

ANNOTATED LAWS OF PALESTINE

A STATEMENT OF THE STATUTE LAW
OF PALESTINE IN ALPHABETICAL ORDER
WITH CROSS-REFERENCES, ANNOTATIONS
TO DECIDED CASES, NOTES ON PRACTICE, ETC.

BY

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III

BUSINESS NAMES/CARRIAGE BY SEA

and

CHARITABLE TRUSTS
by

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CINEMATOGRAPH FILMS
by

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1945
RBK v.3

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1945

In the Act the above provision applies only to natural-born British subjects.

Source: Sec. 22 of the Act.

Firms and persons to be registered.

3. Subject to the provisions of this Ordinance:—

(a) Every firm having a place of business in Palestine and carrying on business under a business name which does not consist of the true names of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true forenames of individual partners or initials of such forenames;

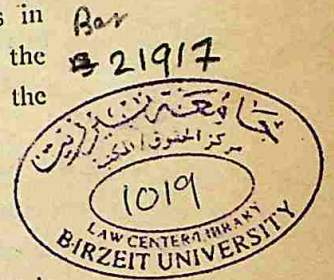
(b) Every individual having a place of business in Palestine and carrying on business under a business name which does not consist of his true surname without any addition other than his true forenames or the initials thereof;

(c) Every individual or firm having a place of business in Palestine who, or a member of which, has either before or after the commencement of this Ordinance changed his name, except in the case of a woman in consequence of marriage;

shall be registered in the manner directed by this Ordinance:

Provided that:—

- (i) where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary; and
- (ii) where two or more individual partners have the same surname, the addition of an 's' at the end of that surname shall not of itself render registration necessary; and
- (iii) where the business is carried on by a trustee in bankruptcy or the Official Receiver or a receiver or manager appointed by the Court, registration shall not be necessary; and
- (iv) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of



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itself to be deemed carrying on a business whether or not the owners share any profits arising from the sale thereof.

Source: Sec. 1 of the Act.

"or the Official Receiver": These words do not appear in the Act.

"Joint tenants", "tenants in common": These words have a special meaning in English law and are of limited application in Palestine.

Registration of Firm: Notwithstanding the *dictum* in C.A.D.C., Ha. 13/45⁽¹⁾ partnership would appear to require registration. See the annotations to that case.

Registration by
nominee, etc.

4. Where a firm, individual or corporation having a place of business within Palestine carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons or another corporation, or acts as general agent for any foreign firm, the first mentioned firm, individual or corporation shall be registered in manner provided by this Ordinance, and in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the Schedule to this Ordinance:

Provided that where the business is carried on by a trustee in bankruptcy or the Official Receiver or a receiver or manager appointed by the Court, registration under this section shall not be necessary.

Source: Sec. 2 of the Act.

"or the Official Receiver": See this note following sec. 3.

Foreign firm: See definition in sec. 2.

Manner and
particulars of
registration.

5. (1) Every firm or person required under this Ordinance to be registered shall furnish to the Registrar a statement in writing in the prescribed form containing the following particulars:—

- (a) The business name;
- (b) The general nature of the business;
- (c) The principal place of the business;

(d) Where the registration to be effected is that of a firm, the present name, any former name, the nationality and if that nationality is not the nationality of origin, the nationality of origin,

⁽¹⁾ 1945, S.C.D.C. 331.

the usual residence, the other business occupation, if any, and the age, and, in the case of a woman the status as regards marriage of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner;

(e) Where the registration to be effected is that of an individual, the present name, any former name, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, the other business occupation, if any, and the age, and in the case of a woman the status as regards marriage, of such individual;

(f) Where the registration to be effected is that of a corporation, its corporate name and registered or principal office;

(g) If the business is commenced after the commencement of this Ordinance, the date of the commencement of the business.

(2) Where a business is carried on under two or more business names, each of those business names must be stated.

Source: Sec. 3 of the Act. The provisions regarding registration differ in the Act. In sub-sec. (1) (d) and (e) of the Act no mention is made of age or status as regards marriage.

Registrar: See sec. 17.

6. The statement required for the purpose of registration must in the case of an individual be signed by him, and in the case of a corporation by a director or secretary thereof, and in the case of a firm either by all the individuals who are partners and by a director or secretary of each corporation which is a partner or by some individual who is a partner, or a director or the secretary of some corporation which is a partner, and in either of the last two cases must be verified by a statutory declaration made by the signatory:

Provided that no such statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than as aforesaid is a partner, shall be evidence for or against any such other person in respect of his liability or non-liability as a partner, and that the court may, on application of any

Statement to be signed by persons registering.

person alleged or claiming to be a partner, direct the rectification of the register and decide any question arising under this section.

Source: Sec. 4 of the Act.

"Court": See sec. 2 for a definition of the term.

Time for
registration.

7. (1) The particulars required to be furnished under this Ordinance shall be furnished within fourteen days after the firm or person commences business, or the business in respect of which registration is required, as the case may be:

Provided that if such firm or person has carried on such business before the commencement of this Ordinance or commences such business within two months thereafter, the statement of particulars shall be furnished after the expiration of two months and before the expiration of three months from the commencement of this Ordinance, and that if at the expiration of the said two months the conditions affecting the firm or person have ceased to be such as to require registration under this Ordinance, the firm or person need not be registered as long as such conditions continue.

Change of name.

(2) This section shall apply, in the case where registration is required in consequence of a change of name, as if for reference to the date of the commencement of the business there were substituted references to the date of such change.

Source: Sec. 5 of the Act. In the Act the section is not divided into sub-sections.

Registration of
changes in firm.

8. Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person, such firm or person shall, within fourteen days after such change or such longer period as the Registrar may, on application being made in any particular case, whether before or after the expiration of such fourteen days allow, furnish to the Registrar a statement in writing in the prescribed form specifying the nature and date of the change signed, and where necessary verified, in like manner as the statement required on registration.

Source: Sec. 6 of the Act.

Registrar: There are, under the Act, a number of local registrars. The dispensation mentioned in this section is granted in England by the Board of Trade.

See sec. 17.

9. If any firm or person by this Ordinance required to furnish a statement of particulars or of any change of any particulars shall, without reasonable excuse, make default in so doing in the manner and within the time specified by this Ordinance, every partner in the firm or the person so in default shall, (notwithstanding that such firm or such person has ceased to carry on business under the business name in respect of which default has been made) be liable to a penalty not exceeding five pounds for every day during which default continues or has existed, and the court shall order a statement of the required particulars or change in particulars to be furnished to the Registrar within such time as may be specified in the order:

Penalty for default in registration.

Provided that where any firm or person who has made default as aforesaid has ceased to carry on business under the business name in respect of which default has been made no proceedings under this section shall be entertained by the court if commenced later than twelve months after such firm or such person has ceased to carry on business under such business name.

Source: Sec. 7 of the Act. The Act makes no provision for the firms which have ceased to exist, but the effect of that law is the same, save for the time limited to institute prosecutions, which is not mentioned in the Act.

Registrar: See sec. 17.

10. (1) Where any firm or person by this Ordinance required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding either in the business name or otherwise:

Disability of persons in default.

Provided always as follows:—

(a) The defaulter may apply to the court for relief against the disability imposed by this section, and the court, on being satisfied that the default was accidental, or due to inadvertence or some other sufficient cause, or that on other grounds it is just and equitable to grant relief may grant such relief either generally or as respects

any particular contracts, on condition of the costs of the application being paid by the defaulter, unless the court otherwise orders, and on such other conditions, if any, as the court may impose, but such relief not be granted except on such service and such publication of notice of the application as the court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if this Ordinance has been complied with, he would not have entered into the contract;

(b) Nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid;

(c) if any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counterclaim, set off, or otherwise such rights as he may have against that party in respect of such contract.

(2) Without prejudice to the power of the court to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a magistrate's court, such last named court may, as respects that contract, grant such relief as aforesaid.

Source: Sec. 8 of the Act.

Court: See definition in sec. 2.

Penalty for false statements.

11. If any statement required to be furnished under this Ordinance contains any matter which is false in any material particular to the knowledge of any person signing it, that person shall be liable to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for any term not exceeding three months, or to both such imprisonment and penalty.

Source: Sec. 9 of the Act.

Duty to furnish particulars to Registrar.

12. (1) The Registrar may require any person to furnish to him such particulars as he thinks necessary for the purpose of ascertaining whether or not such person or the firm of which he is partner could be registered under this Ordinance, or an alteration made in the registered particulars, and may also, in the case of a corporation, re-

quire the secretary or any other officer of a corporation performing the duties of secretary, to furnish such particulars, and if any person, when so required, fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall be liable to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for any term not exceeding three months, or to both such imprisonment and penalty.

(2) If, from any information so furnished, it appears to the Registrar that any firm or person ought to be registered under this Ordinance, or an alteration ought to be made in the registered particulars, the Registrar may require the firm or person to furnish to him the required particulars within such time as may be allowed by the Registrar but where any default under this Ordinance has been discovered from the information acquired under this section, no proceedings under this Ordinance shall be taken against any person in respect of such default prior to the expiration of the time within which the firm or person is required by the Registrar under this section to furnish particulars to him.

Source: Sec. 10 of the Act.

Registrar: The Act refers in this section to the Board of Trade.

See sec. 17.

13. On receiving any statement or statutory declaration made in pursuance of this Ordinance, the Registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering, and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual and, if not kept so exhibited, every partner in the firm or the person, as the case may be shall be liable to a penalty not exceeding twenty pounds.

Registrar to file statement and issue certificate of registration.

Source: Sec. 11 of the Act.

Registrar: See sec 17.

14. The Registrar shall keep an index of all the firms and persons registered under this Ordinance.

Index to be kept.

Source: Sec. 12 of the Act.

Registrar: See sec. 17.

Removal of
names from
register,

15. (1) If any firm or individual registered under this Ordinance ceases to carry on business it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business, or of the individual or, if he is dead, his personal representative, within one month after the business has ceased to be carried on, to deliver to the Registrar notice in the prescribed form that the firm or individual has ceased to carry on business, and if any person whose duty it is to give such notice fails to do so within such time as aforesaid, he shall be liable to a penalty not exceeding twenty pounds.

(2) On receipt of such a notice as aforesaid the Registrar may remove the firm or individual from the register.

(3) Where the Registrar has reasonable cause to believe that any firm or individual registered under this Ordinance is not carrying on business, he may send to the firm or individual by registered post a notice that, unless an answer is received to such notice within one month from the date thereof, the firm or individual may be removed from the register.

Source: Sec. 13 of the Act.

Registrar: See sec. 17.

Sub-sec. (4) which, in the Act, empowers the Registrar to carry out the action threatened by the preceding sub-section has inadvertently been omitted from the Ordinance.

Misleading
business names.

16. (1) Where any business name under which the business of a firm or individual is carried on contains:—

(a) a word indicative of a certain nationality which in the opinion of the Registrar is calculated to lead to the belief that the business is under the ownership or control of persons of such nationality and the Registrar is satisfied that the nationality of the persons by whom the business is wholly or mainly owned or controlled is at any time such that the name is misleading, or

(b) a word indicative of a military title or title of honour which in the opinion of the Registrar is calculated to lead to the belief that the business is under the ownership or control of person with a right to such military title or title of honour and the Registrar is satisfied that the person by whom the business is wholly or mainly

owned or controlled is at any time a person such that the name is misleading, the Registrar shall refuse the registration of such business name, or as the case may be, remove such business name from the Register, but any person aggrieved by the decision of the Registrar under this provision, may appeal to the High Commissioner whose decision shall be final.

(2) The registration of a business name under this Ordinance shall not be constituted as authorising the use of that name if, apart from such registration, the use thereof could be prohibited.

Source: Sec. 14 of the Act. The Act speaks only of British nationality and contains no provisions regarding military titles, etc.

Registrar: See sec. 17. In the Act there is, under this section, a right of appeal from a decision of a registrar to the Board of Trade.

17. The High Commissioner may by order appoint any officer to the Registrar of Business Names for the purposes of this Ordinance.

Registrar.

Source: Sec. 15 of the Act which differs in effect.

The above section appears as re-enacted in 1942 by the Amendment Ordinance. Under the former section the Director of Customs, Excise and Trade was named as Registrar.

Appointment:

By order published in P.G. 1216 of 6.8.42, sup. 2, p. 1265, the Administrator-General was appointed Registrar of Business Names, with effect from the 18th July, 1942.

As a result of this appointment the Registrar is now kept in Jerusalem in the offices of the Administrator-General whose reference may also be made to the register of partnerships, the register of companies and the trade marks records.

18. (1) Any person may inspect the documents filed by the Registrar on payment of such fees as may be prescribed not exceeding fifty mils for each inspection and any person may require a certificate of the registration of any firm or person, or a copy of or extract from any registered statement, to be certified by the Registrar, and there shall be paid for such certificate of registration, certified copy or extract, such fees as may be prescribed, not exceeding one hundred mils for the certificate of registration and not exceeding twenty-five mils for each folio of seventy-two words, of the entry, copy or extract.

Inspection of statements registered.

(2) A certificate of registration or a copy of or extract from any statement registered under this Ordinance, if duly certified to be

a true copy or extract under the hand of the Registrar (whom it shall not be necessary to prove to be the Registrar) shall in all legal proceedings, civil or criminal, be received in evidence.

Source: Sec. 16 of the Act.

High Commissioner-in-Council may make rules.

19. (1) The High Commissioner-in-Council may make rules concerning any of the following matters:—

(a) The fees to be paid to the Registrar under this Ordinance, so that they do not exceed the sum of two hundred and fifty mils for the registration of any one statement;

(b) The forms to be used under this Ordinance;

(c) The duties to be performed by the Registrar under this Ordinance; and

(d) Generally, the conduct and regulation of registration under this Ordinance, and any matters incidental thereto.

(2) All fees payable in pursuance of any such rules shall be paid into the Treasury.

(3) All such rules shall be published in the *Gazette*.

Source: Sec. 17 of the Act, which empowers the Board of Trade to make rules.

For rules in force see *post*.

Publication of true names, etc.

20. (1) Every individual and firm required by this Ordinance to be registered shall, in all trade catalogues, trade circulars, showcards, orders for goods and business letters on or in which the business name appears and which are issued or sent by the individual or firm to any person, have mentioned in legible characters:—

(a) in the case of an individual, his present name and any former name; and

(b) in the case of a firm, the present name and any former name of each of the individuals who are partners in the firm;

(2) If default is made in compliance with this section the individual or, as the case may be, every member of the firm shall be liable for each offence to a penalty not exceeding five pounds;

Provided that no proceedings shall be instituted under this section except by or with the consent of the Attorney General.

Source: Sec. 18 of the Act which also sets out provisions regarding the publication of particulars of nationality. The Act requires the consent of the Board of Trade to sanction prosecutions.

21. Where a corporation is guilty of an offence under this Ordinance, every director, secretary, and officer of the corporation who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

Source: Sec. 19 of the Act.

Offences by corporations.

SCHEDULE.

Source: Schedule to the Act.

Description of Firm, etc.

The additional particulars.

Where the firm, individual or corporation required to be registered carries on business as nominee or trustee.

The present name, any former name, nationality and, if that nationality is not the nationality of origin the nationality of origin and usual residence, or, as the case may be, the corporate name of every person or corporation on whose behalf the business is carried on:

Provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.

Where the firm, individual or corporation required to be registered carries on business as general agent for any foreign firm.

The business name and address of the firm or person as general agent for whom the business is carried on:

Provided that if the business is carried on as general agent for three or more foreign firms it shall be sufficient to state the fact that the business is so carried on specifying the countries in which such foreign firms carry on business.

RULES IN FORCE.
REGISTRATION OF BUSINESS NAMES RULES, 1935.

(Made under sec. 19(1)).

- | | |
|--|---|
| Citation. | 1. The rules may be cited as the Registration of Business Names Rules, 1935.
En. 13.6.35. P.G. 519 of 20.6.35, sup. 2, p. 639. |
| Interpretation. | 2. In the construction of these rules any words used therein defined by the Registration of Business Names Ordinance, 1935, (hereinafter referred to as the Ordinance) shall have the meaning thereby assigned to them respectively. |
| Method of paying fees. | 3. The fees to be paid in pursuance of the Ordinance shall be the fees specified in the first schedule to these rules. Such fees shall be paid to the Registrar who shall pay them into the Treasury. |
| Size of paper. | 4. Subject to any directions which may be given by the Registrar all applications, notices, statements or other documents to be left with or sent to the Registrar shall be upon foolscap paper. |
| Form of application. | 5. Every application for registration of a business name shall be made in the form set out in the second schedule to these rules. |
| Certificate. | 6. The Registrar shall issue a certificate of registration in the form set out in the third schedule to these rules to every firm or individual registered under the Ordinance. |
| Alteration of particulars in register. | 7. Every change in any of the particulars registered shall within fourteen days of such change be notified in the form set out in the fourth schedule to these rules to the Registrar who shall alter the register accordingly.
In filing the application for registration of a business name attention is |
| Removal of name. | 8. Every notice to the Registrar that any firm or individual registered under the Ordinance has ceased to carry on business shall be in the form set out in the fifth schedule to these rules. |
| Time of inspection of register, etc. | 9. The register and all documents in connection with the registration of business names shall be open for inspection of the public and copies of or extracts from such register or documents may be obtained on every business day during the hours that the Registrar's office is open for business. |
| Certificate for purposes of legal proceedings. | 10. A certificate of registration to be used in legal proceedings or for any other specified purpose will be issued upon application but such certificate shall have specified on the face thereof the purpose for which it is issued. |

FIRST SCHEDULE

	Mils.
1. On application to register a business name	250
2. For altering particulars on the register	250
3. For cancelling an entry or a part of an entry upon the register	100
4. Every certificate under the seal of the Registrar	100
5. For inspecting, each inspection	50
6. For certified copy of certificate of Registration	100
7. For copies of or extracts from any registered document or entry in the register, per folio, of seventy-two words or part thereof	25
8. For filing statements, etc., each document	250

SECOND SCHEDULE

REGISTRATION OF BUSINESS NAMES ORDINANCE, 1935.

APPLICATION FOR REGISTRATION OF BUSINESS NAME.

Statement of particulars required to be given pursuant to the Registration of Business Names Ordinance, 1935, in the case of a Corporation.

1. Corporate name
2. The business name
3. Registered or principal office
4. The general nature of business
5. The principal place of business
6. Date of commencement of the business

This date need only be stated where the business was commenced after the date of commencement of Ordinance.

Dated this day of 19.....

Signed.....

In filling up the application for registration of a business name attention is drawn to the provisions of sections 2, 4, 5 and 6 of the Registration of Business Names Ordinance, 1935, and the schedule to that Ordinance.

Statement of particulars required to be given pursuant to the Registration of Business Names Ordinance, 1935, in the case of a Firm.

1. Business name to be registered
Where a business is carried on under two or more business names, each of these business names must be stated.
2. General nature of business
3. Principal place of business
4. Present forename (or name) and surname of each of the individuals who are partners
- 5 Former forename (or names) and surname (if any) of each of the individuals who are partners
6. Nationality of each of the individuals who are partners
If the nationality stated is not the nationality of origin, such nationality of origin must in every case also be stated.
7. Usual place of residence of each of the individuals who are partners
8. Other business occupation (if any) of each of the individuals who are partners
9. Age of each of the individuals who are partners
10. Status as regards marriage (in the case of a woman only)
11. Date of commencement of business

The date need only be stated where the business was commenced after the date of commencement of Ordinance.

12. Corporate name of each corporation which is a partner.....
13. Registered or principal office of each corporation which is a partner

Dated this day of 19.....

Signed.....

In filling up the application for registration of a business name attention is drawn to the provisions of sections 2, 4, 5 and 6 of the Registration of Business Names Ordinance, 1935, and the schedule to that Ordinance.

Statement of particulars required to be given pursuant to the provisions of the Registration of Business Names Ordinance, 1935, in the case of an application by an individual.

1. Business name to be registered
Where a business is carried on under two or more business names each of these business names must be stated.
2. General nature of business
3. Principal place of the business
4. Present forename (or names) and surname

- 5. Former forename (or names) and surname (if any)
- 6. Nationality
- If present nationality is not the nationality of origin, the nationality of origin must be also stated.
- 7. Usual place of residence
- 8. Other business occupation (if any)
- 9. Age
- 10. Status as regards marriage (in the case of a woman only).....
- 11. Date of commencement of business

This date need only be stated where the business was commenced after the date of commencement of Ordinance.

Dated this day of 19.....

Signed

In filling up the application for registration of a business name attention is drawn to the provisions of sections 2, 4, 5 and 6 of the Registration of Business Names Ordinance, 1935, and the schedule to that Ordinance.

THIRD SCHEDULE

THE REGISTRATION OF BUSINESS NAMES ORDINANCE,
1935.

CERTIFICATE OF REGISTRATION.

To
Of
trading as

I HEREBY CERTIFY that, pursuant to and in accordance with the provisions of the Registration of Business Names Ordinance, 1935, and the rules made thereunder has been registered and entered in the Index of Registration under Number.....as your business name.

Given under my hand at this day of, one thousand, nine hundred and

*Registrar for the purpose
of the Registration of Business
Names Ordinance, 1935.*

FOURTH SCHEDULE

NOTICE OF CHANGE IN PARTICULARS REGISTERED.

PURSUANT TO THE REGISTRATION OF BUSINESS NAMES ORDINANCE,
1935.

To the Registrar.

WHEREAS we (I) the undersigned were (was) duly registered pursuant to the provisions of the Registration of Business Names Ordinance, 1935, on the.....day of.....19....., under the Number..... in the Index of Registration;

And whereas a change (or changes) has (or have) occurred (or been made) in respect of the particulars registered as hereinafter mentioned;

Now we (I) the undersigned hereby give you notice that on the date (or dates) hereunder specified the following change (or changes) occurred (or was or were made) in the particulars registered; that is to say:—

.....
.....

Dated this day of 19.....

Signed.....

FIFTH SCHEDULE

NOTICE OF CESSATION OF BUSINESS.

PURSUANT TO REGISTRATION OF BUSINESS NAMES ORDINANCE, 1935.

To the Registrar.

WHEREAS we (I) the undersigned registered under the number in the Index of Registration have ceased to carry on business;

Now we (I) hereby give notice that we (I) have ceased to carry on business as.....as from the day of 19....., save for the purpose of winding up the said business.

Dated this day of 19.....

Signed.....

CARRIAGE BY SEA

INTRODUCTORY NOTE.

In 1922 the International Conference on Maritime Law, which met at Brussels recommended the adoption of the Hague Rules⁽¹⁾, which aimed at unifying the conditions applying to contracts of affreightment and limiting the rights of carriers to contract out of their common law liability. The Rules were amended at a second meeting of the conference in Brussels in 1923.

The Carriage of Goods By Sea Act was enacted in England in 1924 to give effect to the recommendations of the Convention. In 1926 the Carriage by Sea Ordinance was enacted in Palestine on the model of the English Act, incorporating the Hague Rules, as did the Act, in the Schedule. Most of the Dominions have adopted the Hague Rules which were also implemented by legislation in the United States of America, in France and in Belgium. The Act was formally ratified by His Majesty's Government in 1930 and was also made to apply to Palestine. A notice to that effect, which was published in the Gazette in 1931, is set out at the end of this title.

The Ordinance applies to bills of lading issued in respect of outward shipments. It imposes on the shipowners minimum responsibilities which cannot be reduced.

See the notes to sec. 9 for the effect of the Ordinance on the previous Ottoman Law and the notes to sec. 8 for the jurisdiction of Courts under the Ordinance. See also the following titles:

ADMIRALTY (for shipping claims)

AIR (for carriage by air)

PORTS (for carriage by sea)

RAILWAYS (for carriage by rail)

ROAD TRANSPORT (for carriage by motor vehicles).

SHIPPING AND NAVIGATION.

For carriage by land see the notes to sec. 9.

⁽¹⁾ Formulated by a body set up at the 1921 meeting of the International Law Association at the Hague.

ENACTMENTS:

Carriage of Goods by Sea Ordinance, Cap. 12.
Schedule thereto ("The Hague Rules").
Notice dated 14.2.1931.

CARRIAGE OF GOODS BY SEA.

AN ORDINANCE TO AMEND THE LAW WITH RESPECT TO THE
 CARRIAGE OF GOODS BY SEA.

(Drayton Cap. 12).

PREAMBLE.

As regards source, interpretation, etc. see notes to sec. 1.

The preamble differs from that to the Carriage of Goods by Sea Act. The latter recites the agreement by His Majesty's delegates to recommend their respective Governments to adopt the draft Convention as the basis of a convention and the amendments made in 1923, by the Committee appointed at the Conference, to the rules contained in the draft convention.

Preamble.

WHEREAS a Convention for the unification of certain Rules relating to bills of lading was adopted by the International Conference on Maritime Law held at Brussels in 1922 and 1923; AND WHEREAS it is expedient that the Rules of the Convention, as set out in the Schedule to this Ordinance, should, subject to the provisions hereof, be given the force of law in Palestine with a view to establishing the responsibilities, liabilities, rights and immunities attaching to carriers under bills of lading; BE IT ENACTED by the High Commissioner for Palestine, with the advice of the Advisory Council thereof:—

Short title.

1. This Ordinance may be cited as the Carriage of Goods by Sea Ordinance.

PROMULGATION: En. 1.12.1926, P.G. 176 as Ord. No. 43/26. The draft had appeared in P.G. 173 of 16.10.26.

SOURCE, INTERPRETATION:

The Ordinance is based on the Carriage of Goods by Sea Act, enacted in England on the 1st August, 1924⁽¹⁾ and should therefore, like other Ordinance based upon English law, be interpreted in accordance with English law principles. This rule of construction which is mentioned in the titles

⁽¹⁾ 14 & 15 Geo. 5, c. 22. Sec. 1 corresponds to sec. 6(1) of the Act.

ARBITRATION⁽²⁾, BANKRUPTCY⁽³⁾, BILLS OF EXCHANGE⁽⁴⁾ and BUSINESS NAMES⁽⁵⁾ also applies in the case of the Carriage of Goods by Sea Ordinance. As to how much English law may be introduced by reference and as to the Turkish law still applicable, see the notes to secs. 3 and 9.

PREVIOUS OTTOMAN LEGISLATION:

See notes to sec. 9.

JURISDICTION:

See notes to sec. 4 under this heading and see notes to sec. 9.

2. Subject to the provisions of this Ordinance, the Rules contained in the Schedule hereto shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Palestine to any other port whether in or outside Palestine.

Application
of Rules in
Schedule.

Source: Sec. 1 of the Act, with verbal modifications.

"Subject to the provisions of this Ordinance": The Schedule to the Ordinance sets out the terms of the Convention, but the modifications made to the Convention in England were also adopted in Palestine. They appear in secs. 3, 5, 6 and 7 of the Ordinance.

See notes to sec. 4.

3. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Absolute
warranty of
seaworthiness
not to be
implied in
contracts to
which Rules
apply.

Source: Sec. 2 of the Act.

"Contract... to which the Rules apply": The Rules do not apply to a charterparty or to a bill of lading for the carriage of live animals or cargo contracted to be carried on deck and in fact so carried (Schedule, Art. I (b), (c)). See also the limitation in Sec. 2, *supra*. And see notes to sec. 4.

Absolute undertaking: In the case of such contracts of carriage to which the Rules do not apply, the English Common Law rule implying an absolute undertaking on the part of the shipowner to provide a seaworthy ship continues to apply in England. But in Palestine the Ordinance should

(2) Vol. II, at p. 55.

(3) Vol. II, at p. 246.

(4) Vol. III, at p. 15.

(5) Vol. III, at p. 157, and in greater detail under the titles *INTER-
PRETATION* and *PALESTINE ORDER-IN-COUNCIL*.

not (*semble*) be supplemented by English law concepts but by the unrepealed articles of the Ottoman Commercial Code and the Ottoman Commercial Maritime Code. Should these contain no provision applicable to any particular case, reference could then be made to English Common Law by authority of Art. 46 of the Palestine Order-in-Council. The Ottoman Legislation does not impose upon the shipowner the same liabilities as are imposed by English Common Law. See also notes to sec. 9.

Statement as to application of Rules to be included in bills of lading.

4. Every bill of lading or similar document of title issued in Palestine which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Ordinance, and shall be deemed to have effect subject thereto, notwithstanding the omission of such express statement.

Source: Sec. 3 of the Act. The words beginning "and shall be deemed..." do not appear in sec. 3 of the Act. See last heading but two of the notes to this section.

"Bill of lading or similar document of title": See Schedule, Art. I(b). In view of the last part of Art. I(b) of the Schedule a bill of lading does not fall under this section if it is issued to the charterer. The section will apply as soon as the bill of lading is endorsed against valuable consideration, when the last provision of the section will apply. But *cf.* Art. V of the Schedule.

"Shall contain an express provision": Failure to include such a provision may render the shipowner liable to prosecution under sec. 382 of the Criminal Code Ordinance.

"And shall be deemed to have effect subject thereto...": In *The Torni*⁽¹⁾ which was a case decided in England on the effect of the Palestine Ordinance, a bill of lading had been issued in Palestine in respect of a shipment of goods from Palestine to England. The bill of lading did not include the Rules in the Schedule to the Ordinance and contained a clause providing that it was to be construed according to the law of England. It was held by the Court of Appeal that the effect of sec. 4 of the Ordinance was to make it impossible for the shipowner to exclude the Rules and the latter are always deemed to have effect whether incorporated in the bill of lading or not. The Court also held that the effect of sec. 4 could not be nullified by providing for construction of the bill of lading by reference to English law: Palestine law remained the substantive law of the contract. Greer, L. J. held that it would be illegal to exclude the operation of the Rules and that whether the Rules were mentioned or not they were included in every local bill of lading.

(1) [1932] P. 78; 48 T.L.R. 471; 147 L.T. 208; 101 L.J.P. 44.

But in *Vita Food Products v. Unus Shipping Co.*⁽²⁾ the Privy Council, in dealing with an appeal concerning a bill of lading issued in Newfoundland, disapproved the *Torni*. The Privy Council held that the dominant section in the Carriage of Goods by Sea legislation is that corresponding to sec. 2 of the Ordinance. Sec. 4 merely requires the bill of lading to contain an express statement to the effect of sec. 2. Failure to comply with sec. 4 does not make the bill illegal. The addition of the latter part of the section, which does not appear in (the English or) the Newfoundland Act did not have the effect of automatically incorporating the Rules into every bill of lading.

But it must be remembered that the *Torni* was decided in England and that the Privy Council did not indicate how the Palestine Courts should deal with that question: "It may be that a Court in Palestine, bound to give effect to the laws under which it exercises jurisdiction, might arrive at a different conclusion. No opinion can here be expressed on that matter"⁽³⁾.

In circumstances approximating those in the *Torni* the holder of the bill of lading would therefore be well advised to sue in Palestine provided always that the jurisdiction of the local Courts be not excluded (see the next note).

Another sanction available to the shipper for compliance with sec. 4 of the Ordinance is the threat of criminal prosecution (see previous note).

Jurisdiction: In C.D.C., T.A. 270/39⁽⁴⁾, an unreported case which was not appealed, a preliminary point was (as in the *Torni*) argued by consent independently of the other issues. The point concerned the local jurisdiction for a suit under a bill of lading issued in Palestine, which did not comply with sec. 4 and which named the Courts of the country of destination as solely competent to deal with disputes under the bill of lading. It was argued by the plaintiff that this exclusion of the local Courts should be disregarded as contravening the provisions of sec. 4, and as contrary to sec. 8. The submission was overruled.

See also notes to sec. 8.

Stamping: Bills of lading may not be stamped after execution (Stamp Duty Ord., sec. 32(1)). Any person who makes or executes a bill of lading not duly stamped incurs a fine of fifty pounds (sec. 32(2)). The stamp is impressed (sec. 5). The duty is of 30 mils (*ibid*: Schedule, item 7). As to stamping of charter-parties see *STAMP DUTY*.

5. Article VI of the Rules shall, in relation to the carriage of goods by sea in ships carrying goods from any port in Palestine

Modification
of Article VI
of Rules in
relation to
coasting trade.

⁽²⁾ [1939] A.L. 277; [1939] 1 All E.R. 513; 55 T.L.R. 402; 108 L.J. (P.C.) 40; 160 L.T. 579.

⁽³⁾ [1939] 1 All E.R. at p. 528.

⁽⁴⁾ *Kalaris v. Mohrus & ors.*

to any other port in Palestine, have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

Source: Sec. 4 of the Act.

Modification
of Rules 4 and 5
of Article III
in relation to
bulk cargoes.

6. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

Source: Sec. 5 of the Act.

This section modifies rr. 3(b), 4 and 5 of Art. III in the Schedule.

Saving in
operation.

7. — (1) Nothing in this Ordinance shall affect the operation of any enactment for the time being in force limiting the liability of the owners of sea-going vessels.

(2) Nothing in this Ordinance shall affect the operation of any regulations as to the export or import of firearms or ammunition to or from Palestine under the Firearms Ordinance or any regulations relating to the carriage of dangerous goods made under the authority of any Ordinance now existing or hereafter to be enacted.

(3) The Rules shall not by virtue of this Ordinance apply to any contract for the carriage of goods by sea made before the date at which this Ordinance came into force nor to any bill of lading or similar document of title issued whether before or after such date in pursuance of any such contract as aforesaid.

Source: Sub-sec. (1) is adapted from sec. 6(2) of the Act which saves the operation of secs. 446-50 and 502-3 of the Merchant Shipping Act, 1894⁽¹⁾, as amended by any subsequent enactment, "or the operation of any other enactment, etc..." (as in the Ordinance). Sub-sec. (2) is therefore also taken from

(1) 57 & 58 Vict. c. 60.

sec. 6(2) of the Act as secs. 446-50 of the Merchant Shipping Act refer to carriage of dangerous goods. See also, *infra*, notes to sub-sec. (2). Secs. 502-3 of that Act limit the liability of shipowners. Sec. 503 was amended by the Merchant Shipping (Liability of Shipowners and others) Act, 1900⁽²⁾.

Sub-sec. (3) is adapted from sub-sec. (3) of sec. 6 of the Act.

Sub-sec. (1): The sections of the Merchant Shipping Act mentioned in sec. 6(2) of the Act do not apply in Palestine and reference should be made to the relevant Turkish legislation still in force to determine the liability of carriers under this sub-section. See notes to sec. 9.

Sub-sec. (2): A further limitation is set out in the Schedule, Art. IV, r. 6. The following enactments relate to the import and export of firearms and ammunitions:

Customs Ordinance, secs. 44, 45(1), (2)(a);

Customs (Regulation of Import) Order, sec. 3(a), (b), (h)

(both in Drayton, Vol. 1 & 3 respectively).

Customs (Restriction on Importation of Explosives) Order, 1936, dated 1.6.36 (P.G. 600 of 1.6.36, sup. 2, p. 580).

Order No. 40 of 1937, dated 1.6.37 (P.G. 697 of 10.6.37, sup. 2, p. 525).

8. Any action arising out of the provisions of this Ordinance shall be deemed to be a commercial action for the purposes of section 19 of the Courts Ordinance.

Action under Ordinance to be commercial action.
Cap. 28.

This section has no corresponding provision in the Act. It referred to sec. 19 of the Courts Ordinance enacted in Drayton as Cap. 28. That section, which provided for commercial actions to be tried by Courts specially constituted was repealed by the 1940 Courts Ordinance, Sec. 8 should therefore now be deleted.

Jurisdiction: It is now settled that when a claim is made in Palestine against the carrier for failure to deliver a cargo the District, and not the Admiralty Court has jurisdiction (C.A. 134/43)⁽¹⁾. The same applies to actions for breach of a contract on a bill of lading (Ad. 3/42)⁽²⁾. For further particulars see ADMIRALTY, Vol. I, p. 4, note *jurisdiction*. See also the same heading in the notes to sec. 4.

9. Any provision of the Ottoman law with respect to the carriage of goods by sea which is contrary to the provisions of this Ordinance shall no longer have effect.

Ottoman law with regard to carriage of goods by sea not to apply.

This section has no counterpart in the Act. It refers to Chapter V (secs. 56-69) of the Ottoman Commercial Code and to Chapters III, IV, VI, VII

⁽²⁾ 63 & 64 Vict. c. 32.
Sec. 8.

⁽¹⁾ 1943, A.L.R. 375.

⁽²⁾ 9, P.L.R. 676; 1942, S.C.J. 772.

and VIII of the Ottoman (Commercial) Maritime Code. These laws are abrogated only so far as inconsistent with the Ordinance, so that Chapter V of the Commercial Code continues to apply to carriage by land and the (Commercial) Maritime Code may be applied to contracts of carriage by sea which do not fall under the provisions of the Ordinance (as to which see notes to sec. 3).

Sec. 7(1) specifically safeguards the operation of these laws so far as they limit the liability of seagoing vessels. It is not possible to detail, in these notes, the provisions of these laws but generally the liability of the shipowner is excluded by *vis major* and may further be negated by abandonment of the vessel and freight (*vide* art. 30).

The Ottoman (Commercial) Maritime Code, so far as it applies to bills of lading, is referred to in C.A.D.C., Ha. 47/44⁽¹⁾. But see notes to Art. III, r. 4 of the Schedule for comments on this case.

In Ad. 1/39⁽²⁾ the view was taken that District Courts dealing with maritime cases should apply the Ottoman (Commercial) Maritime Code and cases under the Ordinance will normally fall within the jurisdiction of the District, and not of the Admiralty Court (see note *jurisdiction* to sec. 8). When the Turkish law is silent, English law may be applied (*vide* C.A. 81, 85/41)⁽³⁾.

THE SCHEDULE.

(Section 2.)

The Schedule sets out the Hague Rules, approved at the 1922 Convention, and amended by the Committee in 1923 (see notes to Preamble). The terms thereof were further altered in England by secs. 2, 4, 5 and 6 of the Act. These alterations appear in secs. 3, 5, 6 and 7 of the Ordinance, and sec. 2 thereof makes the rules in the Schedule apply "subject to the provisions of this Ordinance". The Rules in the Schedule should be read in connection with the Ordinance and the notes thereto.

RULES RELATING TO BILLS OF LADING.

ARTICLE I.—DEFINITIONS.

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say:—

- (a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper;
- (b) "Contract of carriage" applies only to contracts of car-

⁽¹⁾ 1944, S.C.D.C. 342.

⁽²⁾ 6, P.L.R. 540; 1939, S.C.J. 537. (Overruled on another point).

⁽³⁾ 8, P.L.R. 320; 1941, S.C.J. 413; 10, Ct.L.R. 117.

riage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

- (c) "Goods" includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;
- (d) "Ship" means any vessel used for the carriage of goods by sea;
- (e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

Bill of lading: Under r. 3 of Art. III a bill of lading must be issued to the shipper if he demands it. When no bill of lading has been issued the parties may contract out of the rules in the Schedule, as provided by Art. VI.

"Carriage of goods by sea": These words should be read subject to the limitation in sec. 2 of the Ordinance. "Sea" appears to include navigable rivers: See Art. IV, r. 2(c).

Charterparties are not covered by the rules in the Schedule (Art. V).

Clause (c): Art. VII enables the parties to alter that period.

ARTICLE II.—RISKS.

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

See Art. VI.

ARTICLE III.—RESPONSIBILITIES AND LIABILITIES.

1. The carrier shall be bound, before and at the beginning of the voyage to exercise due diligence to—

- (a) Make the ship seaworthy;
- (b) Properly man, equip, and supply the ship;
- (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:—

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(c) The apparent order and condition of the goods:

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded, the bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant, or agreement, in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

R. 1(a): But there is no implied absolute undertaking of seaworthiness (sec. 3 of the Ordinance).

R. 1(b): See r. 1 of Art. IV.

R. 3: See note *Bill of Lading*, to Art. 1(b).

Rr. 3(b), 4, 5: See sec. 6 of the Ordinance.

R. 4: In C.A.D.C., Ha. 47/44⁽¹⁾, which related to a shipment from a foreign port, the Court stated: "In this country the Rules relating to bills of lading in the Schedule to Cap. 12, Art. III Rule 4 provide that the bill of lading is *prima facie* evidence that the goods have been shipped". This *dictum* must be taken as given by way of illustration, as the Rules do not apply to bills of lading issued in respect of goods sent from a port outside Palestine. (Sec. 2 of the Ordinance).

⁽¹⁾ 1944, S.C.D.C. 342.

ARTICLE IV.—RIGHTS AND IMMUNITIES.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:—

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
- (b) Fire, unless caused by the actual fault or privity of the carrier;
- (c) Perils, dangers and accidents of the sea or other navigable waters;
- (d) Act of God;
- (e) Act of War;
- (f) Act of public enemies;
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process;
- (h) Quarantine restrictions;
- (i) Act or omission of the shipper or owner of the goods, his agent or representative;
- (j) Strikes, or lock-outs, or stoppage or restraint of labour from whatever cause whether partial or general;
- (k) Riots and civil commotions;
- (l) Saving or attempting to save life or property at sea;
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (n) Insufficiency of packing;
- (o) Insufficiency or inadequacy of marks;
- (p) Latent defects not discoverable by due diligence;
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of

proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding one hundred pounds sterling per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the

carrier without liability on the part of the carrier except to general average, if any.

R. 1: See r. 1(a) of Art. III.

R. 2: See sec. 3 of the Act and Art. III, r. 1.

R. 2(c): See r. 4 *infra*.

R. 5: See Art. IX.

R. 6: See notes to sec. 7(2) of the Ordinance.

ARTICLE V.—SURRENDER OF RIGHTS AND IMMUNITIES AND
INCREASE OF RESPONSIBILITIES AND LIABILITIES.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

See Art. 1(b).

ARTICLE VI.—SPECIAL CONDITIONS.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

See Art. 1(b) and note *Bill of Lading*. See sec. 5 of the Ordinance.

ARTICLE VII.—LIMITATIONS ON THE APPLICATION OF THE RULES.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

See Art. 1(c).

ARTICLE VIII.—LIMITATION OF LIABILITY.

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX.

The monetary units mentioned in these Rules are to be taken to be gold value.

CENSUS

Repealed. See STATISTICS ORDINANCE

CENSORSHIP

See PUBLIC PERFORMANCES ORDINANCE

CHANGE OF NAME

See NAMES (CHANGE)

CHARITABLE TRUSTS

INTRODUCTORY NOTE.

Charitable endowments were regulated in the Ottoman Empire by the Sharia law of Waqf which was part and parcel of the municipal law. Endowments constituted by non Moslems under the laws of other religious communities were also recognised. The Charitable Trusts Ordinance, 1924, introduced for the first time into Palestine charitable trusts "established otherwise than in conformity with Religious law." This Ordinance and the Charities (Public Trustee) Ordinance, 1925, are based on English statutes and case law forming part of the general law of trusts. The model used was the Ceylon Trusts Ordinance.

*See, also LAND LAW, PALESTINE ORDER-IN-COUNCIL.
ENACTMENTS:*

Charitable Trusts Ordinance, Cap. 14.

Charities (Public Trustee) Ordinance, Cap. 15.

Charitable Trusts (Fees) Rules, 1935.

Court Fees Rules, 1935, items 28-33.

(incorporated in the note to sec. 41).

Transfer of Land (Fees) Rules, 1939, Schedule, item 12.

(incorporated in the note to secs. 3(1) and 33).

CHARITABLE TRUSTS ORDINANCE

AN ORDINANCE TO REGULATE CHARITABLE TRUSTS ESTABLISHED OTHERWISE THAN IN CONFORMITY WITH RELIGIOUS LAW.

WHEREAS by Articles 52, 53 and 54 of the Palestine Order in Council, 1922, it is provided that the Moslem religious courts, the courts of the Christian communities and the Rabbinical courts shall have jurisdiction in respect of *wakfs* or religious endowments constituted before such courts in accordance with the law thereof;

AND WHEREAS it is desirable to make provision for the regulation of charitable trusts established in Palestine otherwise than in conformity with religious law;

Art. 52 mentioned above provides that the Moslem Religious Court shall have exclusive jurisdiction "in cases of the constitution or internal administration of a *Waqf* constituted for the benefit of Moslems before a Moslem Religious Court".

By Art. 53(iii) exclusive jurisdiction is given to the Rabbinical Courts of the Jewish Community "over any case as to the constitution or internal administration of a *Waqf* or religious endowment constituted before the Rabbinical Court according to Jewish Law".

Art. 54 (iii) confers the corresponding jurisdiction on the Courts of the several Christian Communities.

It will be observed that a certain class of beneficiaries is indicated in Art. 52 but not in Arts. 53 and 54. On the other hand, the observance of the religious law is required by Arts. 53 and 54 but not by Art. 52.

Further provisions concerning the respective jurisdiction of civil and religious courts in matters of *waqf* are contained in the Civil and Religious Courts (Jurisdiction) Ordinance, Cap. 18. This Ordinance deals in sec. 3 with jurisdiction in respect of non Moslem *waqfs* constituted before a Moslem religious court prior to the promulgation of the Palestine Order-in-Council, 1922. It further provides in sec. 4 that questions regarding the exclusive jurisdiction of religious courts in matters of *waqfs* shall be decided by the Special Tribunal referred to in Art. 55 of the Palestine Order-in-Council⁽¹⁾.

The expression "constitution" appearing in Arts. 52-4 of the Order-in-Council and sec. 3 of the Civil and Religious Courts (Jurisdiction) Ordinance was defined in C.A. 5/25⁽²⁾ as "an act of dedication of some person or persons having a right to dispose of the subject matter of the dedication or endowment." A *waqf* created by will cannot be within the exclusive jurisdiction of a Religious Court because it is not constituted before any court: C.A. 164/35⁽³⁾. See also C.A. 85/27⁽⁴⁾ which indicates that actions in which the defendant is neither the *mutawali* (administrator) nor a beneficiary of the *waqf* are not matters of "internal administration."

All matters concerning *waqfs* or religious endowments which are not by the above provisions specifically referred to the jurisdiction of Moslem and other Religious Courts are within the general jurisdiction of the Civil Courts⁽⁵⁾. There is no provision in any enactment as to the law which these Courts are to apply in matters of *waqf*, apart from Art. 9 of the Mandate for Palestine. According to that Article "the control and administration of *Waqfs* shall be exercised in accordance with religious law and the dispositions of the founders", but the provisions of the Mandate are not part of the municipal law applied by the Courts of Palestine.

It is to be noted that matters of *waqf* are not matters of personal status within the definition of Art. 51(1) of the Palestine Order-in-Council, and the application of the "personal law" does not therefore follow from Art. 47 of that Order. Nevertheless it is submitted that the Civil Courts are to apply the religious (or foreign) law under which the religious endowment was constituted. This would accord with Arts. 52(iii) and 53(iii) of the Palestine Order-in-Council, and be supported by the proviso to sec. 37(1) of the Charit-

(1) For a case of this nature brought before the Special Tribunal and its effect on the jurisdiction of the District Court to appoint the trustee of a non Moslem religious *waqf*, see S.T. 1/43 (10, P.L.R. 535; 1943 A.L.R., 671) and C.A. 36/44 (1944, A.L.R., 601). See also C.A. 161/23 (4, R. 1582) and C.A. 5/25 (4, R. 1585).

(2) 4, R. 1585.

(3) 4, P.L.R. 211; 1937, S.C.J. (N.S.) 373; 1, Ct.L.R. (N.S.) 83.

(4) 1, P.L.R. 186; 3, R. 1155.

(5) But see notes to sec. 40, *post*.

able Trusts Ordinance (see notes to that section). Sec. 3 (b) of the Civil and Religious Courts (Jurisdiction) Ordinance refers to the "general principles of equity" as the law to be applied "if the dedicator did not belong to a religious community". On the whole, the question of the law applicable by the Civil Courts in cases of religious endowments is still doubtful. There appears to be no direct judicial authority on the subject and the above remarks should not be taken as giving more than a personal suggestion.

There is, however, one clear feature which should be noted. The provisions of the Charitable Trusts Ordinance do not apply to religious endowments, except in so far as such endowments (a) have been declared to be charitable trusts for the purpose of that Ordinance under sec. 37(1) thereof, or (b) have been transformed into a charitable trust by virtue of sec. 2 of the Civil and Religious Courts (Jurisdiction) Ordinance, or (c) are deemed to be charitable trusts within the meaning of the Ordinance by virtue of the order of a religious court made under sec. 11 of the Charities (Public Trustee) Ordinance, (see notes to those provisions).

A charitable trust as defined in the Ordinance, though roughly corresponding to a religious endowment, is not necessarily the civil equivalent of a *waqf*. Quite apart from the difference in conception — the legal title of charitable trust property vests in the trustees while in the case of Moslem true *waqf* the property is deemed to vest in the Almighty — the Ordinance enumerates certain purposes for which and for which only a charitable trust may be established. These purposes may or may not coincide with those prescribed by any religious law under which a religious endowment may be constituted. No clear distinction or comparison between charities and *waqfs* is drawn in any of the relevant enactments. Thus "charitable purposes" are required as a condition for a declaration under sec. 37 of the Charitable Trusts Ordinance, religious endowments "of a charitable nature" are dealt with in sec. 11 of the Charities (Public Trustee) Ordinance, while sec. 2 of the Civil and Religious Courts (Jurisdiction) Ordinance refers in the beginning to "non-Moslem *waqf*" and at the end to "charitable endowments."

The second preamble and the long title of this Ordinance would suggest that it deals only with the regulation of charitable trusts, leaving their establishment to some other non religious law. This assumption is, however, misleading; the Ordinance contains in secs. 2 and 3 detailed provisions for the creation of charitable non religious trusts. It is also submitted that, since the Ordinance was promulgated (1st October 1924), no such trust can be created except in accordance with the provisions of the Ordinance.

BE IT ENACTED by the High Commissioner for Palestine with the advice of the Advisory Council thereof: —

Short title.

1. This Ordinance may be cited as the Charitable Trusts Ordinance.

Enactment: Ord. 26 of 1924 as amended by Ord. 24 of 1925 and Ord. 30 of 1934.

Source: Ceylon Trusts Ordinance No. 9 of 1917.

Interpretation.

2. (1) Property is held in trust for charitable purposes in any case in which there is an obligation annexed to the ownership there-

of and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him that, while the ownership is nominally vested in the owner, such property and the income and proceeds thereof shall be exclusively used and enjoyed for charitable purposes.

(2) For the purpose of this Ordinance the term "charitable purposes" shall include all purposes for the benefit of the public or any section of the public, within or without Palestine, of any of the following categories —

- (a) for the relief of poverty;
- (b) for the advancement of education or knowledge;
- (c) for the advancement of religion or the maintenance of religious rites or practices;
- (d) for any other purpose beneficial or of interest to mankind not falling within the preceding categories.

Sub-sec. (1):

This provision roughly describes the general incidents of a charity: The ownership vests in the owner but, by virtue of an obligation annexed to the ownership and accepted by the owner, the property and the income and proceeds thereof are devoted to charitable purposes as defined in sub-sec. (2). The division between nominal ownership and beneficial interest is typical of the English conception of trusts introduced into Palestine by the Ordinance. But the Ordinance is confined to charitable trusts and, although the English law of trust may be resorted to for its interpretation and is expressly imported by secs. 28 and 40 of the Ordinance, this in itself does not mean that the English doctrine and rules of private trusts are generally applicable in Palestine. On the contrary, in the case of *Eliash v. Director of Lands*⁽¹⁾ this point was expressly answered in the negative, and although some doubt has since been cast on the correctness of this decision⁽²⁾, it is still thought to be a binding and conclusive authority⁽³⁾. See, further, notes to sec. 40, *post*. And see Vol. II, p. 315.

In spite of the provisions with regard to survivorship (secs. 24(1), 25(3)), the trust property is not vested in, nor does the charitable trust as such constitute, anything like a corporation of which the trustee would be in a similar position as a director of a company (see however, sec. 36). When acting in matters of the trust, the trustee is acting as owner, not as representative, and his acts are effective only during his own term of office. Decisions such as

(1) H.C. 77/31; 1, P.L.R.; 735; 5, R. 1813.

(2) See L.A. 50/36 (4, P.L.R. 136; 8, R. 497 *sub* title C.A.; 3, Ct.L.R. 6) and the dissenting judgment of Trusted, C.J. in C.A. 183/38 (5, P.L.R., 576 at pp. 589 *sqq*; 1938, 2 S.C.J. 197 at pp. 210 *sqq*; 5, Ct.L.R. 17 at pp. 29 *sqq*).

(3) E.g. in the recent decision of Judge Windham, in C.D.C., T.A. 125/43 (1945 S.C.D.C. 265, at p. 269).

C.A. 139/34⁽⁴⁾ would therefore probably apply also to charitable trusts. In that case the appeal of the *Manur el Awwf*, Jerusalem, was dismissed because the Power of Attorney of the advocate presenting it was given by the *Manur* who had since ceased to hold office.

Sub-sec. (2): "Charitable purposes": the definition follows English law. The four categories (a) to (d) are taken with slight modifications from the judgment of Lord Macnaughten in *Income Tax Commissioners v. Pemsel* [1891] A.C. 531, at p. 583.

"For the benefit of the public or any section of the public": for the meaning of these words see Halsbury (Hailsham Ed.), Vol. IV, p. 100, § 146 and p. 128, §170.

Clause (b): Purposes of education are given a certain preponderance by the provisions of sec. 30 (d).

In C.A. 42/29⁽⁵⁾ the Court of Appeal confirmed the decision of the District Court to the effect that the property of the American Colony in Jerusalem was not held upon a charitable trust. It was proved that the American colony was a group of persons formed for the purpose of living according to Christian principles. The members lived a communal life, holding all their property in common. This was held not to be sufficient to constitute a charitable purpose. It was further held that "for a trust to be charitable there must be a charitable purpose as defined by the Ordinance; and it does not constitute a trust charitable that one or more of the beneficiaries happen to be infirm or aged, and are thus dependent upon the trust property for their support."

In P.C. 69/30⁽⁶⁾ an "institution having for its object the relief of needy Jews of the Ashkenazy Section of the Jewish Community who are resident or come to spend their last days in Jerusalem" was declared a charitable trust by the District Court and this decision was upheld both by the Supreme Court and the Privy Council.

Exemptions: Charitable trusts are exempted from certain taxes, rates and duties. See Rates and Taxes (Exemption) Ordinance No. 18 of 1938 secs. 4 (a) (iii) and 5(b), as to Municipal taxes; sec. 5A (inserted by Ordinance No. 13 of 1940) as to Local Council rates; secs. 8(c) and 9(b) as to Rural Property Tax and secs. 12(c) and 13(b) as to Urban Property Tax. These provisions have been judicially interpreted in C.A. 126/43⁽⁷⁾, C.A. 230/43⁽⁸⁾ and C.D.C. Jm. 51/43⁽⁹⁾. See also the Income Tax Ordinance No. 23 of 1941, sec. 8(1)(f) and the Stamp Duties Ordinance, Cap. 133, Schedule item 34, exemption (14) and item 38 (as enacted by Ordinance No. 25 of 1943), exemption(1).

Creation of
trust.

3. (1) Subject to the provisions of section 37 —

(a) no trust in relation to immovable property is valid unless declared by the last will of the author of the trust or of the trustee or by a nontestamentary instrument in writing signed by the author of the trust or the trustee and notari-ally executed;

(b) no trust in relation to movable property is valid unless

(4) 2, P.L.R., 240; 7, R. 18; P.P. 11.1.35.

(5) 1, P.L.R. 460; 5, R. 1809.

(6) 1, P.L.R., 665; 4, R. 1587.

(7) 10, P.L.R. 447; 1943, A.L.R. 559.

(8) 1943, A.L.R., 641.

(9) 1944, S.C.D.C. 128; upheld in C.A. 134/44 (1944, A.L.R. 724).

declared by the last will of the author of the trust or of the trustee, or by a nontestamentary instrument in writing signed by the author of the trust or the trustee, or unless the ownership of the property is transferred to the trustee by delivery.

(2) Subject to the provision of the preceding subsection, a trust is created when the author of the trust indicates with reasonable certainty —

- (a) an intention on his part to create a trust;
- (b) the purpose of the trust;
- (c) the trust property; and
- (d) (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to a trustee.

This section was retroactively substituted ("shall be construed as if it had been originally worded") by Ord. 24 of 1925.

Sub-sec. (1):

Declaration of trusts: Both immovable and movable property may be dedicated to charitable purposes either by an instrument in writing made *inter vivos* or by will emanating either from the author of the trust or from the trustee. In respect of movable property the formal declaration may be replaced by "transferring the ownership to the trustee by delivery".

Declaration of trust inter vivos: In respect of movable property any instrument in writing is sufficient; in respect of immovable property the instrument must be notarially executed. There is a difference between documents on which the signatures only have been attested by the Notary Public and those directly drawn up by him⁽¹⁾. The Ordinance seems to require a deed of the latter kind.

Declaration of trust by will: No particular form is prescribed for dedication by will. Presumably the provisions of the Succession Ordinance are applicable both as to the definition of "will" and as to form, validity, confirmation and probate.

In C.A. 164/35⁽²⁾ the income of certain immovable property had been devised by will to charitable purposes. The Rabbinical Court declared the devise to be invalid under Jewish Law but otherwise confirmed the will. This decision was accepted as binding by the Court of Appeal, but the provision of the will making the property itself inalienable was held to be also invalid as serving only the charitable purpose which had failed.

In H.C. 40/42⁽³⁾ the District Court had ordered the administrators of an estate "to carry out the directions of the testator regarding the creation

⁽¹⁾ H.C. 58/41, (8, P.L.R. 414; 1941, S.C.J. 392; 10 Ct.L.R. 110; P.P. 26.10.41).

⁽²⁾ 4, P.L.R. 211; 1937, S.C.J. (N.S.) 373; 1, Ct.L.R. (N.S.) 83.

⁽³⁾ 1942, S.C.J. 435.

of the charitable trust." This order, made under sec. 18 of the Succession Ordinance, was confirmed on appeal. An application to restrain the Director of Lands from registering the charitable trust was refused by the High Court.

"The instrument of the trust": The non testamentary instrument in writing or the will are together called in many provisions of the Ordinance: "the instrument of the trust", see secs. 7, 10(1) (relief from the ordinary amount of care); Secs. 8(1), 19, (directions and permission for the investment of trust money); sec. 14(1)(b) (permission to delegate the office of trustee or any of his duties); sec. 15 (provision for separate powers of co-trustees); sec. 16 (permission to the trustee to get remuneration); sec. 21 (c) (provisions for the discharge of trustees); sec. 22(1)(a) and sec. 33(2) (nomination of persons who are to appoint new trustees); sec. 25(3) (exclusion of survivorship); sec. 33(1) (appointment of Public Trustee etc.).

The author of the trust: While the author may make provisions for all or any of the above matters in the instrument of trust, his authority in matters of the trust, apart from that instrument, is very restricted. The only matters where "the author of the trust" is mentioned are sec. 5 (directions for the execution of the trust); sec. 22(1)(b) (appointment of new trustees); sec. 27 (revocation of trust); sec. 29(2) (applications to the Court). In addition "the wishes of the author of the trust" are to be considered in the question of adaptation of the trust: sec. 30(c).

"Declaration" and "creation": It appears that a valid declaration under sec. 3(1) is not in itself sufficient for the *creation* of a charitable trust. If the declaration is made by will, the trust does not come into existence until the testator's death. If it is made by a non testamentary instrument and the author is not himself to be the trustee, the transfer of the property to a trustee is required by sub-secs. (2)(d) to complete the creation of the trust. This provision applies both to movable and immovable property. It is submitted, moreover, that the dedication of immovable property for charitable purposes is, in any case, incomplete unless and until it is registered in the Land Registry in accordance with the Land Transfer Ordinance. The question has extensively been dealt with in a number of decisions regarding religious dedications as *waqf*. The last of these cases in which the law is very fully discussed is C.A. 251/43⁽⁴⁾. Though the rules elaborated in these decisions in regard to *waqf* have not been applied to charitable trusts, there appears to be a clear analogy of reasoning between the two kinds of dedication.

The rule in L.A. 173/26⁽⁵⁾ and L.A. 49/35⁽⁶⁾ to the effect that a *bona fide* purchaser of *waqf* land described in the Land Register as *mulk* acquires a valid title, appears to be applicable to land dedicated under the Charitable Trusts Ordinance on the same analogy; because the dedication is not complete until the necessary entry has been made in the Register.

Registration fees: Special fees for the registration of charitable trusts are prescribed by clause 12(ii) of the Schedule to the Land Transfer (Fees) Rules, 1939. This provision was introduced in view of the previous uncer-

(4) 10, P.L.R. 646; 1944, A.L.R. 104. See, however, for a *waqf* created prior to the Land Transfer Ordinance C. A. 165/44 (1945, A.L.R. 228).

(5) 1, P.L.R. 269; 5, R. 1843.

(6) 8, R. 491; 1 Ct.L.R. (N.S.) 45. This and the previous case were followed in C.A. 290/42 (10, P.L.R. 159; 1943, A.L.R. 166).

tainty as to the proper fee, see H.C. 46/33⁽⁷⁾. The fee is 2½% of the market value up to L.P. 200 and ½% of the amount exceeding that sum, The same scale is already contained in the Charitable Trusts' (Fees) Rules, 1935, see note to s. 41 *post*.

Dedication of Miri: Land of the *Miri* category cannot be made the subject of a charitable trust, neither by act *inter vivos*, nor by a devise by will: H.C. 77/31⁽⁸⁾, C.A. 164/35⁽⁹⁾, C.A. 189/37⁽¹⁰⁾, C.A. 117/40⁽¹¹⁾. The same applies to the category of land known as *quasi-mulk*, see C.A. 117/40. This restriction follows from Art. 121 of the Ottoman Land Code, and Art. 8 of the Provisional Law Regulating the Right to Dispose of Immovable property. The prohibition to dispose of *miri* land by will appearing in the latter provision is reiterated in sec. 43 of this Ordinance and sec. 21 of the Succession Ordinance.

The provisions of sec. (1) are subject to those of sec. 37 (see notes to that section).

Sub-sec. (2): While sub-sec. (1) deals with the requisites of form for the declaration of the trust, sub-sec. (2) (a) - (c) is concerned with the contents of the dedication.

It is sufficient for the creation of a trust that the author, in one of the forms set out in sub-sec. (1), indicate his intention to create the trust, the purpose of the trust, and the trust property. He need not appoint trustees or indicate the manner of their appointment; he need not make any provision as to particular beneficiaries, the method of administration or the manner of attaining the purpose of the trust. Even the three items enumerated in clauses (a) to (c) need not be expressed in detail. All that the law requires is that they be "indicated with reasonable certainty." This is in accordance with the English rule that a charitable gift is not void for uncertainty (see Lewin on Trusts, 14th Ed. 1939, p. 472), see also sec. 33(2): "were... it is declared or intended in any instrument of trust..."

It is submitted that, whenever the requirements of sub-sec. (2) (and of course, of sub-sec. (1)) are complied with, all other particulars may be supplemented by the Court under the powers conferred upon it by sec. 28 (see notes to that section), such as —

ascertaining in detail the author's intention, see Halsbury *op. cit.*,

Vol. IV, p. 165, §.220 and p. 231 §.341;

fixing the particular purpose, Halsbury *loc. cit.* p. 167 §221; *pp.* 175 *sqq.* §§.235 *sqq.*;

determination of purpose and apportionment of trust property in case of mixed charitable and other purposes indicated by the author, Halsbury *loc. cit.* *pp.* 171 *sqq.* §§.227 *sqq.*, Lewin *op. cit.* *pp.* 474 *sqq.*;

the application of the *cy-près* doctrine as to the adaptation of the original to some similar purpose, Halsbury, *loc. cit.* *pp.* 221 *sqq.* §§.323 *sqq.*; Lewin *op. cit.* p. 473 *sq.*

(7) 3, R. 1134.

(8) 1, P.L.R. 735; 5, R. 1813.

(9) 1937, S.C.J. (N.S.) 373; 1 Ct.L.R. (N.S.) 83.

(10) 4, P.L.R. 354; 1937, S.C.J. (N.S.) 434; 2, Ct.L.R. 209 — further proceedings: C.A. 33/41 (1941, S.C.J. 113).

(11) 9, P.L.R. 291; 1942, S.C.J. 371.

Acceptance
of trust.

4. The acceptance of the trust by the trustee may be shown by words or acts indicating with reasonable certainty such acceptance.

No person is bound to accept the office of trustee of a charitable trust. But if he has once accepted, he cannot afterwards renounce save with the permission of the Court or judge: sec. 13.

Appointment of new trustee in case of disclaimer, refusal etc.: see sec. 22.

Trustee to
execute trust.

5. The trustee is bound to fulfil the purpose of the trust and to obey the directions of the author of the trust at the time of its creation except as modified by any scheme settled by the court for the administration of the trust in accordance with section 30.

Note that the author of the trust can give directions as to its execution only at the time of creation; thereafter only the Court can give or modify directions: sec. 29(2).

Sec. 30 which is referred to in sec. 5 deals with certain specified powers of the Court, such as adaptation of the trust purposes (clause (c)) but "without prejudice to its general powers" as outlined in sec. 28 and sec. 29(2).

Jurisdiction: sec. 42.

Trustee to
protect title
of trust
property.

6. A trustee is bound to maintain and defend all such suits and to take such other steps as, regard being had to the nature and amount or value of the trust property, may be reasonably requisite for the preservation of the trust property and the assertion or protection of the title thereto.

Suits for the preservation of the trust property: In C.A. 85/27⁽¹⁾ the administrators of a *waqf* applied in the District Court for a declaration that a lease granted by beneficiaries of the *waqf* was invalid and for recovery of possession. It was held that the District Court had no jurisdiction in either of these matters and that the action should have been brought in the Magistrate's Court. While this decision is still good law as regards recovery of possession, the enactment of the Civil Procedure Rules makes it now possible for the District Court to give a declaratory judgment in a proper case (See *CIVIL PROCEDURE*).

In L.C., Jm. 33/29⁽²⁾ the administrators of a charitable institution sued for the recovery of trust property consisting of a room. The defendant's allegation that the room had been given to him for life was rejected as being contradictory to the explicit terms of the *waqfia* under which the administrators were not entitled to grant accommodation to anyone for a period exceeding three years.

In L.A. 3/30⁽³⁾ the *Mamur Awaqaf* had obtained in the Land Court judgment for declaration of title and recovery of possession against the *mutawalli* and beneficiary of a family *waqf*. The beneficiary appealed. It was held

(1) 1, P.L.R., 186; 3, R. 1155.

(2) 5, R. 1807.

(3) 1, P.L.R. 546; 5, R. 1849.

that as regards the question of title only the *mutawalli* could have appealed. It was further held that as he was in possession of, and had obstructed the property claimed, the beneficiary had rightly been included as defendant.

It is submitted that the above precedents would apply *mutatis mutandis* to actions under the Charitable Trusts Ordinance.

Costs of trustee's actions: See notes to sec. 11.

7. A trustee is bound, subject to the provisions of the instrument of the trust, to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee, in so dealing, is not responsible for the loss, destruction or deterioration of the trust property.

Care required
from trustee.

The ordinary amount of care required from a trustee is "subject to the provisions of the instrument of trust", i.e. the will or non testamentary instrument mentioned in sec. 3(1). It would appear that that unilateral instrument can reduce but cannot increase the measure of responsibility cast upon the trustee by sec. 7. Any increase of responsibility is dependent upon the consent of the trustee and, accordingly, "a contract to the contrary" is required if the trustee is to be responsible for loss, destruction or deterioration "in so dealing" with the trust property, *viz.* with such care as follows from the first part of the section.

8. (1) Where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound, subject to any direction contained in the instrument of trust, to invest the money in any of the following securities and in no others: —

Investment
of trust
money.

(a) in bonds, debentures, stock or other securities of the Government of Palestine;

(b) in a first mortgage of immovable property situated in Palestine:

Provided that the value of the property exceeds by one third, or, if consisting wholly or mainly of buildings, exceeds by one half, the amount of the mortgage;

(c) in any security, other than immovable securities, authorised as a trustee investment by the law of England for the time being;

(d) in any other security expressly authorised by the instrument of trust or by any rule which the High Commissioner in Council may prescribe in that behalf,

(2) Nothing in this section shall apply to investments made before this Ordinance comes into force, or shall be deemed to preclude, in any case in which the trust property does not exceed two hundred pounds, deposit thereof in a bank.

"Rules" was substituted for "regulations" by Ord. 30 of 1934.

The duty to invest trust money is "subject to any direction contained in the instrument of trust". Such directions, however, are in turn subject to the powers of the Court as to modification. See sec. 5 and notes thereto.

Sub-sec. (1) clause (b): See also sec. 19.

Clause (c): The securities authorised as a trustee investment by the Law of England are those enumerated in sec. 1 of the Trustee Act, 1925. See also secs. 2 and 7 of that Act. See Lewin *op. cit.* pp. 362 *sqq.*

Clause (d): No rules have been made by the High Commissioner in Council under this provision.

Liability for
breach of
trust.

9. Where the trustee commits a breach of trust he is liable to make good the loss which the trust property has sustained:

Provided always that the court may, upon the application of the trustee, relieve the trustee of any liability for breach of trust if it is of opinion that he has acted honestly and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he has made such breach.

Source of the proviso: Trustee Act, 1925, sec. 61. The words "upon the application of the trustee" do not appear in sec. 61 of the Trustee Act, 1925. On the other hand that section requires the trustee to have acted "honestly and reasonably" whereas sec. 9 only refers to "honestly".

This section is to be read together with sec. 7.

"Directions of the Court" may always be obtained under sec. 29(2). It would appear that no liability of the trustee can arise in a matter in which he acted on the directions of the Court.

Jurisdiction: See sec. 42.

Non-liability
for co-trustee's
default.

10. (1) Subject to the provisions of sections 5, 6 and 7, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of the trust, a trustee is so liable —

(a) where he has delivered trust property to his co-trustee without seeing to its proper application; or

(b) where he allows his co-trustee to receive trust property and fails to make due enquiry as to the co-trustee's dea-

lings therewith, or allows him to retain it longer than the circumstances of the case reasonably require; or

- (c) where he becomes aware of a breach of trust committed or intended by his co-trustee and either actively conceals it or does not, within a reasonable time, take proper steps to protect the charitable interest.

(2) A co-trustee who joins in signing a receipt for trust property, if he proves, or, if it otherwise appears, that he has not received the same, is not answerable by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Co-trustees: See also secs. 14, 15, 19.

"Breach of trust": See secs. 9 and 7.

"Instrument of the trust": Sec. 3(1).

With regard to the cases mentioned in sub-sec. (1) (a) to (c) and sub-sec. (2), see Lewin *op. cit.* pp. 200 *sqq.*

11. Every trustee may reimburse himself or pay or discharge out of the trust property all expenses properly incurred in or about the execution of the trust, or the realisation, preservation or benefit of the trust property.

Right to reimbursement of expenses.

Source: Trustee Act, 1925, sec. 30(2), see also Lewin *op. cit.* pp. 405 *sqq.* Where the *mutawalli* of a *waqf* had lost an action brought by him for the protection of the trust property and had been ordered to pay costs, the execution of this order against his personal property was upheld in view of the fact that he could have retained but had failed to retain sufficient trust money to defray the costs of the suit and he could reimburse himself out of trust money coming to his hands in the future: H.C. 17/42⁽¹⁾.

This decision rather confirms than contradicts the rule that the costs of any action "properly" brought by the trustee for any of the purposes mentioned in sec. 11 are to be paid out of the trust property. This, however, does not apply to unsuccessful appeals. Thus the costs of an action to determine who were the beneficiaries of the trust were ordered to be paid out of the trust, but the costs of the appeal to the District Court and thence to the Supreme Court were held to be payable by the trustee personally: C.A. 84/40⁽²⁾ following *Westminster Corporation v. St. George's Hanover Square* [1909] 1 Ch. 592. See also C.A. 28/42⁽³⁾.

Preservation of the trust property: See sec. 6.

As to remuneration of trustees see sec. 16.

(1) 9, P.L.R., 146; 1942, S.C.J. 107; 11, Ct.L.R. 103.

(2) 7, P.L.R. 241; 1940, S.C.J. 313; 7, Ct.L.R. 99.

(3) 9, P.L.R. 269; 1942, S.C.J., 807; 12, Ct.L.R. 157.

Power to lease
and sell.

12. (1) A trustee shall not be entitled to sell, exchange or mortgage the whole or any part of immovable trust property save with the sanction of the court or judge and subject to such conditions as the court or judge may direct.

(2) Every lease made by a trustee shall be made to take effect in possession upon execution or within not more than three months thereafter: it shall be made at the best rent which can reasonably be obtained.

(3) Except with the permission of the court or judge, no trustee shall lease any immovable trust property for a term of more than three years.

(4) Any sale, exchange, mortgage or lease effected otherwise than in conformity with this section shall be void.

"Exchange" in sub-secs. (1) and (4) was added by Ord. 24 of 1925.

The section regulates the right of a trustee to dispose of immovable trust property. As to duty of trustee to sell, see sec. 39.

The wording of the section is not very satisfactory. Sale, exchange and mortgage are dealt with in sub-sec. (1) on the same lines as leases for more than three years are dealt with in sub-sec. (3). Nevertheless the wording of both sub-sections differs in several particulars. It is uncertain whether these discrepancies have any material effect. In the first part of sub-sec. (2) no mention is made of the "sanction" or "permission" of the Court or judge to leases on terms other than those specified. It is not clear whether the general powers of the Court to sanction transactions of the trustee are thereby ousted or not. It is further open to doubt whether the terms specified in sub-sec. (2) also apply to leases for more than three years or only to leases for shorter periods.

A provision somewhat similar to sub-sec. (3) is contained in Art. 441 of the *Majelle* with regard to leases of *waqf*; see C.A. 85/27⁽¹⁾.

An order made by a judge under sec. 12 is equivalent to an order made by a Court. It is subject to appeal but not subject to review by the High Court H.C. 45/33⁽²⁾. According to this decision such orders are similar to those made under sec. 18 of the Succession Ordinance.

Jurisdiction: See sec. 42.

Trustee cannot
renounce after
acceptance

13. A trustee who has accepted a trust cannot afterwards renounce it save with the permission of the court or judge.

Acceptance of trust: Sec. 4.

Jurisdiction: See sec. 42.

(1) 1, P.L.R., 186; 3, R. 1155.

(2) 2, P.L.R., 32; 5, R. 1816; P.F. 30.1.34.

Note that the section makes no allowance for any contrary provisions contained in the instrument of trust. See, however, sec. 21(b), (c) and (d) and sec. 22 and notes thereto.

14. (1) A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger unless —

Trustee cannot delegate.

(a) the delegation is in the regular course of business; or

(b) the delegation is permitted by the instrument of the trust; or

(c) the court or judge so directs.

(2) The appointment of an advocate or agent or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

The very restrictive wording of sub-sec. (2) is somewhat outbalanced by the words "in the regular course of business" contained in sub-sec. (1)(a). It is strange to find the word "business" in this context. It belongs rather to the powers of a company and its directors and has there been given a very wide meaning. See *Palmer's, Company Precedents*, 15th Ed. Vol. 3, p. 65 sq.

Instrument of trust: See sec. 3(1).

Jurisdiction: Sec. 42.

15. Where there are more trustees than one, all must join in the execution of the trust, except where the instrument of the trust otherwise directs or except when, on good cause shown, the court otherwise directs.

Co-trustees cannot act singly.

This provision is contrary to English law where trustees may act by majority in accordance with sec. 12 of the *Charitable Trusts Act, 1869*.

As to co-trustees, see also secs. 10, 14 and 19.

Under Moslem law and Art. 1465 of the *Mejelle* no good discharge is obtained by payment to one of two *mutawallis* of a *waqf*: C.A. 197/42(1). The same apparently applies in the case of co-trustees of a charitable trust.

16. In the absence of express directions to the contrary contained in the instrument of trust or of an order of a court or judge, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Trustee may not charge for services.

Instrument of trust: Sec. 3(1).

Order of a Court or judge: Sec. 30 (c).

Jurisdiction: Sec. 42.

Reimbursement of expenses: Sec. 11.

(1) 9, P.L.R. 694; 1942, S.C.J. 979.

Trustee may not use trust property for his own benefit.

17. A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.

See also secs. 18 and 19.

Trustee may not obtain interest in trust property.

18. No trustee, and no person who has within one year ceased to be a trustee, may, without the permission of the court or judge, buy or become mortgagee or lessee of the trust property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the trust.

See also secs. 17 and 19.

Co-trustees may not lend to one of themselves.

19. Save where the instrument of the trust provides the contrary, a trustee having power to invest trust money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

See also secs. 8(1)(b), 17 and 18.

Sec. 17 makes no allowance either for a permitting order of the Court or judge, or for contrary provisions in the instrument of trust. Sec. 18 allows for the former only; sec. 19 only for the latter.

Office how vacated.

20. The office of a trustee is vacated by his death or by his discharge from his office.

Discharge from office: Sec. 21. See also sec. 13.

Discharge of trustee.

21. A trustee may be discharged from his office only as follows—

- (a) by the extinction of the trust; or
- (b) by the completion of his duties under the trust; or
- (c) by such means as may be prescribed by the instrument of the trust or by any scheme under this Ordinance; or
- (d) by the appointment under this Ordinance of a new trustee in his place; or
- (e) by the court.

Clause (a): Extinction of the trust: Sec. 26.

Clause (c): Instrument of the trust: Sec. 3(1). Scheme under this Ordinance: Sec. 30.

Clause (d): Secs. 22 and 23. Sec. 22 enumerates various grounds of vacancy or disqualification. These grounds, however, do not automatically bring about the discharge of a trustee. They only give rise to the appointment of new trustees and no previous trustee is discharged unless and until the power to appoint has been exercised.

Clause (e): Sec. 29(1)(a).

22. (1) Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is absent from Palestine for such a continuous period and in such circumstances that, in the opinion of the court, it is desirable, in the interest of the trust, that his office should be declared vacant, or is declared insolvent or desires to be discharged from the trust, or refuses, or is or becomes, in the opinion of the court, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by —

Appointment
of new
trustee on
death, etc.

(a) the person nominated for that purpose by the instrument of trust (if any); or

(b) if there be no such person, or no such person able and willing to act, the author of the trust, if he be alive and competent to act, or the surviving or continuing trustee or trustees for the time being or (with the consent of the court) the retiring trustees, if they all retire simultaneously or (with the like consent) the last retiring trustee.

(2) Every such appointment shall be by writing under the hand of the person making it and shall be notarially executed.

(3) On an appointment of a new trustee, the number of trustees may be increased.

(4) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

The power to appoint new trustees conferred by this section on private persons is subject to the power of the Court under sec. 23.

Sub-sec. (1): The several cases in which new trustees may be appointed are of two kinds: those in which the power of appointment automatically arises, *viz*:—

disclaimer,
death
insolvency,
desire to be discharged,
refusal,
acceptance of inconsistent trust,

and those in which the disqualification of the previous trustee must first be declared by the court, *viz*:—

absence from Palestine

unfitness,

personal incapability.

Clause (a): See also sec. 33(2).

Sub-sec. (2): Notarial execution: see notes to sec. 3(1); see also sec. 33(3). In addition to this form, the consent of the Court is required in the last two cases of sub-sec. (1) (b).

Appointment
by court.

23. Whenever any such vacancy or disqualification occurs and it is found not reasonably practicable to appoint a new trustee under the preceding section or where for any other reason the due execution of the trust is or becomes impracticable, the Attorney General or any person benefiting by the purpose of the trust, may, without instituting a suit, apply by petition to the court for the appointment of a trustee or a new trustee and the court may appoint a trustee or a new trustee accordingly: if the Public Trustee of Charities is appointed, the court may direct that he shall act alone and that any continuing trustee shall be discharged, or that he shall act together with the continuing trustee as may be deemed most convenient in the interest of the trust.

"Public Trustee of Charities" substituted for "Public Trustee" by Ord. 30 of 1934.

Source: Trustee Act, 1925, sec. 41(1).

"Such vacancy or disqualification", — i.e. as is mentioned in sec. 22(1).

The power of appointment under this section is very wide. It does not only arise whenever the private appointment under sec. 22 is found not to be "reasonably practicable", but also where for any other reason "the due execution of the trust is or becomes impracticable". It is however, submitted that these latter words nevertheless only refer to cases where the appointment of new trustees becomes desirable by reasons connected with the previous trustees.

"Attorney General": It appears that only the Attorney General personally may make the application.

In P.C. 69/30⁽¹⁾ the alleged trustee of a charitable institution had applied to the District Court to declare the institution a charitable trust. This application was granted and leave was given to the Attorney General to apply for the appointment of trustees. Upon his application trustees were appointed. All these decisions were confirmed both by the Court of Appeal and the Privy Council. For other powers of the Attorney General under the Ordinance, see secs. 29, 38-9.

"Persons benefiting by the purpose of the trust": One such person is sufficient, and he can apply in his own right. Compare sec. 29(1) where "two

(1) 1, P.L.R., 665; 4, R. 1587.

or more persons having an interest in the trust" are required for acting under that section, and they must have obtained the consent of the Attorney General.

"Without instituting a suit": this distinguishes sec. 23 from sec. 29, under which the institution of an action is required.

"By petition": As to the meaning of this expression, which also appears in sec. 15 of the Arbitration Ordinance, see Annotated Laws of Palestine, Vol. II pp. 155 *sqq.* The proper procedure seems to be by notice of motion.

"Public Trustee of Charities": See sec. 35. According to that section, the Court has no discretion but to appoint the Public Trustee of Charities "unless the circumstances are such as to render such appointment inconvenient."

24. (1) Whenever any new trustee is appointed under or in pursuance of this Ordinance, all the trust property for the time being vested in the surviving or continuing trustee or trustees or in the representatives of any trustee and all the rights of suit in relation thereto of the trustee in whose place the appointment is made, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Vesting of trust property in new trustee.

(2) Every new trustee so appointed and every trustee appointed by a court either before or after the passing of this Ordinance shall have the same powers, authorities and discretion and shall, in all respects, act as if he had been originally nominated a trustee by the author of the trust.

Sub-sec. (1):

"Appointed under and in pursuance of this Ordinance": Secs. 22-3. 29(1)(a). See also sec. 33(2).

"Trust property for the time being vested": Secs. 25, 32-3.

"Representatives of any trustee": In view of sec. 25(3) and (5) this refers to the death of a sole trustee.

Sub-sec. (2): This is a general provision, not specifically connected with the vesting of trust property.

25. (1) Trust property shall be deemed to be vested in all the trustees jointly.

Vesting of trust property generally and survival of trust.

(2) Where trust property consists of stock, shares or securities, or of immovable property or any interest therein, or of any other property transferable in any book or register, it shall be registered in the names of all the trustees.

(3) On the death or discharge of one of co-trustees, the trust survives and the trust property remains vested in the surviving or

continuing trustees unless the instrument of trust expressly declares otherwise.

(4) Where trust property transferable in any book or register is registered in the names of two or more co-trustees and is expressed to be so registered upon a joint account, the registering authority shall, upon proof of the death or discharge of any trustee, amend the register accordingly and the trust property shall continue registered in the names of the surviving or continuing trustees or trustee only.

(5) Where upon the death of any trustee any interest in the trust property or in any part thereof has, by the effect of any law regulating succession to property, become vested in any person or persons who have not been appointed trustees thereof, such person or persons shall, pending any appointment of new trustees, hold such property upon the trust declared and shall be liable for any breach of trust as though they had been duly appointed trustees and had accepted the trusteeship.

The whole section was substituted by Ord. 24 of 1925.

Sub-sec. (1): The joint vesting of trust property corresponds to the provision in sec. 15 for the joint execution of the trust. It will be noted that sec. 15 and also sec. 25(3) are subject to the terms of the instrument of trust, whereas sec. 25(1) is not.

Sub-sec. (3):

"Discharge", see sec. 21.

"*The trust survives*". This is the legal fiction which excludes the operation of any law of succession in respect of the proprietary interest which the deceased co-trustee had in the trust property, and dispenses with the need for transferring his or a discharged co-trustee's interest to the surviving or continuing trustees. *Sub-sec. (4)* accordingly only provides for an "amendment" of the register or book.

Sub-sec. (4): According to *sub-sec. (2)* "property transferable in any book or register" includes also "immovable property or any interest therein." Immovable property is, however, further and separately dealt with in sec. 34. The drafting is not very satisfactory: Sec. 25(4) omits to provide for the amendment of the register on the appointment of new trustees (sec. 24(1)) and upon transfer by vesting order (sec. 32). On the other hand sec. 34 makes no reference to "interests in immovable property" which are expressly mentioned in sec. 25(2).

"*Amend the register*": No transfer, but only an amendment, is required (see note to *sub-sec. (3)*). Fees prescribed for transfer are, therefore, not payable. See also notes to sec. 34.

Sub-sec. (5):

"*Death of any trustee*": This must mean death of a sole trustee (see notes to sec. 24(1)). Whenever any surviving trustee remains, no interest

in the trust property devolves by inheritance upon the death of any co-trustee: Sub-sec. (3).

"Appointment of new trustees": Secs. 22-3. Upon such appointment the trust property automatically becomes vested in the new trustees: Sec. 24(1).

26. A trust is extinguished—

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or
- (c) subject to the powers of the court under section 28, when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked.

Trust how extinguished.

Extinction of the trust: See also sec. 21(a).

Clause (c): In addition to sec. 28 see also sec. 30 (d) and (e).

Clause (d): see sec. 27.

27. No trust can be revoked by the author of the trust save by permission of the court, and no such revocation shall defeat or prejudice what the trustees may have duly done in the execution of the trust.

Revocation of trust.

As this is a separate section, and not a proviso to sec. 26(d), it is open to question whether every trust may be revoked by permission of the Court or only a trust which was from the beginning made revocable. On the other hand it is clear that even a trust of this latter kind cannot be revoked without the permission of the Court.

Jurisdiction: Sec. 42.

28. The court shall have the same powers for the establishment, regulation, protection and adaptation of all charitable trusts as are exercised for the time being with reference to charitable trusts within the meaning of English law by the High Court of Justice in England.

General powers of the court.

This sweeping provision, including as it does both statutory and other powers of the High Court of Justice, is presumably to be read and applied "subject to the provisions of this Ordinance" although these words do not appear in the section.

As to the powers of the High Court of Justice with reference to charitable trusts, see Halsbury, *Hailsham* Ed. Vol. IV, pp. 346 *sqq.*

"The court": See sec. 42.

29. (1) In case of any alleged breach of any trust, or whenever the direction of the court is deemed necessary for the administration of any trust, the Attorney General or two or more persons having

Actions for carrying trusts into effect.

an interest in the trust, and having obtained the consent in writing of the Attorney General, may institute an action to obtain a decree—

- (a) removing any trustee or trustees of the charity and, if necessary, appointing new trustees thereof; or
- (b) directing accounts and enquiries; or
- (c) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust; or
- (d) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged; or
- (e) settling a scheme for the management of the trust; or
- (f) granting such further or other relief as the nature of the trust may require.

(2) Nothing in this section shall be deemed to preclude the trustee or author of any trust from applying to the court by action or otherwise for such direction or relief as he may be entitled to obtain under the general provisions of this Ordinance, or for the purpose of invoking the assistance of the court, for better securing the objects of the trust, or for regulating its administration or succession to the trusteeship, and, upon any such application, the court may make such order as it may deem equitable.

Sub-sec. (1):

For the persons who may act under this subsection, compare sec. 23 and notes thereto.

"Institute an action": See, *per contra*, sec. 23.

Clause (a): Removal of trustee; see sec. 21 (e).

Appointment of new trustees: See sec. 23. See also Halsbury, *op. cit.* pp. 319 *sqq.*

Clause (b): See also sec. 30(a). In C.A. 99/39⁽¹⁾ a beneficiary asked for an account of the moneys due to him from the Moslem Director of Orphans. It appeared that the accounts of the trust were negligently kept and it was necessary to employ an auditor in order to ascertain the amount due. The defendant was ordered to pay that amount together with interest from the time when the amount ought to have been paid, together with the costs of the audit. He was directed to recover interest and costs from the person who had been guilty of the negligence and had since been discharged from office. The case was decided under the Ottoman Orphans' Law, but its reasons would equally apply to a case under the Ordinance.

(1) 6, P.L.R. 483; 1939, S.C.J. 473. See further H.C. 70/40 (1940, S.C.J. 409; 8, Ct. L.R. 161).

Clause (c): See also sec. 30(d) and (e).

Clause (d): See secs. 12 and 39.

Clause (e): See sec. 30.

Sub-sec. (2): Contrary to subsec. (1) this provision may be invoked by and may only be invoked by "the trustee or author of any trust".

"*By action or otherwise*": The alternative form to an ordinary action would appear to be a "petition" as contemplated by sec. 23, i.e. application by way of motion. See notes to sec. 23.

An order made by the District Court under sec. 29(2) in the exercise of its discretion will, generally, not be set up on appeal: C.A. 27/28⁽²⁾. In C.A. 74/35⁽³⁾ an *interim* injunction was granted by the District Court under sec. 29(2) on an application of trustees to restrain certain persons from interfering with the management of the trust.

30. In settling any scheme for the management of a trust the court shall have, without prejudice to its general powers, the powers following:—

Special powers
of court.

(a) to provide for the periodical auditing of the accounts of the trust property by auditors appointed by or subject to the approval of the court, or otherwise as the court may deem expedient;

(b) to provide for the visitation of the charity;

(c) to provide for the settlement of the remuneration of the trustee;

Provided that no such remuneration shall, except with the consent of the court, in any case exceed ten per cent of the gross income of the trust;

(d) to devote any surplus income that may be available after the reasonable satisfaction of the objects of the trust to the extension of such objects, or, if the court see fit, to purposes of education;

(e) to make such adaptation of the trust purposes as may be necessary to carry out the wishes of the author of the trust as nearly as practicable where it is not possible to carry out those wishes in the exact manner of the trust.

A scheme for the management of a trust is referred to in sec. 29(1)(e) as one of the matters for which a decree may be obtained by an action instituted by the Attorney General or with his consent. It would, however,

⁽²⁾ 1, P.L.R. 320; 5, R. 1806.

⁽³⁾ 7, R. 209; P.P. 26.8.36.

appear from sec. 29(2) that such a scheme may also be settled by an application (by action or motion) of the trustee or author of the trust.

"Without prejudice to its general powers": See sec. 28. One of the most important of these powers is the application of the so-called *cy-près* doctrine. See Halsbury, *op. cit.* pp. 221 *sqq.*

Clause (a): See also sec. 29(1)(b).

Clause (b): On visitation of charities, see Halsbury, *op. cit.* pp. 340 *sqq.*

Clause (c): See sec. 16.

Clauses (d) and (e): See also sec. 29(1)(c).

For modification of the directions of the author of the trust, see sec. 5.

Prescription.

31. (1) In the following cases, that is to say—

(a) in the case of any claim against a trustee founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or

(b) in the case of any claim to recover trust property, or the proceeds thereof still retained by a trustee, or previously received by the trustee and converted to his use,

the claim shall not be held to be barred or prejudiced by any provisions relating to prescription of right or limitation of action, but the court may entertain such action notwithstanding the lapse of any period of prescription or limitation if it is of opinion that, in all the circumstances of the case, it is in the interest of justice that it should be entertained.

(2) Save as provided in the preceding subsection, the defence that the right or claim is barred by prescription or by a period of limitation of action shall be available for a trustee in any action or legal proceeding in the like manner and to the like extent as it would have been available if he had not been a trustee.

In C.A. 28/42⁽¹⁾, in an action by a *mutawalli* of a *waqf* against a former *mutawalli*, the point for decision was whether prescription had been interrupted by an action brought by the same plaintiff in his capacity of beneficiary. Had this been an action concerning a charitable trust under the Ordinance, it would have been necessary first to decide whether the action was within the scope of clauses (a) or (b) of sec. 31(1).

Precedents, however, concerning questions of prescription which do not correspond to those specified in clauses (a) and (b) may be resorted to also in matters concerning charitable trusts. Thus it has been held that no beneficiary or *mutawalli* can ever acquire any equitable or prescriptive title: C.A. 24/40⁽²⁾,

⁽¹⁾ 9, P.L.R. 269; 1942, S.C.J. 807; 12, Ct.L.R. 157.

⁽²⁾ 7, P.L.R. 133; 1940, S.C.J. 240; 8, Ct.L.R. 154.

C.A. 235/40⁽³⁾, C.A. 64/43⁽⁴⁾. This, apparently, also applies to the recovery of trust property under the Ordinance.

32. (1) In the following cases, namely—

Vesting orders.

- (a) where it is uncertain in whom the title to any trust property is vested; or
- (b) where a trustee or any other person in whom the title of trust property is vested has been required in writing to transfer the property by or on behalf of a person entitled to require such transfer, and has wilfully refused or neglected to transfer the property for twenty eight days after the date of the requirement; or
- (c) where a trustee or other person in whom the trust property is vested is a minor or is out of Palestine or cannot be found; or
- (d) where it is otherwise convenient to vest the trust property in any other person;

the court may make an order (in this Ordinance called "a vesting order") vesting the property of any such person in any such manner or to any such extent as the court may direct.

(2) A vesting order under any provision of this Ordinance shall have the same effect as if the trustee or other person in whom the trust property was vested had executed a transfer to the effect intended by the order.

(3) Where a vesting order may be made under this section, the court may, if it is more convenient, appoint a person to transfer the property; and a transfer by that person in conformity with the order shall have the same effect as an order under this section, and every person so appointed shall, for the purpose of all transactions, proceedings and formalities incidental to the transfer, have all the power and capacities of the trustee or other person in whom the trust property was vested and shall be deemed to be the authorised attorney of such trustee or other person for the purpose aforesaid.

Sub-sec. (1) substituted and sub-sec. (3) added by Ord. 24 of 1925.

⁽³⁾ 8, P.L.R. 23; 1941, S.C.J. 18.

⁽⁴⁾ 1943, A.L.R. 507.

Sub-sec. (1) :

Clause (a) : For the persons in whom the trust property is generally vested, see secs. 24(1), 25.

Clause (b) : There is no provision in the Ordinance under which any person is entitled to make a request as contemplated by this provision.

Sub-sec. (2) : see also secs. 25(4) and 34.

Devolution of
trust property.

33. (1) Where, whether before or after the commencement of this Ordinance, it is declared or intended in any instrument of trust that the trustee of the trust shall be the Public Trustee of Charities or any person for the time being holding or acting in any public office, or holding or acting in any office or discharging any duty in any public institution or association, or religious community, or where any property comes into or is in the possession or ownership of any such person in any of the aforesaid capacities upon any trust, the title of the trust property shall devolve from time to time upon the person for the time being holding or acting in any such office, or discharging such duty without any conveyance, vesting order or other assurance otherwise necessary for vesting the property in such person.

(2) Where, whether before or after the commencement of this Ordinance, in the case of any charitable trust or in the case of any trust for the purpose of any public or private association (not being an association for the purpose of gain), a method for the appointment of new trustees is prescribed in the instrument of trust (other than nomination referred to in section 22), or by any rule in force, or, in the absence of any such prescribed method, is established by custom, then, upon any new trustee being appointed in accordance with such prescribed or customary method, and, upon the execution of the memorandum referred to in the next succeeding subsection, the trust property shall become vested without any conveyance, vesting order or other assurance in such new trustee and the old continuing trustees jointly or, if there are no old continuing trustees, in such new trustee wholly.

(3) Every appointment under the last preceding subsection shall be made to appear by a memorandum under the hand of the person presiding at the meeting or other proceeding at which the appointment was made, and attested by two other persons present at

the said meeting or proceeding: every such memorandum shall be notarially executed.

"Public Trustee of Charities" substituted for "Public Trustee" by Ord. 30 of 1934.

Source: Sub-secs. (2) and (3): Trustee Appointment Act, 1850 secs. 1, 3.

Sub-sec. (1):

Instrument of trust: Sec. 3(1), see also notes to sec. 3(2).

Public Trustee of Charities: See sec. 35.

Sub-secs. (2) and (3): Trusts "for the purpose of any public or private association" mentioned in this provision do not fall within the framework of the Ordinance (see notes to sec. 40) and so are the "rules in force" and "the meetings" which are referred to only incidentally and without any indication as to the rules or meetings intended. So far as Charitable Trusts are concerned, the provisions of subsecs. (2) and (3) seem to allow for an alternative method of appointing new trustees. They constitute, in this respect, an addition to sec. 22. With regard to the vesting of the trust property in the new trustees they are only a duplication of sec. 24(1).

34. Where immovable property is registered in the names of trustees, the Director of Lands shall, upon production of any instrument or order of appointment of new trustees or of a vesting order, and, upon being satisfied that the property forms part of the trust property, make all necessary entries in the land register upon payment of such fees as may be prescribed.

Registration
of immovable
trust property.

Previous sub-sec. (1) repealed by Ord. 24 of 1925.

"Director of Lands" replaced by "Director of Land Registration" by Ord. 21 of 1939.

The section deals only with immovable property and only after its first registration in the names of trustees. See secs. 3(1), 25(4) and notes thereto.

The Land Transfer (Fees) Rules, 1939, in item 12 II (b) of the Schedule, provide for a fee of 250 mils for "registration of any instrument or order of appointment of new trustees, or of a vesting order in respect of immovable property already registered in the names of trustees".

"Instrument of appointment": Secs. 22(2), 33(3).

"Order of appointment": Secs. 23, 29(1)(a).

"Vesting order": Sec. 32.

35. If at any time the post of Public Trustee of Charities is created by Ordinance in Palestine, the Public Trustee of Charities may be appointed a trustee of any trust under this Ordinance: in any case in which the court or judge is empowered to appoint a trustee of any trust, the Public Trustee of Charities shall be appointed, unless the circumstances are such as to render such appointment inconvenient.

Public Trustee
of Charities.

"Public Trustee of Charities" substituted for: "Public Trustee" by Ord. 24 of 1925.

The post of Public Trustee of Charities was created by Charities (Public Trustee) Ordinance (*q.v.*, *post.*)

"*May be appointed*": Either originally or under secs. 22 or 33(2).

"*The court or judge is empowered to appoint a trustee*" under secs. 23 and 29(1)(a). See notes to sec. 23.

Incorporation
of trustees.

36. The High Commissioner in Council may, in his discretion, by order, on the application of the trustees of any charitable trust, authorise the incorporation of the said trustees, and upon the publication of the said order the said trustees of the charity and their successors for the time being shall be constituted a corporation under such style and subject to such conditions as may be specified in the order.

No such orders seem to have been made.

See also Companies Ordinance sec. 23.

Trust created
by construction
of documents
or custom.

37. (1) Notwithstanding anything in this Ordinance, if the court is of opinion upon the evidence of documents laid before it or of proved custom that any property in Palestine is held by the owner thereof under an obligation that the use of such property and the proceeds and income thereof shall be devoted to charitable purposes, the court may declare such property to be held in trust for the purpose of this Ordinance and the provisions of this Ordinance shall apply thereto as though the trust had been created in accordance therewith:

Provided that where the trust was created under foreign law the court shall, in exercising jurisdiction with reference thereto, apply the law under which it was created so far as such law is not contrary to the public policy of Palestine or to the policy of this Ordinance.

(2) In dealing with any property alleged to be subject to a charitable trust, the court shall not be debarred from exercising any of its powers by the absence of evidence of the former constitution of the trust if it shall be of opinion in all the circumstances of the case that the trust in fact exists or ought to be deemed to exist.

Sub-sec. (2) added by Ord. 24 of 1925.

Sub-sec. (1):

"*Notwithstanding anything in this Ordinance*": this refers particularly to sec. 3.

"The court": See sec. 42.

"Documents or proved custom." No other evidence is admissible under this provision. Precedents as to the admissibility of oral evidence to prove the existence of a *waqf*, such as C.A. 64/43⁽¹⁾ can therefore be relied upon only so far as the proof of custom is concerned⁽²⁾.

In the decision of the District Court which was the subject of C.A. 178/33⁽³⁾, sec. 37(1) seems to have been held as of no avail. For a case in which sec. 37(1) was acted upon, see P.C. 69/30⁽⁴⁾.

"Under an obligation etc." These words roughly correspond with the description of trust contained in sec. 2(1).

"Charitable purposes": See sec. 2(2).

"The court may declare": This declaration replaces the creation in accordance with sec. 3. It can not be made where no trust could have been created under that section, e.g. where the property in question is immovable property of the *miri* category: C.A. 164/35⁽⁵⁾, C.A. 117/40⁽⁶⁾.

"Provided that.....": see notes to the preamble of the Ordinance.

Sub-sec. (2): This provision is in line with English Law, see Halsbury, *op. cit.* p. 210. See also *Mejella*, Art. 1668. It is, however, not easily reconciled either with sec. 3 or with sec. 37(1) of the Ordinance. It may be that under sub-sec. (2) the Court is empowered to exercise all its powers under the Ordinance (and the English law, see sec. 28) in respect of property "alleged to be subject to a charitable trust" although there is neither a creation under sec. 3 nor a declaration under sec. 37(1). But the provision also permits of a more restrictive interpretation, upholding its connection with sub-sec. (1): If upon evidence of documents or proved custom the Court is of opinion that property is held on trust for charitable purposes, it may make a declaration under sec. 37(1) and may thereafter exercise all other powers under the Ordinance notwithstanding the absence of evidence of the former constitution. In any case, sub-sec. (2) is in accordance with the law of *waqf* as laid down in C.A. 107-108/41⁽⁷⁾, where Copland, J. said: "The absence of any *waqfiya* is not a determining factor. When we find all the incidents of a *waqf sahih* extending over a very long period, then the law presumes that there must have been a lawful origin for these incidents, in other words that a *waqf sahih* was lawfully created."

38. (1) Where property in Palestine is held in trust for charitable purposes by a foreign corporation, such corporation shall be recognised as the trustee of the property for the purpose of this Ordinance upon registration of the corporation with the registrar of companies in accordance with section 248 and 250 of the Companies Ordinance.

Foreign
corporations.

⁽¹⁾ 1943, A.L.R. 507. See also 165/44 (1945, A.L.R. 228).

⁽²⁾ As to how a custom is to be proved, see C.A. 5/40 (7, P.L.R. 80; 1940, S.C.J. 63; 7, Ct.L.R. 61).

⁽³⁾ 2, P.L.R. 247; 7, R. 88; P.P. 27.1.35; see the report in Rothenberg.

⁽⁴⁾ 1, P.L.R. 665; 4, R. 1587, see notes to secs. 2(2) and 23.

⁽⁵⁾ 4, P.L.R. 211; 1937, S.C.J. (N.S.) 373; 1, Ct.L.R. (N.S.) 83.

⁽⁶⁾ 9, P.L.R. 291; 1942, S.C.J. 371.

⁽⁷⁾ 8, P.L.R. 398; 1941, S.C.J. 400; 10, Ct.L.R. 104.

(2) For the purpose of registration, the members of the committee of management of the corporation or other persons authorised to control its affairs shall be deemed to be the directors.

(3) Where property in Palestine is held on trust by a foreign corporation and the corporation has failed to register, the Attorney General may apply to the court for the appointment of a trustee as though there were no existing trustee.

Sub-sec. (3) re-enacted by Ord. 24 of 1925.

The section deals with "foreign corporations" while secs. 248 to 250 of the Companies Ordinance deal with "foreign companies" as defined in sec. 2(1) of that Ordinance.

Sub-sec. (2): See Companies Ordinance sec. 248(2)(1)(b) and the definition of "director" in sec. 2(1).

Sub-sec. (3): See secs. 23 and 29(1).

Limitation of
power to
hold land.

39. (1) Where immovable property is devised, transferred or otherwise comes to be held upon trust for charitable purposes, the trustees thereof shall, within one year from the date at which such property became subject to the trust, apply to the court or judge under section 12 of this Ordinance for an order for sale and such order shall be made accordingly.

(2) The Attorney General may at any time, if satisfied that immovable property is held subject to a trust for charitable purposes, make application to the court or judge for an order for sale thereof.

(3) The provisions of this section shall apply to immovable property held by any limited company in respect of which a licence has been granted under section 23 of the Companies Ordinance, unless the company obtains the certificate of the High Commissioner for which provision is made by section 15 of the Companies Ordinance.

(4) The provisions of this section shall not apply in the following cases—

(a) where the immovable property consists of houses or buildings in, or required for, the occupation of the trustee for the purposes of the trust; or

(b) where the permission of the High Commissioner has been obtained; or

(c) where the *mulk* immovable property was at the date when this Ordinance came into force held upon a charitable trust within the meaning of this Ordinance; or

(d) where the immovable property is acquired by the trustees in substitution for property sold by them, which was not subject to the provisions of this section.

This section was retroactively amended and added to by Ord. 24 of 1925.

Sub-sec. (1) :

"*Revised*": See sec. 3(1)(a).

"*Transferred*": See sec. 3(2)(d).

"*Otherwise comes to be held upon trust*": e.g. where the trust is constituted *inter vivos* and the author is himself to be the trustee, see sec. 3(2)(d).

"*Charitable purposes*": See sec. 2(2).

Jurisdiction: See sec. 42.

Sub-sec. (3): Sec. 23 of the Companies Ordinance provides that companies formed for charitable and kindred purposes may obtain a license dispensing with the addition of the word "limited" to their name and with certain formalities set out in sec. 23(3). Sec. 15 of the Companies Ordinance provides that no company having as one of its objects "the acquisition and development of land generally in Palestine" may be registered unless it has obtained a certificate empowering it to hold land generally. It is to be noted that the Companies Ordinance does not contain any provision against mortmain similar to sec. 39 of the Charitable Trusts Ordinance. See notes that section in title *COMPANIES*.

In the Revised Edition of the Laws of Palestine (Drayton) the word "is" appears between "any limited company" and "respect of which. This, of course, is a misprint for "in". Originally the word was "in".

Sub-sec. (4) :

Clause (a): "*The occupation of the trustee*": A charitable trust is not a juristic person. The property is, accordingly, vested in, and occupied by, the trustee.

40. All matters with reference to any trust, or with reference to any obligation in the nature of a trust arising or resulting by the implication or construction of law, for which no specific provision is made in this or any other Ordinance, shall be determined by the principles of equity for the time being in force in the High Court of Justice in England.

Application
of English
law.

Although most of the sections of the Ordinance speak of "trust", "trust property", "trustee" without expressly reiterating that a trust for charitable purposes or a charitable trust is meant, it may safely be assumed that they are intended to apply to such trusts only, unless the contrary is expressly stated, as in sec. 33(3). Sec. 40, however, imports the English principles of equity "in all matters" regarding "any trust" and "any obligation in the nature of a

trust etc." saving the provisions of this "or any other Ordinance." In view of this wording it may well be argued that the general directions of Art. 46 of the Palestine Order-in-Council have been implemented by sec. 40 not only with regard to charitable trusts but with regard to trusts of any description including so called private trusts. It seems that the section has escaped the attention of the Courts deciding H.C. 77/31⁽¹⁾, C.D.C.T.A. 125/43⁽²⁾ and C.Aps. 16—24/45⁽³⁾ and has as yet not received any judicial interpretation. On the other hand, it is to be remembered that it appears in an Ordinance otherwise dealing exclusively with charities and expressly made for that purpose only (see the Preamble), and that the wording, although very wide and general, nevertheless admits of an interpretation restricting its scope to matters of charitable trusts. See also notes to sec. 2, p. 195 *supra*.

Rules.

41. The Chief Justice may, with the approval of the High Commissioner, make rules as to—

- (a) the procedure to be observed in any proceedings under this Ordinance;
- (b) the jurisdiction of the courts or judges thereof under this Ordinance;
- (c) the fees to be charged in respect of any proceeding under this Ordinance.

Clause (c) was added by Ord. 24 of 1925.

The only rules made under this section are the Charitable Trusts (Fees) Rules, 1935, (Palestine Gazette No. 487 of 17th January 1935) prescribing fees for registration in the Land Registry see p. 232 *post*. Identical provisions are now incorporated in the Transfer of Land (Fees) Rules, 1939, Schedule, item 12 II. See notes to sec. 3(1) and sec. 33.

Court fees in matters of charitable trusts are provided for in items 28 to 33 of the Schedule to the Court Fees Rules, 1935 (Palestine Gazette No. 540 of 26th September 1935), as follows:—

28. On application for appointment of trustee	LP. 3.-
29. On application for dismissal of trustee	" 3.-
30. On application for vesting order	" 3.-
31. On application for declaration of trust	" 3.-
32. On application for revocation of trust	" 3.-
33. On application for which no other fee is prescribed	" 1.-

Jurisdiction.

42. Subject to any rules under this Ordinance—

- (a) the competent court in any proceedings under this Or-

(1) 1, P.L.R. 735; 6, R. 1813.

(2) 1945, S.C.D.C. 265.

(3) 1945, A.L.R. 628.

dinance shall be the district court of the District in which any part of the subject matter of the trust is held or situate;

(b) where it is provided that any application may be made to or order made by the court or a judge, such application may be made to or order made by the competent district court or the president thereof.

Rules mentioned in the opening words are those which may be made under sec. 41(b). No such rules were made.

"Proceedings under this Ordinance": This, presumably, means proceedings particularly based on the provisions of the Ordinance, such as applications under secs. 23, 29 and the like, but does not include other proceedings connected with charitable trusts. Thus actions for the recovery of possession of trust property would probably be within the jurisdiction of the Magistrates' Court similar to actions for the recovery of *waqf* property, see C.A. 85/27⁽¹⁾.

Holy Places: Special provisions regarding any "cause or matter in connection with the Holy Places or religious buildings or sites in Palestine" are contained in the Palestine (Holy Places) Order-in-Council, 1924, which prescribes that no such cause or matter "shall be heard or determined by any Court in Palestine." The jurisdiction of the Civil Courts is thereby ousted, see, e.g., C.A. 178/33⁽²⁾ and C.A. 324/44⁽³⁾, whereas the jurisdiction of the Religious Courts has been saved by the proviso to Art. 2 of the said Order-in-Council. See notes to the preamble at p. 193 *ante* and title *PALESTINE (HOLY PLACES) ORDER-IN-COUNCIL*.

Various questions of jurisdiction in relation to the validity of a charitable dedication were raised, but were not decided, in Mot. Jm. 43/45⁽⁴⁾.

43. Nothing in this Ordinance shall affect property devoted to charitable purposes which is the subject of a *waqf* or religious endowment constituted before a religious court in accordance with the provisions of the Palestine Order in Council, 1922, nor be construed to validate a devise of *miri* land for charitable purposes.

Ordinance does not refer to *wakf* or religious endowments.

The last part beginning with "nor construed" was added by Ord. 24 of 1925.

As to *waqfs* or religious endowments, see Charities (Public Trustee) Ordinance, sec. 11 and Civil and Religious Courts (Jurisdiction) Ordinance, sec. 2. See also notes to the preamble.

As to devise of *miri* land, see Succession Ordinance sec. 21 and notes to sec. 3(1) and sec. 37 *supra*.

⁽¹⁾ 1, P.L.R., 186. 3 R. 1155.

⁽²⁾ 2, P.L.R. 247; 7, R. 88; P.P. 27.1.35.

⁽³⁾ 1944, A.L.R. 744.

⁽⁴⁾ 1945, S.C.D.C. 450.

CHARITIES (PUBLIC TRUSTEE) ORDINANCE.

AN ORDINANCE TO PROVIDE FOR THE CONSTITUTION OF THE
OFFICE OF PUBLIC TRUSTEE OF CHARITIES.

(Drayton, Cap. 15)

- Short title. 1. This Ordinance may be cited as the Charities (Public Trustee) Ordinance.
- Source: Public Trustee Act, 1906.
- "Charities" has the same meaning as charitable trust or trust for charitable purposes under the Charitable Trusts Ordinance.
- Interpretation. 2. In this Ordinance, unless the context otherwise requires—
- "expenses" includes costs and charges;
- "private trustee" means a trustee other than the Public Trustee of Charities;
- "religious court" means a Moslem religious court or the court of a religious community having jurisdiction under Articles 53 and 54 of the Palestine Order in Council, 1922.
- As to the jurisdiction of Moslem and other religious Courts, see, in addition to the above provisions, Civil and Religious Courts (Jurisdiction) Ordinance secs. 3, 4 and 5. See notes to the preamble of the Charitable Trusts Ord. *supra* p. 192 *sqq.*
- Office of Public Trustee of Charities. 3. It shall be lawful for the High Commissioner to appoint an officer called the Public Trustee of Charities, who shall have capacity to acquire and hold immovable and movable property of every description, to enter into any contracts, to execute any deeds, and to sue and be sued under the above name: he shall have an official seal.
- See further sec. 8.
- No Public Trustee of Charities exists in Palestine as the power of appointment under this Ordinance has never been exercised.
- General powers and duties of Public Trustee of Charities. 4. (1) Subject to and in accordance with the provisions of this Ordinance and the rules made thereunder, the Public Trustee of Charities may, if he thinks fit, act—
- (a) as custodian trustee alone; or
- (b) as an ordinary trustee, either alone or jointly with any person or body of persons, and shall have all the same

powers, duties and liabilities, and shall be entitled to the same rights and immunities, and shall be subject to the same control and orders of the court, as a private trustee acting in the same capacity has, is entitled or is subject to, under any existing or future Ordinance now or hereafter in force in Palestine.

(2) The Public Trustee of Charities may decline, either absolutely or except on the prescribed conditions, to accept any trust.

(3) The Public Trustee of Charities shall not accept any trust save a trust for charitable purposes within the meaning of section 2 of the Charitable Trusts Ordinance.

Source: sub-sec. (1) clause (b): Public Trustee Act, 1906 sec. 2(2).

Sub-sec. (1): No rules were made under the Ordinance.

Clause (a): See sec. 5.

Clause (b): Powers, duties etc. of private trustees, see secs. 5 *sqq.* of the Charitable Trusts Ord.

Sub-sec. (2): See sec. 12 *post* and Charitable Trusts Ord. sec. 4.

Sub-sec. (3): See, however, sec. 11 and notes thereto.

5. (1) Subject to the rules made under this Ordinance, the Public Trustee of Charities may, if he consents to act as such, and whether or not the number of trustees has been reduced below the original number, be appointed to be custodian trustee of any trust—

Appointment
to be
custodian
trustee.

(a) by order of the court made on the application of any person on whose application the court may order the appointment of a new trustee; or

(b) by the testator or other creator of any trust; or

(c) by the person having power to appoint new trustees.

(2) Where the Public Trustee of Charities is appointed to be custodian trustee of any trust—

(a) the trust property shall be transferred to the custodian trustee as if he were the sole trustee, and, for that purpose, vesting orders may, when necessary, be made under the Charitable Trusts Ordinance;

(b) the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the

custodian trustee (which trustees are hereinafter referred to as the "managing trustees");

- (c) as between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have free access thereto and shall be entitled to take copies thereof or extracts therefrom;
- (d) the custodian trustee shall concur in, and perform, all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs, the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them;
- (e) all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee: Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they may direct, and, in such cases, shall be exonerated from seeing to the application thereof, and shall not be answerable for any loss or misapplication;
- (f) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone but the custodian trustee shall have the same power of applying to the court for the appointment of a new trustee as any other trustee;
- (g) the custodian trustee, if he acts in good faith, shall not be liable for accepting as correct, and acting upon the faith of, any written statement by the managing trustees as to

any matter of fact, upon which the title to the trust property or any part thereof may depend, nor for any acting upon any legal advice obtained by the managing trustees independently of the custodian trustee;

- (h) the court may, on the application of either the custodian trustee or any of the managing trustees, and on proof to its satisfaction that it is expedient to terminate the custodian trusteeship, make an order for that purpose, and the court may thereupon make such orders and give such directions as under the circumstances may seem to the court to be expedient.

Source: Public Trustee Act, 1906, sec. 4.

Sub-sec. (1): "Rules": There are no such rules.

"Consent": See sec. 12.

Clause (a): Charitable Trusts Ord. secs. 23 and 29(1).

Clause (b): See Charitable Trusts Ord. sec. 3(1).

Clause (c): Charitable Trusts Ord. sec. 22.

Sub-sec. (2).

Clause (a): Charitable Trusts Ord. s. 32(1).

Clause (d): Compare Charitable Trusts Ord. s. 10.

Clause (f): Under the Charitable Trusts Ord. private trustees have no express power of applying to the Court for the appointment of new trustees. They may, however, apply under sec. 29(2) or in pursuance of sec. 28 of that Ordinance.

Clause (h): See Charitable Trusts Ord. sec. 21(c).

6. The Public Trustee of Charities may, by that name or any other sufficient description, be appointed to be trustee of any will or other instrument creating a charitable trust, and may be so appointed whether the will or instrument creating the trust was made or came into operation before or after the passing of this Ordinance and either as an original or as a new trustee, or as an additional trustee, in the same cases and in the same manner and by the same persons or court as if he were a private trustee, with this addition, that though the trustees originally appointed were two or more, the Public Trustee of Charities may be appointed sole trustee, notwithstanding that in the instrument creating the trust it was provided that the number of trustees should never be less than a certain number exceeding one.

Appointment
of Public
Trustee of
Charities to
be trustee.

Source: Public Trustee Act, 1906, sec. 5(1).

"By that name": See Charitable Trusts Ord. sec. 33(1).

"Will or other instrument": Charitable Trusts Ord. sec. 3(1).

"Additional trustee": See Charitable Trusts Ord. sec. 22(3).

See also Charitable Trusts Ord. secs. 23 and 35.

Liability of
the general
revenue of
Palestine.

7. (1) The general revenue of Palestine shall be liable to make good all sums required to discharge any liability which the Public Trustee of Charities, if he were a private trustee, would be personally liable to discharge, except where the liability is one to which neither the Public Trustee of Charities nor any of his officers has in any way contributed and which neither he nor any of his officers could, by the exercise of reasonable diligence, have averted; and, in that case, the Public Trustee of Charities shall not, nor shall the general revenue of Palestine, be subject to any liability.

(2) All sums payable in pursuance of this section out of the general revenue of Palestine shall be charged on and issued out of that fund.

Source: Public Trustee Act, 1906, sec. 7.

Sub-sec. (1): Liability of the Public Trustee of Charities: see also secs. 4(1)(b), 5(2)(d) and (g).

Sub-sec. (2): The above provision of the English Act charges "the consolidated fund of the United Kingdom". In Palestine there is no corresponding fund. The subsection is, accordingly, meaningless.

Officers and
offices.

8. (1) The High Commissioner shall appoint a fit person to the office of Public Trustee of Charities who shall receive such salary or fees, and be appointed on such terms, as the High Commissioner may determine.

(2) The High Commissioner shall appoint such persons to be the officers of the Public Trustee of Charities as he may consider necessary, and those officers shall hold office upon such terms and be remunerated at such rates and in such manner as the High Commissioner may determine.

(3) Any person appointed to be Public Trustee of Charities or one of his officers may be a person already in the public service.

(4) The head office of the Public Trustee of Charities shall be in Jerusalem.

See note to sec. 3.

9. (1) There shall be charged in respect of the duties of the Public Trustee of Charities the scale of fees contained in the Schedule to this Ordinance:

Fees charged.

Provided that such scale of fees may from time to time be altered, varied or amended by order of the High Commissioner in Council.

(2) Any expenses which might be retained or paid out of the trust property, if the Public Trustee of Charities were a private trustee, shall be so retained or paid.

(3) All such fees shall be appropriated to the use of the general revenue of Palestine.

Sub-sec. (2): See Charitable Trusts Ord. sec. 11.

10. (1) The Public Trustee of Charities shall not, nor shall any of his officers, act under this Ordinance for reward except as provided by this Ordinance.

Mode of action
of Public
Trustee of
Charities.

(2) The Public Trustee of Charities may, subject to the rules made under this Ordinance, employ for the purpose of any trust such advocates, bankers, accountants and brokers, or other persons as he may consider necessary, and, in determining the persons to be so employed in relation to any trust, the Public Trustee of Charities shall have regard to the interests of the trust, but, subject to this, shall, whenever practicable, take into consideration the wishes of the creator of the trust and of the other trustees (if any) either expressed or as implied by the practice of the creator of the trust or in the previous management of the trust.

(3) The entry of the Public Trustee of Charities by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to enter the name on its books by reason only that the Public Trustee of Charities is a corporation; and, in any dealing with property, the fact that the person or one of the persons dealt with is the Public Trustee of Charities shall not of itself constitute notice of a trust.

Source: Public Trustee Act, 1906, sec. 11(1),(2),(5).

Sub-sec. (1): See Charitable Trusts Ord. sec. 16.

Sub-sec. (2): See Charitable Trusts Ord. sec. 14.

Sub-sec. (3): See Companies Ordinance, sec. 29(2).

Power of religious courts to appoint Public Trustee of Charities to be an ordinary trustee.

11 (1) Upon application made to a religious court by any person charged with the administration, or any person entitled to the benefit of a *wakf* or religious endowment of a charitable nature within the jurisdiction of the court, such court may remove existing trustees and appoint the Public Trustee of Charities as an ordinary trustee of the *wakf* or religious endowment.

(2) The religious court may, upon exercising jurisdiction under this section, make any consequential orders as to vesting of the trust property or otherwise, requisite for the carrying out of the appointment; and the *wakf* or religious endowment shall thenceforth be deemed to be a charitable trust within the meaning of the Charitable Trusts Ordinance and the provisions thereof shall apply thereto.

See also sec. 12.

Note that a *waqf* or religious endowment can be converted into a charitable trust within the meaning of the Charitable Trusts Ord. only by way of appointment of the Public Trustee of Charities. As no such office exists up to now, the section cannot be applied.

Acceptance of trust not obligatory.

12. Nothing in this Ordinance shall make effective any appointment of the Public Trustee of Charities as trustee of any trust, *wakf* or religious endowment unless, in each case, he has consented to accept the trusteeship.

See sec.4(2)..

Rules.

13. The High Commissioner in Council may make rules for carrying into effect the objects of this Ordinance, and, in particular, for all or any of the following purposes, that is to say:—

- (a) establishing the office of Public Trustee of Charities and prescribing the trusts or duties he is authorised to accept or undertake, and the security, if any, to be given by him and his officers;
- (b) the transfer to and from the Public Trustee of Charities of any property;
- (c) the accounts to be kept and the audit thereof;

- (d) the establishment and regulation of any branch office;
- (e) the form and manner in which notices shall be given;
- (f) specifying the investments in which the Public Trustee of Charities may invest trust funds.

No rules were made under this section.

THE SCHEDULE.

(Section 9(1).)

(1) ON CAPITAL.

Upon the acceptance of the trust, a fee at the following rates—

(a) One and a half per cent of the gross value of any property which does not exceed £P. 10,000:

Provided that the fee shall not be less than £P. 1;

(b) One per cent of any excess over £P. 10,000 in the case of any property the gross value of which exceeds that sum.

(2) ON INCOME.

A fee upon the gross income of any property at the following rates—

(a) Five per cent on the first £P. 2,000;

(b) Two and a half per cent of any excess over £P. 2,000:

Provided that the fee shall not be less than £P. 1.

(3) ON TRANSFER OF PROPERTY.

A fee of—

One per cent of the value of any property or the amount of any bequest or legacy presented to any charity:

Provided that the fee shall not be less than £P. 1.

(4) ON THE SALE OF LAND.

A fee of—

One per cent of the purchase price on the sale of immovable property forming any part of the charitable trust.

(5) ON INVESTMENTS.

A fee of—

One per cent of the amount, in the case of the purchase, sale, fixed deposit, withdrawal or transfer of securities.

(6) ON REGISTRATION AND INQUIRY.

A fee of—

- (a) 50 mils on every entry, abstract or copy, for every 100 words or part thereof;
- (b) 100 mils to £P. 1, at the discretion of the Public Trustee of Charities, on searching for, or furnishing, any information.

(7) ON OTHER MONEYS.

On all moneys received, paid or otherwise dealt with, and not elsewhere provided, a fee of—

- (a) one and a half per cent up to £P. 500;
- (b) one per cent of any excess over £P. 500.

(8) EXPENSES.

£P. 1 per day for each day or part of the day during which the Public Trustee of Charities shall be required to be away from his headquarters for the purpose of inspection or any other business in connection with a charitable trust in addition to his actual expenses for fares and transport and other disbursements in connection with such inspection or other business.

(9) GENERAL.

In addition to the foregoing charges, there shall also be chargeable and payable all disbursements by the Public Trustee of Charities properly made in connection with the administration of the trust.

CHARITABLE TRUSTS (FEES) RULES, 1935.

Short title.

1. These rules may be cited as the Charitable Trusts (Fees) Rules, 1935.

Fee on the registration of a trust in the Land Registry.

2. A fee of two and a half per centum on the market value of the immovable property made by the subject of the trust shall be charged for the registration of a trust in the Land Registry.

Provided that if such value exceeds two hundred pounds, a fee of two and a half per centum shall be charged on the first two hundred pounds, and a fee of one half per centum on any amount in excess of two hundred pounds.

Fee on the Registration in the Land Registry of instruments and orders in respect of immovable property already registered in the name of trustees.

3. A fee of two hundred and fifty mils shall be paid on the registration in the Land Registry of any instrument or order of appointment of new trustees, or of a vesting order, in respect of immovable property already registered in the name of trustees.

See notes to sec. 41 of the Charitable Trusts Ord. *ante*.

CINEMATOGRAPH FILMS

INTRODUCTORY NOTE.

Censorship for cinematograph films was introduced by Public Notices dated 20.7.1921 and 15.3.1923. The Cinematograph Films Ordinance was enacted in 1927 and repealed these Notices. A Board was constituted to under the Ordinance to exercise censorship on cinematograph films.

For Customs Duties to be paid on cinematograph films see the CUSTOMS TARIFF AND EXEMPTION ORDINANCE No. 24 of 1937, Class III, Group E of the Schedule.

As to the licensing of the premises see sec. 3 of the Public Entertainments Ord. No. 5 of 1935.

ENACTMENTS:

Cinematograph Films Ord., Cap. 16 as amended.

Cinematograph Films Rules.

Notices under sec. 3(1).

Notice under sec. 7(2).

CINEMATOGRAPH FILMS ORDINANCE

AN ORDINANCE TO PROVIDE FOR THE CENSORSHIP OF
CINEMATOGRAPH FILMS.

(Drayton Cap. 16).

1. This Ordinance may be cited as the Cinematograph Films Short title.
Ordinance.

PROMULGATION:

En. as Ord. 27 of 1927, Drayton Cap. 16.

AMENDMENTS:

1. Cinematograph Films (Amendment) Ord., No. 5 of 1931.

2. The Statute Law Revision Ord., No. 30 of 1934.

3. Public Entertainment Ord., No. 5 of 1935.

The amendments are incorporated in the text.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

The definition of "District Commissioner" appearing in the original Ordinance was omitted by the Statute Law Revision Ordinance.

"Board" means the Censorship Board constituted under this Ordinance;

"Board" see sec. 3(1).

See Interpretation Ordinance sec. 2.

“public entertainment” has the meaning assigned to the term in the Public Entertainments Ordinance, 1935;

The definition of “Public Entertainment”, originally referring to the Intoxicating Liquors and Public Entertainments Ordinance (Drayton Cap. 70) was replaced by the second schedule to the Public Entertainments Ordinance, No. 5 of 1935.

“superior police officer” has the meaning assigned to the term in the Police Ordinance.

The Police Ordinance, Drayton Cap. 112 defines “Superior Police Officer” as follows: “Superior Police Officer” means any police officer of or above the rank of assistant superintendent of Police.

Constitution
of a
Censorship
Board.

3. (1) A Censorship Board shall be established in Jerusalem composed of the District Commissioner of Jerusalem and such other persons, of whom one at least shall be a woman, as the High Commissioner may from time to time nominate: the District Commissioner of Jerusalem shall be chairman of the Board.

(2) A quorum of the Board shall be formed by two members, of whom one at least shall be an officer of the Government.

(3) The Board may at any time co-opt any person for the purpose of advising upon the fitness for exhibition of any film submitted to them.

The Original Ordinance provided for the Deputy District Commissioner of Jerusalem being the Chairman of the Board. By the Statute Law Revision Ordinance the word “Deputy” was omitted.

As to the composition of the Board see Notice under sec. 3(1) *post*.

Exhibition of
film without
authority
forbidden.

4. (1) No cinematograph film shall be exhibited unless it shall have been authorised for exhibition and marked by the Board.

(2) For the purpose of this section, a film shall be deemed to be exhibited when it is exposed to the view of two or more persons, including the operator, at any public entertainment.

Advertisement
of film not to
be exhibited
unless
authorised.

5. No person shall display or cause to be displayed any picture, photograph, poster or figure advertising any cinematograph performance unless the same has been approved by the Board and marked by it.

Application
to the Board
for
authorisation.

6. (1) Any person desiring the authority of the Board to exhibit a film shall apply therefor in writing to the Board stating the title, subject and description of the film, and submit a series of photo-

graphs of every scene included in the film, and copies of any picture, photograph, poster or figure to be used for the advertisement of the film: he shall, if required, project the film before the Board.

(2) The Board may in its discretion grant, either with or without conditions imposed, or withhold authority for, the exhibition of any film or any part thereof, or any advertisement of a film.

(3) If the authority is not granted the Board shall, on demand, give a certificate to the applicant stating the refusal; and, on production of such certificate and of proof of the exportation of the film, any customs dues paid on the introduction of the film into Palestine may be refunded.

7. (1) The mark affixed by the Board under the provisions of sections 4 and 5 shall cease to be valid on notice to that effect being given by the secretary of the Board to the person who submitted the film or picture, photograph, poster or figure to be marked, or to any person in possession thereof.

Interdiction
of authorised
films.

(2) If in either case mentioned in subsection (1) such a person cannot be found, notice may be given by publication in the *Gazette*.

See *post* for a notice under sec. 57(2).

8 (1) Any person who exhibits or displays or causes to be exhibited or displayed any film or part of a film, or any picture, photograph, poster or figure advertising a film,

Offences and
penalties.

(a) which has not been marked by the Board, or

(b) which, if marked, has been altered or tampered with in any way, save by reducing the length of the film, since such mark was affixed, or

(c) the mark of which has ceased to be valid under section 7, is guilty of an offence and is liable to imprisonment for one month or a fine of fifty pounds.

(2) Any person who contravenes any provision of this Ordinance for which no other penalty is provided, or any provision of a rule made under this Ordinance, is guilty of an offence and is liable to a fine of five pounds.

(3) Nothing in this Ordinance shall affect the liability of

any person to prosecution for any performance which is of an indecent character or is calculated to disturb the public peace:

Provided that no person shall be punished twice for the same offence.

Sec. 8(2) was added to the original Ordinance (as sec. 8(3) by sec. 2 of the Amendment Ord., 1931.

The word "regulation" appearing therein was replaced by the word "rule" by the third schedule to the Statute Law Revision Ord.

Search for
unauthorised
film and
arrest of
persons
concerned

9. (1) Any member of the Board, and any superior police officer, district officer, or officer of the Department of Education authorised by the Director may at any time enter upon any place of public entertainment where a cinematograph film is being exhibited.

(2) Any member of the Board or any person authorised in writing by the secretary of the Board, or any superior police officer, on being satisfied that there is good reason to believe that a film not authorised for exhibition in accordance with this Ordinance has been or is being exhibited in any place of public entertainment, may, without warrant, at any time enter and search such place and seize any film or part of a film reasonably supposed to be exhibited without such authority, and may arrest any person reasonably supposed to be concerned with such exhibition.

Fees.

10. (1) An applicant for authority to exhibit a film shall pay, on application, the prescribed fee in respect of each film and any advertisement connected therewith.

(2) Exemption from payment of the fee may be granted by the Board where it is satisfied by a certificate of the district commissioner that the film will be exhibited exclusively for a charitable or educational purpose.

Sec. 10(1) was replaced by sec. 3 of the Amendment Ord., 1931.

Rules.

11. The High Commissioner may make rules providing for the following matters—

- (a) the composition and procedure of the Board;
- (b) the form of authorisation to be used by the Board;
- (c) the fee to be paid on an application for authority to exhibit a film and any advertisement connected therewith;

(d) generally, for the application of this Ordinance.

The word "regulations" was replaced by the word "rules" by the third schedule to the Statute Law Revision Ordinance.

Sub-sec. 11(c) was inserted by sec. 4 of the Amendment Ord., 1931.

See post for Rules.

CINEMATOGRAPH FILMS RULES.

Rules dated 19.9.1928 (P.G. No. 220 of 1.10.1928), 16.9.1931 (P.G. No. 291 of 16.9.1931), 10.5.1936 (P.G. No. 593 of 14.5.1936, Sup. 2, p. 346), 30.10.1937 (P.G. No. 735 of 4.11.1937, Sup. 2, p. 1055), 24.8.1943 (P.G. No. 1287 of 2.9.1943, Sup. 2, p. 791), undated (P.G. No. 1324 of 16.3.1944, Sup. 2, p. 265).

The Rules of 1928 and 1931 are incorporated in Drayton, Vol. III, p. 1657. The subsequent Amendment Rules, making provision for the fees payable, have all been repealed by the Rules of 1944.

1. These rules may be cited as the Cinematograph Films Rules. Short title.

2. (1) The Board may constitute one or more sub-committees consisting of not less than two members of the Board for the purpose of considering any application to the Board for authority to exhibit a film and any such sub-committee may require the applicant to project the film. Sub-committees of the Board.

(2) Every such sub-committee shall report to the Board on the applications which it has considered and the Board shall not grant or withhold authority to exhibit any film in respect of which the application for such authority has been considered by a sub-committee of the Board until the Board has taken into account the report of such sub-committee.

Rules ("Regulations") dated 16.9.1931.

3. The following fees shall be payable under section 10(1) of the Cinematograph Films Ordinance on application for authority to exhibit a film:— Fees.

	<i>£P.Mils</i>
(a) for each news film	0.250
(b) for each short film	2.500
(c) for each film other than a news film or short film, together with the film (if any) advertising that it is forthcoming	10.000:

Provided that where an authority granted by the Board for the exhibition of a film has expired and an application is made for a further authority to exhibit the same film the following fees shall

be payable on such application:—	<i>£P.Mils</i>
(a) for each news film	No fee
(b) for each short film	0.500
(c) for each film other than a news film or short film, together with the film (if any) advertising that it is forthcoming	2.000”

Rules undated in P.G. No. 1324, Sup. 2, p. 265.

Licence to
be projected.

4. The licence of the Board authorising the exhibition of a film shall be projected on the screen at each exhibition.

Rule (“Regulation”) dated 19.9.1928.

NOTICES.

NOTICE UNDER SECTION 3(1).

Published in P.G. No. 1049 of 10.10.1940, Sup. 2, p. 1319.

The first Board under the Ordinance was nominated by Notice dated 27.12.1927 (P.G. No. 203 of 16.1.1928). The members were replaced from time to time by notices published to this effect.

IN EXERCISE of the powers vested in him by section 3(1) of the Cinematograph Films Ordinance, the High Commissioner has been pleased to re-constitute the Censorship Board and has nominated the following persons to be members thereof under the chairmanship of the District Commissioner, Jerusalem District:—

An Assistant Secretary.

A representative of the Inspector-General of Police.

A representative of the Director of Education.

A representative of the Social Services Section of the Department of Education.

A representative of the Public Information Officer.

MR. A. E. MULFORD.

MRS. AYLMEYER-HARRIS.

ADEL EFF. JABR.

MRS. ANNE FONER-HEYMAN.

DR. ELIEZER REIGER.

MRS. ANBARA SALAM AL-KHALIDI.

By Notice dated 35.12.1940 (P.G. No. 1069 of 2.1.1941, Sup. 2, p. 55) Mrs. Anbara Salam Al-Khalidi was nominated to be a member of the Board in place of Miss Fathme El-Husseini, resigned.

NOTICE UNDER SECTION 7(2).

Published in P.G. No. 1278 of 2.9.1943, sup. 2, p. 792.

NOTICE IS HEREBY GIVEN, in accordance with section 7(2) of the Cinematograph Films Ordinance, that the undermentioned marks affixed by the Board under the provisions of section 4 or 5

of that Ordinance shall cease to be valid on the publication of this notice in the *Gazette*:

- (a) marks affixed or relating to any news film which were affixed at any date more than six months before the publication of this notice in the *Gazette*; and
- (b) marks affixed or relating to any film, other than a news film, which were affixed at any date more than one year before the publication of this notice in the *Gazette*.

Any person desiring to obtain a renewal of the authority of the Board under section 4 of the Cinematograph Films Ordinance, or of the approval of the Board under section 5 of that Ordinance, should apply to the Secretary, Cinematograph Films Censorship Board, District Commissioner's Offices, Jerusalem, on a form which will be supplied on request.

As on 31.12.1945

BZU/LIB Institute of Law



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