defendant but in the name of another purchaser, namely, the "Shemen" Company. It

In the
District Court,
Tel-Aviv.

No. 5.
Judgment,
12th March, 1944
—continued.

follows, that the Notarial Notice which was served on Defendant was a simple formality and not an honest offer to Defendant to accept the goods, for the goods had already been sold to the "Shemen" Company, and Plaintiff was not in a position to sell them to Defendant.

Besides, whereas under the contract the sale was c.i.f., Haifa, Defendant was not bound to pay other than against Bills of Lading which Defendant did not have in his possession at the time of the Notice (namely, on 1st May, 1942), but only on 15 May, 1942, as the evidence of the witnesses shows.

Plaintiff, further, tried to prove the extent of damages. In his 10
Statement of Claim he claims L.P.4526, and, according to Plaintiff's advocate, it follows that the goods were sold to Defendant at L.E.9 and not at L.E.12 as stated in the contract, and that they were sold to the Shemen Company at L.E.8.500. It follows that if there was a loss at all it was only L.E.500.

By reason of the foregoing, the Court finds that Plaintiff's case is baseless, and decides to dismiss it.

Plaintiff to pay Defendant's costs on the lower scale and L.P.10 attendance fees.

Delivered this 12th day of March, 1944, in the presence of parties' 20
advocates.

(Sgd) P. KORNGRUEN,
Judge.

(Sgd) ISRAEL MANY,
Judge.

In the
Supreme Court
of Palestine,
sitting as a
Court of
Civil Appeal.

No. 6.
Notice and
Grounds of
Appeal,
28th March,
1944.

No. 6.

Notice and Grounds of Appeal.

IN THE SUPREME COURT OF PALESTINE SITTING AS A COURT OF CIVIL APPEAL.

Notice of Appeal is hereby lodged against the judgment of the District Court, Tel-Aviv, delivered on the 12th day of March, 1944, in Civil Case 30
No. 263/42, upon the grounds hereinafter set out.

Grounds of Appeal.

1. The Court below was wrong in holding that the Respondent was entitled to consider the contract at an end after he had received a refusal of a licence to import cotton seed.

2. The Court below misunderstood the contention of Appellant. Even if, which is not admitted, the Respondent was not bound to take any further steps to secure an import licence, he was bound to wait a reasonable time before repudiating the contract.

In the Supreme Court of Palestine, sitting as a Court of Civil Appeal.

3. The Court below was wrong in holding that no import licence was available for the Respondent.

No. 6. Notice and Grounds of Appeal,

4. The Court below was wrong in holding that after repudiation any further or other Notary Public Notice was necessary than the one sent.

28th March, 1944
—continued.

10 5. The Court below was wrong in holding that the Appellant could not have sold the cotton seed aforesaid to the Respondent and the Respondent was estopped from raising that objection.

6. The Court below was wrong in holding that any documents had to be presented to the Respondent after the repudiation by the Respondent of his agreement.

7. The measure of damages proved by the Appellant was not contradicted by the Respondent. The Appellant sold at a lower price to reduce damage and the damage claimed by the Appellant was the difference between the contract price and the price at which the cotton seed was sold.

20 For all these reasons, it is prayed that the judgment of the Court below may be set aside and judgment be entered for the Appellant with costs and advocate's fees in this Court and in the Court below.

(Sgd.) E. DAVID GOITEIN.

For the Appellant.

Enemy declaration attached.

No. 7.

Judgment.

Before:

Mr. Justice EDWARDS and Mr. Justice FRUMKIN.

No. 7. Judgment, 12th December, 1944.

30 This is an appeal from a judgment of the District Court of Tel-Aviv, dismissing an action brought by the present Appellant for breach of a c.i.f. contract.

On 1st March, 1942, at Alexandria, Egypt, the present Respondent, as buyer, entered into a contract with the seller, Charles Schlick, of Alexandria, "or substitute people from Sudan," under which the buyer undertook to buy one thousand tons of Sudanese cotton seeds at L.P. 12 per ton. The destination was Haifa or any Palestine port, and shipment was to be by sea or rail at seller's option from Port Sudan c.i.f. Palestinian ports or rail station, and delivery was to be during March until 31st August, 1942, from Port Sudan, in one or four lots shipment. The contract was to
40 be subject to the seller's export licence and to the buyer's import licence.

In the
Supreme Court
of Palestine,
sitting as a
Court of
Civil Appeal.

No. 7:
Judgment,
12th December,
1944
—continued.

The Court below dismissed the action principally on the ground that the competent authorities had refused an import licence and that therefore the contract became void. The District Court rejected one of the defences of the present Respondent, namely, that the present Appellant was not the proper person to sue. We think this defence rightly failed, because when one looks at the reverse of the contract one finds the words "Order Mr. Sarkis Izmirilian with recourse Khartoum, Sudan, Charles Schlick." This Mr. Izmirilian was obviously a substitute person from the Sudan, properly appointed in accordance with the contract.

On the 24th March, 1942, the competent authorities wrote a letter 10 refusing to grant a licence, but on the 22nd April, 1942, a licence was offered by the Food Controller, who said that if he were informed of the buyer's name, he would then request the appropriate Import Licensing Authority to issue an import licence. In the letter of the 22nd April, 1942, the Food Controller suggested that the consignment be offered to Messrs. Shemen or Messrs. Itzhar, Ltd.

On the 30th April, 1942 (*Palestine Gazette*, No. 1,190, p. 513), Government notified that oil seeds, including cotton seeds, could not be imported from certain countries, one of which was the Sudan, but that in exceptional circumstances import licences might be issued to private 20 importers. In this connection we might say that there is no difference in law between the present Respondent and Messrs. Shemen or Messrs. Itzhar, Ltd. *vis-a-vis* the Government, because all these three persons would be regarded as private importers.

On the 5th May, 1942, a Notarial Notice was sent on behalf of the Appellant to the Respondent; but it is to be remarked that by letter dated 26th March, 1942, the Respondent had already intimated his intention to repudiate the agreement on the ground that it was impossible to obtain an import licence. In that letter he categorically stated "I wish to be free." On the 5th May, 1942, as we have said, a Notarial Notice was sent 30 to the Respondent, to which he did not reply.

It is argued on behalf of the Respondent that the Notarial Notice gave him only twenty-four hours in which to comply, and that it was given on a Friday afternoon, and the next day being his Sabbath it was impossible for him to take delivery of the goods. To this the Appellant's advocate replies that the Notarial Notice were merely given with the object of affording the Respondent another chance, and it is also said that if he felt that a period of twenty-four hours was insufficient, he could have replied to the Notarial Notice by asking for an extension of time, which he did not do. With this contention we agree. Much has been made by the 40 Respondent's advocate of the fact that there was no evidence that an import licence was in fact ever granted to the Respondent, it being said that the licence would only be granted to Itzhar, Ltd., or Shemen, Ltd., and was in fact later issued to Shemen, Ltd.

We think that there is nothing in this point, because had the Respondent waited until the 31st August, 1942, as he should have done, he might have obtained an import licence. In this connection Mr. Goitein, for the Appellant, has called our attention to the case of *Austin Baldwin & Co. v. Wilfrid Turner & Co., Ltd.*, *English & Empire Digest*, vol. 12, p. 398, No. 3,225, and vol. 36, T.L.R., 769, and to the case of *Andrew Miller and Co., Ltd., v. Taylor & Co., Ltd.* (1916), K.B., pp. 402, 414 and 416, where Swinfen Eady, L. J., held at p. 415 that it was the duty of the Plaintiff to have waited a reasonable time for the purpose of seeing whether it were possible to fulfil their contract, and it was said that if they had waited, the contract could have been carried out as usual without any difficulty. In our view, the parties before us expressly provided for such a period in the contract itself. We therefore consider that the Respondent should have waited till the 30th August, 1942, and we accordingly hold that the Respondent was not justified in breaking the contract.

For the foregoing reasons we set aside the judgment of the District Court and enter judgment for the Plaintiff for damages. As to damages, the cotton seed was sold for L.P.8.500, but the purchase price was L.E.12 per ton. As to the measure of damages, a point was taken on behalf of the Respondent that Izmirilian sold the seeds to Schlick for L.E.9 per ton, and the damages should be assessed on the basis of the difference between that sum and L.E.8.500, but this is a matter between Schlick and Izmirilian, and has nothing to do with the Respondent, who bought the seeds for L.P.12. The damages will be calculated at the difference between L.P.8.500 and L.E.12, multiplied by 1,000, to be paid in Palestine currency. We do not think that the Appellant is entitled to any further sum.

The Respondent must pay the Appellant's costs here and in the Court below. The cost of this appeal will be taxed on the lower scale and will include an advocate's attendance fee at the hearing of L.P.15.

Delivered this 12th day of December, 1944.

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

I agree.

(Sgd.) G. FRUMKIN,
Puisne Judge.

In the
Supreme Court
of Palestine,
sitting as a
Court of
Civil Appeal.
No. 7.
Judgment,
12th December,
1944
—continued.

No. 8.

In the
Supreme Court
of Palestine,
sitting as a
Court of
Civil Appeal.

Order granting Final Leave to Appeal.

Before:

Mr. Justice EDWARDS and Mr. Justice FRUMKIN.

No. 8.
Order granting
Final Leave
to Appeal,
23rd March,
1945.

In the Application of:

ISRAEL MARGOLIS

versus

SARKIS IZMIRILIAN

WHEREAS by order of this Court dated the 29th day of January, 1945, the applicant was granted conditional leave to appeal to His Majesty in Council subject to the following conditions:— 10

1. That the Appellant do enter within six weeks of the date of this order into a bank guarantee from one of the three banks, Barclays, Ottoman or Anglo-Palestine, in a sum of L.P.300 effective for three years or more, for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellant to pay the Respondent's costs of the appeal (as the case may be); 20

2. That the Appellant do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within six weeks of the date of this Order;

3. And it is further ordered that the execution of the judgment of this Court be stayed pending the determination of the appeal by His Majesty in Council, provided Applicant will produce within six weeks a guarantee from one of the three above-mentioned banks in the sum of L.P.3,600, effective for three years, and provided further that if the appeal is not determined within three months before the expiration of the said three years and no new guarantee is furnished within that period, Respondent will be at liberty to proceed with the execution of the said judgment of this Court; 30

AND WHEREAS the Applicant has fulfilled the said conditions in that he has filed a guarantee bond for the sum of L.P.300 issued by Barclays Bank, Tel-Aviv, dated 1st day of March, 1945, as prescribed, and has filed a list of documents which he proposes should constitute the file to be despatched to the Privy Council, and has further filed a bond for the sum of L.P.3,600 as prescribed;

NOW THEREFORE the Court orders, and it is hereby ordered, in pursuance of Article 21 of the Palestine (Appeal to Privy Council) Order-in-Council, that final leave to appeal to His Majesty in Council be granted to Applicant.

Given this 23rd day of March, 1945.

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

(Sgd.) G. FRUMKIN,
Puisne Judge.

In the
Supreme Court
of Palestine,
sitting as a
Court of
Civil Appeal.

No. 8.
Order granting
Final Leave
to Appeal,
23rd March, 1945.
—continued.

10

Exhibits.

Plaintiff's Exhibits.

P/8.

CONTRACT BETWEEN SCHLICK AND MARGOLIS.

Alexandria, 1st March, 1942.

Seller.—Charles Schlick, Alexandria, or substitute people from Sudan.

Buyer.—Israel Margolis, 11, Yehuda Halevy Street, Tel-Aviv, Palestine.

Quantity.—1,000 (thousand) tons of 1,000 Kos. each.

Goods.—Sudanese cotton seeds, new and old crop.

20 *Packing.*—In old bags, suitable for export.

Price.—L.E.12 (twelve Egyptian pounds) per 1,000 Kos., netto/brutto, on basis origin weight, by public Sudanese weigher.

Insurance.—Covered and included in Seller's price, to final destination.

Destination.—To Haifa or any Palestinian port.

Shipment.—By sea or rail at seller's option from Port Sudan, to c.i.f. Palestinian ports or rail station.

Delivery.—During March until 31st August, 1942, from Port Sudan, in one or four lots shipment.

30 *Payment.*—By opened confirmed letter credit through the Barclays Bank, or by remitting the money by telegraph to the same bank, when seller advises having any chance for place on ship to load goods.

Licences.—Subject to seller's export licence, and to buyer's import licence.

Exhibit P/8.
Contract
between Schlick
and Margolis.

Exhibit P/8.
Contract
between Schlick
and Margolis.
—continued.

We herewith undersigned confirm the overmentioned contract and conditions, agreed by both parties.

Endorsement " Order M. Sarkis Izmirilian with recourse Khartoum, Sudan."

(Sgd.) CHARLES SCHLICK.

The Buyer.

The Seller.

(Sgd.) ISRAEL MARGOLIS.
Stamp, 30 Egyptian Mils.

(Sgd.) CHARLES SCHLICK.
L March, 1942.

Exhibit P/6.
Letter from
Margolis to
Ch. Schlick,
15th March,
1942.

P/6.

Letter from Margolis to Ch. Schlick.

10

Tel-Aviv, 15th March, 1942.

Mr. Charles Schlick,
Alexandria.

Dear Sir,

With reference to your letter of 10th March, 1942, and your cable, I beg to inform you that I applied on the 6th March, 1942, to the Palestine Government for a licence to import to Palestine 1,000 tons cotton seed till the 31st August, 1942, and hope to be granted same. As soon as I shall receive the Import Licence, I will open a credit for 100 tons, and after the first consignment of 100 tons will be shipped, I shall open another credit and so on, as per the contract. In case, God forbid, I shall not receive same, I shall cable you, so that your cables and registered letters are of no avail. You are quite aware, that inasmuch as the seller wants to sell the goods, the more I desire to buy it, and it is not a children's play. Please let me know how much would the seller charge the freight and insurance costs till Haifa. There is a hope, that I should be able to receive the cotton seed in Port Sudan by steamer, and perhaps he would prefer to send by rail. No telegrams are to be sent, but only letters. I hope to receive the Import Licence not before the 5th/10th April next. As it is customary, the Import Licence is not being granted earlier than one month after the date of application. 20 30

I am sending you back the contracts of the Egyptian Railways bearing my signature. The delay is due to the fact that I stayed in Haifa for the whole time in order to receive my kopra and cotton seed.

Yours faithfully,

(Sgd.) I. MARGOLIS.

Send you also the received from the Ionian Bank about Veisman to collect the 10/15 pounds.

P/4.**Letter from Defendant's Advocate Lebel to Ch. Schlick.**Tel-Aviv, 4th April, 1942.
Registered.Exhibit P/4.
Letter from
Defendant's
Advocate to
Ch. Schlick,
4th April, 1942Mr. Charles Schlick,
P.O.B. 1648, Alexandria.*Subject:* Contract dated 1st March, 1942, for 1,000 tons of Cotton Seeds.

Dear Sir,

10 In reply to the Notarial Notice served on my client, Mr. Israel Margolis, by Advocate Shaoni of Tel-Aviv on behalf of Mr. Sarkis Izmirilian. I am instructed to inform you once more that my client considers the said contract as cancelled.

It was clearly stipulated in the said contract that the purchase of the goods is "subject to buyer's Import Licence." Such Licence was refused to my client by the competent authorities in their letter dated 24th March, 1942 (copy of which is attached hereto). The contract is therefore to be regarded as cancelled as from the 26th of March, 1942.

20 Moreover, in the *Palestine Official Gazette*, No. 1,190 of the 30th ult., it was officially announced that no import licence will be issued for cotton seeds, and I shall be glad if you will kindly notice that my client regards the whole matter as closed.

Yours faithfully,
(Sgd.) S. LEBEL.Copy to: Mr. Sarkis Izmirilian, Khartoum.
Enclosed copy of letter dated 24th March, 1942.**P/1.**

To: Yiechiel Miedzyrzecki, Tel-Aviv.

30 One yours tenth Haifa apply to Jerusalem giving the following references Warsupply Khartoum wire t 861 or eighteenth March to Warsupply Jerusalem and the reply High Commissioner Jerusalem wire 163 of nineteenth March to Warsupply Khartoum stop please do necessary cable urgent.—IZMIRILIAN.

Exhibit P/1.
Cable from
Izmirilian to
Yiechiel
Miedzyrzecki,
13th April, 1942.**P/2.****Letter by Food Controller to Messrs. Y. Nahari Miedzyrzecki, Tel-Aviv.**Food Controller's Office,
Jerusalem.Exhibit P/2.
Letter from
Food Controller
to Y. Nahari
Miedzyrzecki,
22nd April, 1942.

22nd April, 1942.

Dear Sirs,

40 In reply to your letters of the 14th and 17th April re import licence for 1,000 tons cotton seed now en route to Palestine from the Sudan, I have to inform you that an import licence will be granted to the buyer of this

Exhibit P/2.
Letter from
Food Controller
to Y. Nahari
Miedzyrzecki,
22nd April, 1942.
—continued.

consignment. I suggest the consignment is offered to Messrs. Shemen or Messrs. Izhar, Ltd.

2. Please advise me in due course of the buyer's name in order that the Import Licensing Authority can be requested to issue an import licence.

Yours faithfully,

(Sgd. f.) FOOD CONTROLLER,
(?)

Messrs. Y. Nahari—Miedzyrzecki,
P.O.B., 641, Tel-Aviv.

Exhibit P/3.
Notarial Notice
by Izmirilian
to Margolis,
1st May, 1942

P/3.

10

(Translation from Hebrew.)

**Notarial Notice by Izmirilian to Margolis, sent by Advocate Sha'oni.
Notarial Notice.**

Served through the Government Notary Public of Tel-Aviv, on the
day of April, 1942.

From: Mr. Sarkis Izmirilian, of Khartoum.

To: Mr. Israel Margolis, 11, Yehuda Halevy Street, Tel-Aviv.

1. On 1st March, 1942, you purchased from my client, Mr. Sarkis Izmirilian, who was substituted for Mr. Charles Schlick, of Alexandria, 1,000 tons of Sudanese cotton seeds, at L.P.12 per ton, by virtue of a 20 contract, signed by you, made on 1st March, 1942.

2. I accordingly notify you that there have arrived in Haifa, per s.s. *Fred*, 800 tons of the goods which you have purchased as aforesaid and a further 200 tons were consigned to Haifa per s.s. *Sidpool*, by virtue of export and import licences obtained for the import of the said goods into the country, in accordance with the contract. The import licence is at your disposal.

3. I therefore warn you to clear the goods which have already arrived at the Haifa Port, within 24 hours of the receipt by you of this Notice and to pay the consideration thereof as per the price fixed in the contract. 30 You should also clear and accept the 200 tons consigned per s.s. *Sidpool*, which are due to reach Haifa Port within the next few days, immediately and not later than within 24 hours of the receipt of a notice in this regard, and to pay the price thereof within that delay.

4. I warn you that if you fail to comply with this Notarial Notice and fail to remove the goods received for you at Haifa within the said delay, you shall be liable to Mr. Sarkis Izmirilian for all damages, losses and loss of profit and all legal costs and others, costs of this Notarial Notice and advocate's fees, which have been or shall be caused to Mr. Sarkis Izmirilian in future in connection with your failure to clear and receive the said goods. And my client reserves unto himself the right, in the event of your not clearing the said goods within the said period, to sell the goods to someone else at any price offered therefor: and you shall, of course, be
 10 bound to pay unto my client the differences between the price fixed in the contract and the price at which the goods shall be sold to somebody else together with costs, etc.

Exhibit P/3.
 Notarial Notice
 by Izmirilian
 to Margolis,
 1st May, 1942.
 —continued.

(Sgd.) Dr. A. SHA'ONI,

Attorney for Sarkis Izmirilian.

41, Lilienblum Street, Tel-Aviv.

No. 112, folio 683.

To: Mr. Israel Margolis, Tel-Aviv.

At the request of Mr. Abraham Sha'oni, advocate, I hereby send you this Notarial Notice. Please acknowledge receipt. This 1st day of May,
 20 1942.

(Sgd.) N. BARNETT,

Notary Public, Tel-Aviv.

Served on Mrs. Sara Margolis, who refused to sign:

(Sgd.) ?

1st May, 1942.

P/5.

Letter from Margolis to Ch. Schlick.

Exhibit P/5.
 Letter from
 Margolis to
 Ch. Schlick,
 9th April, 1942.

9th April, 1942.

Registered.

30 Mr. Charles Schlick,
 Alexandria.

Dear Sir,

In reply to your letter of 2nd April 1942, I beg to inform you that I have nothing to add to my letters of 15th, 26th and 30th ult. and to my telegrams to you. In short, there is no permission to import cotton seed

Exhibit P/5.
Letter from
Margolis to
Ch. Schlick,
9th April, 1942
—*continued*.

from Sudan. Should I import same, the goods would be forfeited and a fine imposed upon me. So also your supplier was not at right to effect any action unless he has enquired in Tel-Aviv whether an import licence has been obtained, likewise I also cannot do anything unless I enquire whether the supplier has obtained an export licence. There is a clause in our contract, that the transaction is subject to Import and Export Licences accorded by the Palestine and Sudan Governments respectively. Unless no such licences have been accorded there is no validity to our understanding. And generally, why are you in such a hurry? Our understanding is up to the 31st of August, and now the Palestine Government the decisive factor in our contract, does not consent to the transaction, about which I have already informed you in my letter of 26th March, 1942. 10

Please take note that a certain gentleman has called on me in order to peruse the whole correspondence between the Palestine Government and myself. He called on me as representative of the Sudan supplier. He has been convinced that I have done everything in order to obtain the Import Licence from the Palestine Government, but the latter refused its consent for the import of cotton seed from Sudan. The said representative has also informed accordingly the Sudan firm by cable.

I hope this will be the last letter in this matter.

20

Yours truly,

(Sgd.) I. MARGOLIS.

P/7.

Account by " Shemen Works," Haifa." Shemen " Works,
Haifa.31st May, 1942.
Ref. P.4490/4497.Exhibit P/7.
Account by
" Shemen
Works," Haifa.
31st May, 1942.

Final account S. Iznirilian, Khartoum.

Re. 9,112 bags cotton seed ex s.s. *Fred and Reedpool*—our contract No. 14
of 3rd May, 1942.

10	9,112 Bags Cotton Seed weighing Gross Kgs....	...	...	1,024,210
	Tare at 1.5 Kg. per Bag Kgs. ....	...	...	13,068
			Nett Kgs.	<u>1,010,542</u>
	1,010,542 Kgs. at L.E.8.50	...	...	L.E.8,589,607
	Less Franchise $\frac{1}{2}\%$ ...	...	...	L.E. 42,948
				<u>L.E.8,546,659</u>
	Our payment to Barclays Bank	...	L.E.7,650,000	
	Our debt Note No. 4,490, LP.30.442	...	29,680	
				<u>L.E.7,679,680</u>
				<u>L.E. 866,979</u>
20	Our cheque No. 12814 to Mr. Nahari-Miedzyrzecki ...	...	...	LP.888,654
				LP.700,000
	Balance to your credit	...	...	<u>LP.188,654</u>

(Sgd) ?

E. & O. E.

for PALESTINE OIL INDUSTRY, " SHEMEN," LTD.

Defendant's Exhibits.

D/6.

Letter from Margolis to Department of Customs, Excise and Trade.

Tel-Aviv, 6th March, 1942.

Exhibit D/6.
Letter from
Margolis to
Department of
Customs, Excise
and Trade,
6th March, 1942.Department of Customs,
Excise and Trade,30 Import Licensing Section,
Haifa.

Sir,

I have the honour to forward you enclosed herewith a contract in
triplicate for 1,000 tons of Sudanese cotton seeds purchased by me in Egypt,

Exhibit D/6.
Letter from
Margolis to
Department of
Customs, Excise
and Trade,
6th March, 1942
—continued.

and ask you kindly to grant me an import licence for the said goods, valid until the 31st December, 1942.

I shall be greatly obliged to you, Sir, if the desired licence be issued to me as soon as possible, in view of the fact that the seller is very pressed in money, and should I fail to take delivery at once of some part of the goods purchased, he might sell the entire goods, and having in view that no more cotton seeds is permitted to be exported from Egypt, thus due to lack of an import licence I might remain without any goods.

Thanking you in advance for your kindness,

I beg to remain, Sir,

Yours respectfully,

(Sgd.) I. MARGOLIS.

10

Encl.

i. Application for import licence.

i. Contract in triplicate.

Exhibit D/5.
Cable from
Schlick to
Margolis,
7th March, 1942.

D/5.

Cable from Schlick to Margolis.

To: Israel Margolis, Tel-Aviv.

Have learned cotton seed transactions been affected Palestinian buyers with import licence strongly recommended confirm order opening credit 20 not to loose business telegraph.—Schlick.

Exhibit D/10.
Letter from
Schlick to
Margolis,
10th March,
1942.

D/10.

Letter from Schlick to Margolis.

10th March, 1942.

Mr. Israel Margolis,
Yehuda Halevy Street, 11.
Tel-Aviv.

Dear Mr. Margolis,

Ref. your contract dated 1st inst., for 1,000 tons cotton seed origin Soudan, subject your import licence:—

30

I beg to confirm again your above contract and I cannot take in consideration your cable of 4th inst. informing me that you don't obtained import licence; this is impossible, as I am assured here that import licence for cotton seeds are easily allowed; but you probably have not applied

for an import licence and so you are always responsible to draw that goods without any delay; as from other part other people have obtained such import licences, and I obtained my export licence from Sudan to Palestine for the overmentioned 1,000 tons I telegraph again to you on 7th inst., asking you to take the goods and open credit immediately as goods shall be shipped soonly and you are responsible for any delay. Now if you really had a REFUSAL from your licence authorities in connection of your demand for 1,000 tons seeds then please send it to me, that letter to show it to my seller in Sudan, on which document only seller agrees to cancel the contract signed between us. Besides that, my seller, takes responsibility to obtain the above licence so you cannot have any arguments to refuse goods. Please hurry to open the credit. I hope you understand your responsibility in signing such contract, with me, and if you have another reason in mind, you have no right to cancel your contract. Please cable on receipt of that letter.

Exhibit D/10.
Letter from
Schlick to
Margolis,
10th March,
1942
—continued.

Ionian Bank.—Has received the documents of s.s. *Halibjord*, which credit in Mombass has not been realised and sent against documents to bank here; the bank telephoned to me and ask that you send the balance of money, having paid only a margin of 50 per cent. please telegraph to the bank directly.

Your faithfully,

(Sgd.) CHARLES SCHLICK.

D/7.

Letter from Department of Customs, Excise and Trade to Margolis.

Government of Palestine,
Department of Customs, Excise and Trade,
Import Licensing Section.

Haifa, 24th March, 1942

Ref. : TA/209.

30 Mr. Israel Margolis,
11, Yehuda Street, Tel Aviv.

Sir,

With reference to your application dated 15th March, 1942, for a licence to import cotton seeds from Sudan, I regret to inform you that the licence for which you ask cannot be granted.

I have the honour to be, Sir,

Your obedient servant,

(Sgd.) ?

Director.

40 *Note.*—If the goods referred to above arrive in Palestine they will be forfeited.

Exhibit D/7.
Letter from
Department of
Customs, Excise
and Trade to
Margolis,
24th March,
1942.

Exhibit D/8.
Cable from
Margolis to
Schlick,
26th March,
1942.

D/8.

Cable from Margolis to Schlick.

Schlick 7 Saidpremier
Alexandria.

Yesterday Government advised by radio all importers no import licence till registration cancelling order cotton seed writing.—MARGOLIS.

Exhibit D/9.
Letter from
Margolis to
Schlick,
26th March,
1942.

D/9.

Letter from Margolis to Schlick.

26th March, 1942.

Registered. **10**

Mr. Charles Schlick,
Alexandria.

Dear Sir,

Enclosed herewith please find a copy of the telegram which I have sent you to-day. You must take note that a telegram passes by censor and is deemed as an official document.

I have called several times at Jerusalem and Haifa concerning the import licence and their reply was: We shall see, we cannot tell you yes or not. As to your telegrams stating that there is a possibility for shipment because a steamer is available. I have called at Jerusalem once again, **20** and finally all importers were advised by radio yesterday that no import licence will be issued, until investigations will prove that the respective importer is relevant and authorised to do business in war time. Goods imported illegally (as per your telegram) are forfeited and one may also be put in prison for such deed. I have informed you that I should not be waited for and that as soon as I should be permitted I would let you know. At present, however, I wish to be free, as I am unaware whether I should be included in the list of importers at all.

Yours faithfully,

(No signature.)

30

P.S.—Should my above statement be inadequate for you, I shall forward you the *Palestine Gazette* of yesterday where the Regulation was published, in case it would be required to show to your exporters, in order to avoid any complaints against you.

Exhibit D/9.
Letter from
Margolis to
Schlick,
26th March, 1942
—continued.

I have just now received the refusal from the Import Licensing Section, copy of which is enclosed herewith.

P/9.

Letter from Schlick to Margolis.

Exhibit P/9.
Letter from
Schlick to
Margolis,
3rd April, 1942

3rd April, 1942.

10 Charles Schlick,
Alexandria.

Mr. Israel Margolis,
Tel-Aviv.

Dear Sir,

1,000 tons cotton seed, your contract of 1st March, 1942.

In continuation of my enclosed letter dated yesterday, I just received your two letters dated 26th March, registered and 30th March, simple together with enclosures which reached me this morning and contents not very convincing nor interesting. As you know and I informed you before
20 your contract has been transferred with recourse to seller Mr. Sarkis Izmirilian, Khartoum, with whom to have to communicate direct, having acted in that affair as broker, and explain to you by telegrams and letters to you. So it is useless that you call to me again, because all the file of your correspondence, telegrams, etc. . . . were remitted to Khartoum, so please you know now what you have to do, honour your signature.

Kindly allow me to refer you to your lines regarding your mentioning to " a telegram passes by censor and is deemed as an official document " here I am afraid I fail to understand, of its being an official document just because it has been passed through the censor, as far as I am concerned

Exhibit P/9.
Letter from
Schlick to
Margolis,
3rd April, 1942.
—*continued.*

a business telegram whether censor or no censor is always an official document. Perhaps you are referring to your telegram of the 26th instant, that had your statement not been true you would not dared to telegraph me an untrue information. But experience showed me that you have on other occasions made such untrue statements and when you were asked to prove same you have failed to do so.

Apart from the above, you have posted me a copy of your "supposed to be an application" with a date which does not correspond with that of the above, and last but not least the copies of your authorities reply dated the 24th March, in which they are referring to your application 15th March, 10 in brief you have been deliberately trying to put me on wrong footing in front of my exporter, who is well aware of the real position through his authorities.

I am afraid there remains nothing for me to do in this case, but according to Mr. Sarkis Izmirilian's request to post them all your letters and telegrams after those I sent him till now, who I think is in a better position than I to take the necessary steps through the War Supply Department if need be.

In closing I will inform you that if you do not respect your contract, I am afraid the consequences are much more serious than that are you 20 expecting.

Believe me, Sir,

Yours very faithfully,

(Sgd.) CHARLES SCHLICK.

D/1.

Bill of Lading No. 3, Port Sudan.

Exhibit D/1.
Bill of Lading,
15th April, 1942.

ELLERMAN LINES OF STEAMERS, HALL LINE, CITY LINE.

Agents:

Cotts, Darke & Co., Ltd.,

Khartoum, Port Sudan, Suakim, etc.,

and at

Winchester House, Old Broad Street, London, E.C.2.

Voyage Clause.

10 The ships of the Line are accustomed to call at other ports ^{other} than those mentioned in this Bill of Lading, and it is not practicable always to call at the usual or customary ports or in any calls made to follow the geographical or any sequence. It is therefore agreed that calls at these ports once or oftener made in any order are within the steamers voyage.

The steamer may dry dock or adjust compasses with the whole or any part of the cargo shipped under this Bill of Lading.

	Y A	1,474	Bags Sakel Cottonseed	...	...	...	121,325	Kilos
	SI							
	TEL-AVIV	1,508	Bags Sakel Cottonseed	...	...	...	179,000	Kilos
20	Y S V	1,723	Bags Sakel Cottonseed	...	...	...	225,368	Kilos
	Y A	1,904	Bags Sakel Cottonseed	...	...	...	250,317	Kilos
		<u>6,609</u>	<u>Bags Sakel Cottonseed</u>	<u>...</u>	<u>...</u>	<u>...</u>	<u>776,010</u>	<u>Kilos</u>

“ Mostly second hand bags, several torn and repaired.”

Gross weight said to be,

Freight prepaid. No refund if ship lost.

Port of destination may be altered by Government control and must be accepted as completion of this contract.

(Stamp) Barclays Bank D.C. & O.

Khartoum.

30

B/C 5081.

The above goods to be forwarded from or trans-shipped at
(or elsewhere.....)

Exhibit D/1.
Bill of Lading,
15th April, 1942
—continued.

Bill of Lading No. 3, Port Sudan.

Port Sudan—Homewards.

B/L No. 3.

Shipped in good order and condition by Sarkis Izmirilian on board the British steam ship *Fred* lying in the Port of Port Sudan for carriage to the Port of Haifa via Cape of Hope at Owner's option, but with liberty either before or after proceeding to that Port, to proceed to, and stay at any port or ports in any rotation, backwards or forwards (although in a contrary direction to, or out of, or beyond, the route of the voyage) once or oftener, for any purposes whatsoever, and all such ports, places and sailings shall be deemed included within the intended voyage; to sail with or without pilots, and to deviate for the purpose of saving life and or property; and to tow and assist vessels in all situations. 10

Six thousand six hundred and nine packages of merchandise.

The said goods being marked and numbered as on the margin are to be delivered, subject to the exceptions, terms and conditions of this Bill of Lading, in the like good order and condition, from the ship's tackles (where the ship's responsibility shall cease), at the aforesaid Port of Haifa or so near thereto as she may safely get, unto Order or Order or to his or their Assigns. 20

Dated at Port Sudan, 15th April, 1942.

(Sgd.) ?

For Mitchel Cotts and Co., (?) Ltd.,
Shipping Dept.

Exhibit D/2.
Bill of Lading,
25th April, 1942.

D/2.

Bill of Lading, Port Sudan.

SOUTH AND EAST AFRICAN ROYAL MAIL SERVICE.

K.Haifa/3.

THE UNION-CASTLE MAIL STEAMSHIP COMPANY, LTD.
(Registered in England.) 30

Head offices: 3, Fenchurch Street, London, E.C.3.

This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act, 1924, and of the Rules Scheduled thereto and shall be construed accordingly, and nothing herein contained shall be deemed to constitute or be construed as a surrender in whole or in part by the Carriers of all or any of their rights and immunities or as an increase

of any of their responsibilities and liabilities as defined by the said Act and Rules. The rights and immunities as set forth in Article IV of the said Rules shall extend and apply to loss or detention of or damages to goods in the actual custody of the Carriers or their servants prior to the loading on and subsequent to the discharge from the ship, and the exceptions and stipulations herein contained insofar as they relate or may be applicable to the custody and care and handling of the goods prior to the loading and subsequent to the discharge from the ship shall, by virtue of Article VII of the said Rules be of full force and binding between the Carriers and the holder of this Bill of Lading. Neither the Carriers nor the ship shall under any circumstances be liable for any loss or detention of or damage to goods, howsoever caused, arising at a time when the goods are not in the actual custody of the Carriers or their servants.

Exhibit D/2.
Bill of Lading,
25th April, 1942
—continued.

10

Y A —161 bags sakel cottonseed,
said to weigh 13,250 kilos.

S L
TEL-AVIV—187 bags sakel cottonseed,
said to weigh 23,534 kilos.

20

A K —2,155 bags American cottonseed,
said to weigh 189,209 kilos.

Freight prepaid. No refund if ship lost. Port of destination may be altered by Government Control and must be accepted as completion of this contract.

(Stamp) Barclays Bank (D. C. & O.),
Khartoum.

B/C 5081.

Port Sudan.

Shipped in good order and condition by Sarkis Izmirilian on board the steamship *Reedpool*

30 whereof is Master, now lying at or off Port Sudan,

Two thousand five hundred and three bags, being marked and numbered as per margin, to be delivered subject to the exceptions and conditions enumerated below in like good order and condition at or off Haifa with the liberty to ship, land, trans-ship or land and reshipe either direct or by craft or otherwise and/or to forward to destination by this or any other steamer or steamers, rail, craft or other conveyance, either direct or via any ports or places in any order at the Company's expense (except as hereinafter mentioned) but at Merchant's risk throughout UNTO ORDER or to his or their Assigns.

40

Exhibit D/2.
Bill of Lading,
25th April, 1942
—continued.

Freight as per margin, with Primage (if any) and Charges (if any) to be paid in Khartoum before delivery; the ship retaining a lien on the goods for all Freight, Primage and Charges until paid; average as per York-Antwerp rules, 1924, and charges as accustomed.

IN WITNESS whereof the Master or Agent of the said vessel hath affirmed the TWO Bills of Lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Port Sudan, this Twenty-fifth day of April, 1942.

The following are the exceptions and conditions referred to above:—

1. The Company..... **10**

No. 11.

Extract from the " Palestine Gazette," No. 1190.

Exhibit 11.
Extract from
the " Palestine
Gazette,"
30th April, 1942.

NOTICE TO IMPORTERS.

LIMITATION OF IMPORTS.

It is notified for information that the commodities set out in the First Schedule hereto are being imported on Government account and that no import licences in respect of such commodities will be issued to private importers.

2. It is further notified that the importation of the commodities set out in the Second Schedule hereto which originate from overseas is **20** prohibited.

In exceptional circumstances Import Licences may be issued in respect of such commodities which are the produce or manufacture of one of the following countries:—

Egypt, Sudan, Arabia, Iraq, Turkey, Syria, Lebanon, Cyprus, Kenya, Uganda, other East African Possessions.

3. The attention of the public is drawn to section 5 (1) of the Import, Export Customs Powers (Defence) Ordinance, No. 51 of 1939, whereby all goods imported into Palestine without licence shall be deemed to be prohibited goods and shall be forfeited. **30**

FIRST SCHEDULE.

List of Commodities which are being imported on Government account and in respect of which no import licences will be issued to Importers:—

CLASS I.—FOOD, DRINK AND TOBACCO.

10	Wheat Wheat Flour Maize Barley Rice Sugar Tea Malt	Cocoa Beans Olive Oil Coconut Oil Palm Oil Other edible oils excluding cottons seed oil (except from Egypt, Syria and the Lebanon and Iraq). Oil seeds including cotton seed, seed potatoes (except from Syria and the Lebanon, Iraq and Egypt). Hops.
----	---	--

Exhibit 11.
Extract from
the "Palestine
Gazette,"
30th April, 1942
—continued.

D/3.

**Form of Barclays Bank, Khartoum, to Barclays Bank, Haifa,
Serial No. 5081.**

Exhibit D/3.
Form of
Barclays Bank,
Khartoum, to
Barclays Bank,
Haifa,
1st May, 1942.

Remitting branch, Khartoum.
Date: 1st May, 1942.
Remitter's letter d/d 1st May, 1942.
Remitter or Assignor: S. Izmirilian, Khartoum.

Serial No. 5081.
Remitter's No. 6/42.

20 Drawee "Shemen."

Fo.
Fo.

Address: Haifa.

Presented on

Drawer advised on 11 May, 1942.

Sent for collection to on
Fo.

(Stamp) Barclays Bank (D. C. & O.),
Haifa.

B/C. No. 6/12700.

Documents attached 2/2 invoice 2 2/3 B/L. I/P.

30 Unpaid Advices to Remitters

Unpaid Advices to Agent

Instructions.

Protest

Without protest

D/payment

D/acceptance

Refer to Yiechiel Nahari Miedzyrzecki,

P.O.B. OX 641,

Tel-Aviv.

40 Checked by

Checked by

Exhibit D/3.
Form of
Barclays Bank,
Khartoum, to
Barclays Bank,
Haifa,
1st May, 1942
—continued.

Remarks.

(Cr. in L.E. through our Jerusalem branch by cable (see below)).

Please credit us with proceeds in L.E. through Jerusalem branch under advice to us by cable stating the exact amount credited.

If unpaid, please advise us by cable.

Receiving Branch No.	Date	
Diary Fo.		
Tenor		
Due date		
Extended to		10
" "		
" "		
Protested on		
Protest advised		
Acceptance advised		
Steamer <i>Fred, Reedpool.</i>		
Arrived on		
Warehoused on		
Warehoused at		
Warehousing Adv.	Extension Adv.	20
Extention without advance in Fo.		
Amount paid on a/c		
Date	Amount	Local Equivalent
.....	
.....	.....	or
.....	
		Register figures
		L.....
		L.....
		L.7,846.154
		30

Amount of bill	
at L.E.7,650.	
Commission	
Postages 7,846,154.	
Interest 19,650.	
Remitters	
Commission 7,865.814	
Total	40
Encashed on	

Debit.

Protest L.
Telph. charges
Expenses at

Exhibit D/3.
Form of
Barclays Bank,
Khartoum, to
Barclays Bank,
Haifa,
L. _____
1st May, 1942
_____—*continued.*

Exhibit D.3.

(By Court.)

D/4.

**Letter by Manager of Barclays Bank, Haifa, to
Manager of Tel Aviv Branch.**

10

Barclays Bank (D. C. & O.),
Haifa (Palestine),
30th November, 1943.
Express.

Exhibit D/4.
Letter from
Manager,
Barclays Bank,
Haifa, to Tel
Aviv Branch,
30th November,
1943.

The Manager,
Tel-Aviv Branch.
Dear Sir,

Our ref. B/C No. 12700.

We enclose original and translation of a Witness Summons issued by
20 the District Court, Tel-Aviv, which was served on us this morning.

We understand that the goods referred to therein are the goods in respect of which Khartoum Branch sent us shipping documents for collection on the 1st May, 1942. We enclose the relative translation slip from which you will see that the documents were received here on the 11th May, 1942, and that the drawee was advised the same day. Payment of the amount involved (L.E.7,650=L.P.7,865.814) was made on 14th May, 1942, and we accounted to Khartoum the following day.

This is the only information we have the only document in our possession and we shall be obliged if you will arrange for one of your clerks to
30 appear at the Court at the appointed time and give evidence in accordance with the foregoing. When submitting your claim for expenses perhaps you will collect for us 200 mils cost of our to-day's trunk call.

Thanking you,

Yours faithfully,

(Sgd.) ? *Manager.*

A.
Licensing of
Import Orders,
1939,
11th December,
1939.
No. 51 of 1939.

A.

Licensing of Import Orders, 1939.

**IMPORT, EXPORT AND CUSTOMS POWERS (DEFENCE)
ORDINANCE, 1939.**

Order by the High Commissioner under Section 3.³

In exercise of the powers vested in him by section 3 of the Import, Export and Customs Powers (Defence) Ordinance, 1939, the High Commissioner is pleased to order and it is hereby ordered as follows:—

1. This Order may be cited as the Licensing of Imports Order, 1939.

2. **All goods are, subject to the provisions of this Order, prohibited to be imported into Palestine.**¹ 10

3. Nothing in the foregoing provisions of this Order shall be taken to prohibit—

(a) the importation of any goods under the authority of a licence granted by the Director of Customs, Excise and Trade, **or any competent authority,**² provided that all conditions attaching to the said licence are complied with; or

(b) the importation of any goods which are proved to the satisfaction of the Director of Customs, Excise and Trade **or any competent authority,**² to have been shipped or despatched to Palestine **before the coming into force of this Order.** 20

4. If, for the purpose of obtaining any such licence for the importation of any goods as is referred to in the next preceding paragraph of this Order, any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding L.P.500, or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

5.—(1) **The Director or any competent authority may, at any time, without assigning any reason for so doing, revoke or suspend, or vary the conditions or period of validity of, any licence or class of licence granted under this Order, in respect of all or any of the goods or classes of goods the importation into Palestine of which is authorised by such licence or class of licence.**⁴ 30

¹ See P.G., No. 1031 of 18.7.40. Supplement No. 2, p. 964.

² See P.G., No. 1239 of 24.12.42. Supplement No. 2, p. 1946.

³ See P.G., No. 968 of 11.12.39. Supplement No. 2, p. 1425.

⁴ See P.G., No. 1248 of 4.2.43. Supplement No. 2, p. 124.

(2) Any such revocation, suspension or variation as aforesaid may be effected by the Director or any competent authority by notice published in the "Gazette," and on such publication being made all persons to whom such notice applies shall be deemed to have notice thereof and shall comply with any condition or direction imposed or given in connection with such revocation, suspension or variation.¹

5a. All licences granted prior to the 1st November, 1941, by the director of Customs, Excise and Trade for the importation into Palestine of any goods which were not exported from the country of origin prior to the 1st of November, 1942, are hereby revoked and the importation of all such goods into Palestine is prohibited.²

6. The Director of Customs, Excise and Trade or any Competent Authority³ shall have power to refuse to issue any licence for the importation of any goods into Palestine without assigning any reason for such refusal.

11th December, 1939.

B.

Extract from the "Palestine Gazette," No. 968, Supplement No. 2 (Licensing of Import Orders, 1939).

20 IMPORT, EXPORT AND CUSTOMS POWERS (DEFENCE) ORDINANCE, 1939.

Order by the High Commissioner under Section 3.

IN EXERCISE of the powers vested in him by Section 3 of the Import, Export and Customs Powers (Defence) Ordinance, 1939, the High Commissioner is pleased to order and it is hereby ordered as follows:—

1. This Order may be cited as the Licensing of Imports Order, 1939.
2. The goods specified in the Schedule hereto are, subject to the provisions of this Order, prohibited to be imported into Palestine.
3. Nothing in the foregoing provisions of this Order shall be taken
30 to prohibit—
 - (a) the importation of any goods under the authority of a licence

¹ See P.G., No. 1248 of 4.2.43. Supplement No. 2, p. 124.

² See P.G., No. 1233 of 12.11.42. Supplement No. 2, p. 1733.

³ See P.G., No. 1239 of 24.12.42. Supplement No. 2, p. 1946.

A.
Licensing of
Import Orders,
1939,
11th December,
1939.
No. 51 of 1939
—continued.

B.
Extract from the
"Palestine
Gazette,"
No. 968,
Supplement
No. 2
(Licensing of
Import Orders,
1939),
11th December,
1939.
No. 51 of 1939.

B.
 Extract from the
 " Palestine
 Gazette,"
 No. 968,
 Supplement
 No. 2
 (Licensing of
 Import Orders,
 1939),
 11th December,
 1939.
 No. 51 of 1939.
 —continued.

granted by the Director of Customs, Excise and Trade, provided that all conditions attaching to the said licence are complied with; or

(b) the importation of any goods which are proved to the satisfaction of the Director of Customs, Excise and Trade to have been shipped or despatched to Palestine before the coming into force of this Order.

4. If, for the purpose of obtaining any such licence for the importation of any goods as is referred to in the next preceding paragraph of this Order, any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding L.P.500, or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment. 10

5. Any licence granted by the Director of Customs, Excise and Trade for the importation into Palestine of any goods, may be revoked at any time by the Director of Customs, Excise and Trade.

6. The Director of Customs, Excise and Trade shall have power to refuse to issue any licence for the importation of any goods into Palestine without assigning any reason for such refusal. 20

7. The provisions of section 214 of the Customs Ordinance shall apply to the articles, the importation of which into Palestine is prohibited or restricted by this Order.

SCHEDULE.

[List of Goods appears in Schedule (not printed)]

C.

Extract from the " Palestine Gazette," No. 1,031, Supplement No. 2

**IMPORT, EXPORT AND CUSTOMS POWERS (DEFENCE)
ORDINANCE, 1939.**

Order by the High Commissioner under Section 3.

IN EXERCISE of the powers vested in him by section 3 of the Import, Export and Customs Powers (Defence) Ordinance, 1939, the High Commissioner is pleased to order and it is hereby ordered as follows:--

1. This Order may be cited as the Licensing of Imports (Amendment) Order (No. 2), 1940, and shall be read as one with the Licensing of Imports Order, 1939, hereinafter referred to as the principal Order.

10 2. Paragraph 2 of the principal Order is hereby revoked and the following paragraph substituted therefor:—

“ 2. All goods are, subject to the provisions of this Order, prohibited to be imported into Palestine.”

3. The Schedule to the principal Order, as amended by the Licensing of Imports (Amendment) Order, 1939, and the Licensing of Imports (Amendment) Order, 1940, is hereby revoked.

By His Excellency's Command,

J. S. MACPHERSON,

Chief Secretary.

10th July, 1940.

C.

Extract from the
" Palestine
Gazette,"
No. 1031,
Supplement
No. 2,
18th July, 1940.
No. 51 of 1939.

Replacement of
paragraph 2 of
the principal
Order.

Revocation of
the Schedule to
the principal
Order.

D.

D.

Extract from the
" Palestine
Gazette,"
No. 1239,
Supplement
No. 2,
24th December,
1942.
No. 51 of 1939.

Extract from the " Palestine Gazette," No. 1,239, Supplement No. 2.

IMPORT, EXPORT AND CUSTOMS POWERS (DEFENCE)

ORDINANCE, 1939.

Order by the High Commissioner under Section 3.

IN EXERCISE of the powers vested in him by section 3 of the Import, Export and Customs Powers (Defence) Ordinance, 1939, the High Commissioner is pleased to order and it is hereby ordered as follows:—

Citation.

1. This Order may be cited as the Licensing of Imports (Amendment) Order (No. 3), 1942, and shall be read as one with the Licensing of Imports Order, 1939, hereinafter referred to as the principal Order. 10

Gaz. 11.12.39.
p. 1425.
Amendment of
paragraphs 3,
5 and 6 of
the principal
Order.

2. Paragraphs 3, 5 and 6 of the principal Order shall be amended by the insertion therein immediately after the words " Director of Customs, Excise and Trade," wherever they appear therein, of the words " or any Competent Authority."

Commencement.

3. This Order shall come into force on the first day of January, 1943.

By His Excellency's Command,

J. S. MACPHERSON,

Chief Secretary.

23rd December, 1942.

In the Privy Council.

No. 80 of 1945

ON APPEAL FROM THE SUPREME COURT
OF PALESTINE SITTING AS A COURT
OF CIVIL APPEAL AT JERUSALEM.

BETWEEN

ISRAEL MARGOLIS

Appellant-Defendant

AND

SARKIS IZMIRILIAN

Respondent-Plaintiff

RECORD OF PROCEEDINGS

WALTONS & CO.,

101, Leadenhall Street,

London, E.C.3.

Appellant's Solicitor.

BARTLETT & GLUCKSTEIN,

199, Piccadilly,

London, W.1.

Respondent's Solicitor