

DIGEST OF CASES

REPORTED IN

THE LAW REPORTS OF PALESTINE

1940 — 1944 (inclusive)

IN INDEX FORM

VOLUME 2

Letters J— Z

by

CHALOM COHEN

Haifa

Ref
KMQ
1002.23
.A35
1940-1944
RBK v.2

Ac 17 6506

DIGEST OF CASES

REPORTED IN

**THE LAW REPORTS
OF PALESTINE**

1940 — 1944 (inclusive)

IN INDEX FORM

VOLUME 2
Letters J— Z

by
CHALOM COHEN
Haifa



21950

Ref
KMΦ
1002.23
.A35
1940-1944
RBK
v.2.

ALPHABETICAL INDEX

VOLUME II

LETTERS J - Z

** J **

JAFFA Courts, 177
Jewish Law, 177
Jewish Community, 177
Jewish Community Rules, 177
Joinder of parties, 177
JUDGES, 177
Judges Record, 177
Judges Rules, 179
Judgment, 179
Judicial Notice, 183
Judicial Separation, 183
JURISDICTION, 184

** K **

Kadi Sharia Court, 188
Khoulou, Right of..189
Kushan, 189

** L **

Land, 189
Land Courts Ordinance, 190
Land Court, 190
Land Code, 192
LANDLORD & TENANT, 193
Landlords & Tenants (Ejection)
and Rent Rest.(Ext) Ord.
1935, 203
Land Registrar, 204
Land Registry, 204
Land Registers, 204
Land Settlement, 205
Land Transfer Ordinance, 208
Land Transfer(Fees) Rules, 1939
210
Land Valuers, 210
Latin Ecclesiastical Court, 210
Latins, 210
Law Council Ordinance, 211
Law & Practice, 211
LEASE, 212
Leave, 212
Leave to defend, 212
Liquidated damages 213
Libel, 213
Liberty of the Subject, 213
Licences, 213

Limitations, 210
Legislation, 214
LEGAL TENDER, 214
Loss, 214
Lunatic, 214
Local Councils, 214

** M **

MAGISTRATE ,
& Chief Magistrate, 215
Magistrate's Courts, and Land
Courts, 215
Magistrates Courts Jurisdiction
Ordinance, 1939, 215
Magistrates Courts Procedure
Rules, 1940, 218
MAINTENANCE, 220
Making Away with, 223
MARRIAGE & DIVORCE, 223
Manour Awqaf, 227
Manslaughter, 227
Map, 227
Masha, 227
Mashad el Maska, 227
Master & SERVANT 228
Maximum Penalty, 229
MEDICAL EVIDENCE, 229
Medical Practitioners Ord., 229
MEJELLE, 230
Merger, 233
Mowat Land, 233
MINORS, 233
MIRI LAND, 234
Misconduct, 235
Misrepresentation, 235
MISTAKE, 235
Mortal Sickness, 236
MORTGAGE, 236
Moslem Law, 239
Moslem Marriage, 239
MOTION, 239
Motive, 240
Motor Vehicles, 240
Muhayaa, 240
Mukhtars, 240
Municipal Corporations, 241
Municipal Rates, 241
Municipal Tribunal, 242
MURDER, 242

**

ALPHABETICAL INDEX

** N **

NEGLIGENCE, 242
 Nominee, 242
 NOTARIAL CONTRACT, 242
 Notarial Documents, 243
 Notarial Notice, 243
 NOTARY PUBLIC, 244
 Notary Public Law, 244
 Notes of Trial Court, 245
 NOTICE OF APPEAL, 245
 Novelty, 245

** O **

OATH, 245
 Onus of proof, 245
 Opposition, 246
 Option, 246
 ORDER IN COUNCIL, 246
 ORIGINATING SUMMONS, 247
 Orphans, 247
 OTTOMAN Code of Civil Procedure, 247
 OTTOMAN Commercial Code, 249
 OTTOMAN PROVISIONAL LAW, 249
 Ottoman Law of Interest, 249
 Ottoman Law of Inheritance, 250
 Ottoman Land Code, 250
 Ottoman Magistrates Law, 250
 Ottoman Law of Partition, 251
 Ottoman Law of Mortgage, 252
 Ottoman Law Reg. the Right to Dispose of Immovable Prop. 252
 Ottoman Law of Societies, 252
 Ottoman Law on Werqo, 252
 OWNERSHIP, 252

** P **

Palestine (Amt) Order in Council, 1935 253
 Palestine (Appeal to Privy Council) Order in Council 253
 Palestine Citizenship (Amt) Order in Council 255
 Palestine (Holy Places) O.C. 255
 Palestine Order in Council 256
 Palestine Jew, 258
 Palestine Territorial Limits 259

Parcelation, 255
 Partition, 259
 Partnership, 259
 Partnership Ordinance, 261
 Patents & Designs, 261
 PENSIONS ORDINANCE, 261
 Penalty, 262
 Personal Injuries, 262
 Personal Law, 262
 Personal Status, 263
 Pharmacists Rules 265
 Plans, 265
 Pleas, 265
 Plodings, 266
 Policy of Insurance, 266
 Police (Amendment) Ord. 266
 Police Court of Discipline, 266
 Police, 266
 Police Files, 266
 Police Ordinance, 267
 Political Murder, 267
 Possession, 267
 POST OFFICE ORDINANCE 268
 Power of attorney, 268
 Precedents, 269
 Pre-emption, 269
 PRELIMINARY ENQUIRY, 269
 PREMEDITATION, 270
 Premises, 270
 Prerogative, 270
 Prescription, 271
 PRESS ORDINANCE, 273
 Previous convictions, 273
 Private Company, 273
 Private International Law, 273
 Private Rights, 273
 Prima facie case, 273
 PRINCIPLES, 274
 Prisons Ordinance, 274
 Privy Council, 274
 Private Complainant, 275
 Probate Court, 275
 Process, 275
 PRODIGAL, 275
 Profit, 276
 Promulgation, 276
 Provisional Attachment, 276
 Provisional Law of Disposition of Immovable Property 276
 PUBLIC AUCTION, 276
 Public Health Ordinance, 276
 Public Mischief, 277
 PUBLIC OFFICERS, 277

** R **

Rabbinical Law, 277
 Rabbinical Courts, 277
 RAPE, 277
 Rate of Exchange, 278
 Rates & Taxes, 279
 RECEIVER, 279
 Receiving Order, 281
 Recognisance, 281
 Recommendation of Mercy, 281
 RECORD Loss of, 281
 Record, 281
 RECOVERY OF POSSESSION, 282
 Reformatory, 283
 REGISTRAR, 283
 Registered Title, 284
 Regulations, 284
 Relations, 284
 Relief, 285
 Religious Community, 285
 Religious Order, 285
 Religious Courts, 285
 Remedy, 285
 Relittal of case, 286
 RENT, 286
 RENT RESTRICTIONS, 286
 Requisition, 289
 Residence, 289
 RES JUDICATA, 289
 Retrial, 290
 River, 290
 Road Transport, 290
 Routes- Permits 290
 Rules of Court, 291
 Rule nisi, 291
 Rural Property Tax, 291

** S **

SALT ORDINANCE, 291
 Sentence, 292
 Service, 294
 Servitude, 294
 Share Register, 295
 Settlement Officer, 295
 Settlement of Title, 295
 Sharia Court, 295
 Schedule of Rights, 295
 Ships, 295
 Shuf'a, 296
 Signature, 296
 Slip Rule, 296
 SODOMY, 296
 SPECIFIC PERFORMANCE, 296
 STAMPS, 299
 Statutes, 299
 Stay of Proceedings, 299
 Strike, 300
 Substitution, 300
 SUCCESSION, 300

** S **

Succession Rules, 300
 Substantive Law, 300
 Summary Procedure, 300
 Summary Trial, 307
 SUPREME COURT DECISIONS, 307
 Supreme Moslem Council, 307
 Surveys Department, 308
 Suppositions, 308
 Stateless Jew, 308

** T **

Tapou Register, 308
 Taxes, 308
 Tel Aviv Courts, 308
 Thumb Print, 309
 Title Deed, 309
 TIME, 309
 TORTS, 309
 Town Planning, 309
 Trades & Industries, 310
 Trade Marks, 311
 Trading with the Enemy, 311
 Transaction, 312
 Transjordan, 312
 Trees, 313
 Trespass, 313
 Treatment Special, 313
 Trial Court, 314
 Trial, 314
 TRUSTEE, 315
 Tribal Court, 315

** U **

Urban Property Tax, 316
 USURIOUS interest, 316
 Usurious Loans, 316
 UTTERING, 316

** V ** W **

Valuation, 316
 VENUE, 316
 Vesting Orders, 317
 Vested Right, 318
 Village Settlement Committee, 318
 Villayet Law, 318
 Visa, 318
 WAIVER, 318, WAQF, 319,
 War Risks, 323; WASTE LAND, 323
 WATER, 323, WAY, 324
 Welfare Officer, 324; WERQO, 324
 WILL, 324
 WITNESSES, 327-- WORDS & PHRASES, 330
 Workmen's Compensation, 333
 Wrong Court, 334 Yoklama, 334
 Young Offenders., 334.

 JAFFA JEWISH LAW JEWISH COMMUNITY JOINDER JUDGES

(1035) JAFFA COURTS.

Are the more appropriate
 Courts for purely Arab Cases.
 Mis.A 47/44 XI 542

(1036) JEWISH LAW.

Applicable to stateless Jews
 not members of the Jewish
 Community.
 CA 122/44 XI 522.

(1037) JEWISH COMMUNITY.

See Agudat Israel.
 HC 110/42 IX 572.

(1038) JEWISH COMMUNITY
RULES.

The proof whether a person
 is or is not technically a
 member of the Jewish Commu-
 nity must be decided by the
 fact whether he is or is not
 on THE REGISTER duly estab-
 lished for such members.
 CA 246/40 VIII 55.

(1039) JOINDER OF PARTIES.

See C.P.R. 1938 r. 67(2).

(1040) JOINDER - Appeal.

Application for joining
 certain persons as co - de-
 fendants - refusal of appli-
 cation - Appeal from such
 order lies by leave and not
 as of right.
 CA 334/43 XI 165.

(1041) JUDGES.

Non Gazetting of, Acting
 Judge.
 Cr.A. 158/44 XI 631

(1042) Party not entitled
to choose Judges to sit upon
any particular case.

HC 1/41 VIII 2.

(1043) JUDGES - Disagreement.

Where one member of the Court
 has taken a certain view and
 has been overruled by the
 majority and the case proceeds
 it is his duty to direct his
 mind to the issues which are
 before the Court and to the

suitability of the sentence
 upon conviction upon those
 issues.

Cr.A. 54/41 VIII 205

(1044) JUDGES : Ecclesi-
astical Courts. Enemy Sub-
ject.

Nothing in the point that
 one of the Judges of... was
 an enemy subject because
 questions of nationality
 and politics should not en-
 ter into the question of
 the appointment of the Judges
 of the Catholic Courts.
 HC 103/42 IX 579

(1045) JUDGES - Observations
by...

A Judge of a District Court
 having decided he has no ju-
 risdiction to deal with an
 application should refrain
 from making further observa-
 tions or giving further or-
 ders.
 CA 153/41 VIII 377.

(1046) JUDGES RECORD.

TRUSTED C.J. ... The Crimi-
 nal Procedure (T.U.I.) Ordina-
 nance requires the Presiding
 Judge to record in writing
 all evidence and all objec-
 tions and rulings, and sec-
 tion 51 requires the Presi-
 ding Judge to record upon his
 notes the findings of fact on
 which the conviction or acquit-
 tal is based. The marginal note
 refers to this as " form of
 Judgment" section 45 provi-
 des that the Court shall give
 a verdict, and s. 70 provides
 that among the documents to
 be used on the appeal shall
 be the Judgment. Having re-
 gard to the marginal note to
 s. 51 I take that to mean the
 Presiding Judges' record of
 the findings of fact. In
 practice, these are frequent-
 ly typed out and signed, and
 there would seem to be no ob-
 jection to this, as s. 51

JUDGES

does not say as does section 35 that the Presiding Judge SHALL RECORD IN WRITING. Cr.A. 27/41 VIII 169.

(1047) JUDGES RULES, Rule 8 Where two or more persons are charged with the same offence and statements are taken separately from the persons charged, the Police should not read these statements to the other persons charged but each of such persons should be furnished by the Police with a copy of such statement and nothing should be said or done by the Police to invite a reply. If the person charged desires to make a statement in reply the usual caution should be administered. It is the Practice of the Courts of Palestine to follow this rule. Cr.A. 91/42 IX 406.

(1048) JUDGMENT - Adverse Possession, cannot be basis of a Judgment - Land Law (Amendment) Ordinance not retrospective. C.A. 390/43 XI 217.

(1049) JUDGMENT - Alteration in... District Court gave Judgment in which it did not award interest Subsequently it gave another Judgment awarding interest - HELD District Court was not competent to give last Judgment. C.A. 202/42 X 85.

(1050) For an objection to succeed the alteration must be substantial one going to the grounds of the Judgment itself. Cr.A. 39/43 X 212.

(1051) Alteration not substantial - conclusions in Judgment unaffected by such alteration. PCA 66/43 XI 237.

JUDGMENT

(1052) JUDGMENT - Court of Appeal. Application to exclude passage from... CA 226/38 VII 153

(1053) JUDGMENT & DECREE Judgment put in execution not void for the reason that it had not been reduced to the form of a decree. HC 97/43 X 569.

(1054) JUDGMENT Declaratory. Almost every decision in any Court must in some form or other be DECLARATORY of the Rights of the parties, to the action, but the subject matter of the action must be within the jurisdiction of the Court. CA 92/42 IX 503.

(1055) JUDGMENT - Declaratory Appeal. Point as to whether a Magistrate can issue a declaratory Judgment not raised in District Court on appeal from the Magistrate's Court. Whether it could be raised on appeal to the Supreme Court sitting as a Court of Civil Appeal. HELD. As the question whether a Magistrate can issue a declaratory Judgment was not raised until the grounds of appeal were filed in the Supreme Court under s. 14(2) of the Magistrates Courts Jurisdiction Ordinance 1939, it was too late for appellant to be allowed to take that point on the appeal, and it would be too late if such point was raised for the first time in the application to the District Court for Leave to Appeal. CA 195/42 IX 691.

(1056) JUDGMENT - Error in.. An error in a Judgment should only be corrected in the presence of the parties thereto or after sending them a further notice to attend for that purpose. CA 90/43 X 225.

JUDGMENT

JUDGMENT

(1057) JUDGMENT - Foreign Court Impeachment of. See "Foreign Court"

(1058) JUDGMENT. Finding of fact. Objection that no sufficient findings of fact to justify verdict. Judgment gave in considerable detail the story as told by one accomplice, and Court applies its mind to what is important in accomplice's evidence in distinction from what is mere detail and unimportant. Form that Court took in expressing its findings of fact no reason for vitiating the conclusions to which it came. Cr.A. 18/44 XI 101.

(1059) JUDGMENT Foreign Court. Mere irregularity of procedure on the part of... is not sufficient to vitiate the proceedings of such Court. A Judgment of a Foreign Court can only be impeached on the grounds that it was given without jurisdiction or that it was obtained by fraud or that it is contrary to Public Policy or English Law. It cannot be impeached on the merits. CA 155/43 X 332.

(1060) JUDGMENT - Foreign Court Action on.. An action on a foreign Judgment can be brought at any time within period of limitation of action. CA 155/43 X 332.

(1061) JUDGMENT Interpretation. Order given by Land Court interpreting its original Judgment - Order forms integral part of original Judgment - No leave to appeal from Order necessary. CA 96/41 VIII 256.

(1062) Judgment - Jurisdiction.

There is old English Authority for the proposition that a Judgment OBVIOUSLY given without jurisdiction is a nullity. (English and Empire Digest Vol 16 p.126-7) in Palestine, in the absence of an appeal the question who is to decide if it was given without jurisdiction may be tested by bringing an order in execution before the High Court. CA 47/41 VIII 172

(1063) JUDGMENT Land Court. Settlement Officer has no power to declare... a nullity on ground of fraud. CA 144/43 X 407.

(1064) JUDGMENT - Majority The Judgment of the majority of the Court is the effective Judgment and that it is the duty of the Appellate Court to apply precisely the same tests to the majority Judgment as it would do if there were no disagreement. Cr.A. 54/42 IX 252.

(1065) JUDGMENT. What forms operative part of... HC 35/44 XI 158.

(1066) JUDGMENT (Reciprocal Enforcement) Egypt. s. 3. CA 230/41 IX 86.

(1067) Unreasonableness of... When Court of appeal will interfere. CA 39/40 VII 167.

(1068) Too short... Cr.A. 158/44 XI 631.

(1069) JUDGMENT - Tribal Court. See Tribal Court. HC 67/40 VII 434.

JUDGMENT

JUDICIAL NOTICE

JURISDICTION

(1070) JUDGMENT - Witnesses. Judgment in a Criminal Case — Postponment of delivery of Judgment until result of a prosecution against one of witnesses in that case known — Duty of Trial Court to make up its mind on the evidence adduced before it — irrespective of whether the witness against whom the prosecution is pending has subsequently been convicted or not. Cr.A. 47/44 XI 178.

(1071) JUDICIAL NOTICE. Court of Appeal must take Judicial Notice of new legislation passed between date of Judgment appealed from and date of delivery of Judgment on appeal and must decide whether or not such legislation is applicable to the appeal before it. CA 78/44 XI 528.

(1072) When a rule or regulation forms the basis of a criminal charge that rule or regulation should, in fact, be brought to the notice of the Trial Court at some stage of the proceedings. It is not suggested that a copy of the Gazette must always be formally produced in the sense that an exhibit is produced but, the better practice and one to which no possible exception can be taken, that at least some reference should be made to the rule or regulation by its actual visual production. Cr.A. 40/43 X 207.

(1073) JUDICIAL SEPARATION. A District Court has no jurisdiction to order Judicial Separation of persons who are Palestinian Citizens and Members of the Recognised Religious Community as it falls under the matters of Marriage and Divorce in respect of which exclusive Jurisdiction

is conferred on the Religious Courts by the Order in Council.

(b) When an application for Judicial Separation is made to a District Court and an ancillary and consequential claim for custody is also made to that Court the District Court has no jurisdiction to deal with the matter of Custody. The position may perhaps be different if the application is in respect of a matter of concurrent jurisdiction coupled with an ancillary and consequential claim for custody.

CA 60/43 X 241.

(1074) JURISDICTION. Amount claimed.

Action within the Jurisdiction of a District Court. Before hearing of action part of claim satisfied and matter became within the jurisdiction of a Magistrate's Court Amended Statement of Claim made. Whether District Court seized with action.

HELD That since the amount as originally claimed was within the Jurisdiction of the District Court the fact that as a result of subsequent action on the part of respondents the amount claimed as per the amended statement of claim became within the jurisdiction of a Magistrate's Court did not take the matter out of the jurisdiction of the District Court. The proper test to be applied being what was the amount claimed when the action was filed for breach of contract.

CA 213/43 X 613.

(1075) JURISDICTION. See Consent to Jurisdiction, See Vesting Orders.

(1076) JURISDICTION Consent. The Consent in such matters which alone gives to the Ecclesiastical Court jurisdiction

JURISDICTION

JURISDICTION

tion must be a definite consent by the parties themselves.

CA 22/40 VII 125.

(1077) JURISDICTION

Conflict of ...

A District Court has power by injunction to stop an Inferior Tribunal such as an Arbitrator from continuing the Arbitration pending the hearing of the action in the District Court.

CA 154/41 VIII 375.

(1078) JURISDICTION - High Court.

Power of... to cancel warrant of Imprisonment by High Commissioner for the purpose of Extradition to Transjordan.

HC 25/40 VII 162.

(1079) JURISDICTION

Ecclesiastical Court.

Nature of consent - affording jurisdiction to..

CA 22/40 VII 125.

(1080) JURISDICTION - Holy Places.

Jurisdiction of Civil Courts in connection with Holy Places or Religious buildings or sites - Possibilities contemplated in the Palestine (Holy Places) Order in Council 1924.

CA 55/40 VII 291.

(1081) JURISDICTION - Land Courts.

Claim to land upon which road built by defendant - Land by itself with less than L.P.100 but together with road more than L.P.150.

HELD Magistrate Court sitting as a Land Court has jurisdiction.

CA 74/41 VIII 259.

(1082) JURISDICTION of

Magistrates Courts.

See Magistrates and Chief Magistrate.

(1083) JURISDICTION -

Magistrate's Court.

The Jurisdiction of a Magistrate's Court is statutory and laid down in s. 3 of the Magistrates' Courts Jurisdiction Ordinance, 1939 and, except as is contained within that section or some other statutory provision of equal force or effect, it could not otherwise exist or be varied.

CA 92/42 IX 503.

(1084) JURISDICTION -

Marriage - Cyprus. Jewess Jurisdiction of District Court to grant a decree of nullity respect of marriage between Palestinian member of Jewish Community and non Jewish before Marriage Officer Cyprus.

CA 9/40 VII 228.

(1085) JURISDICTION -

Objection to...

Should be taken at the outset if possible but can in practice be taken at any time.

Cr.A. 111/41 VIII 403.

(1086) JURISDICTION.

Point may always be taken at any time.

CA 201/42 IX 696.

(1087) Point - may be raised at any time during the course of the proceedings and even on appeal, when it has not been raised in a Court of First instance. Court itself entitled to take the point even if the parties themselves did not do so, when it is clear on the face of the proceedings that no appeal lies or that Court below acted without jurisdiction.

CA 250/42 X 32.

(1088) JURISDICTION -

Rabbinical Court.

Application under first part

which also applies to

Ecclesiastical Court

JURISDICTION

of Art. 55 of the Palestine Order in Council to direct which Court shall have jurisdiction to determine the validity of a divorce granted by a Rabbinical Court and also to decide as to the validity of a marriage contracted according to Jewish Law. Applicant a Palestinian and Member of the Jewish community - Respondents Foreigners. HELD There is no Court in Palestine having jurisdiction to determine the question raised in this application. MA 20/43 X 124.

(1089) JURISDICTION Refusal to assume of ...

Notice of Motion filed. Direction by Magistrate that Notice should be in accordance with form. Direction does not amount to a refusal to assume Jurisdiction. HC 9/44 XI 19.

(1090) JURISDICTION - Service out of ...

Ex parte application for service of Notice of summons on defendant who is residing in the USA. No evidence that defendant was ever in Palestine - application granted. The contract, the basis of the action was not intended to be governed by the Law of Palestine nor was a breach thereof committed in Palestine - Whether order granting leave to serve was a good order:

HELD. By majority- Khayat J. dissenting. That as the presumption was that the lex loci contractus namely the Law of Czechoslovakia was the proper law of the contract and the contract was not by its terms or by its implication to be governed by the Law of Palestine, and as the action was not brought in respect of a breach committed in

KADI

Palestine, leave to serve the notice of summons out of the jurisdiction could not be granted.

2) That the plaintiff might have made out a cause of action but that that was not enough for the purpose of r.48 of the Civil Procedure Rules.

3) That in order to succeed in obtaining leave to serve the notice of summons out of the jurisdiction the first respondent (plaintiff) must establish that the appellant was a necessary or proper party to the action brought against the second respondent and that the action was properly brought against the second respondent, on both of which he failed, because the Company could not be sued on the letters forming the contract on which the action was based which letters were written before it was formed, and because the guarantee alleged to have been given by the Company was not produced and was not sued upon.

Per KHAYAT J. District Court had power to make the order it made in view of the provisions of r. 48(g) of the C.P. Rules, 1938.

CA 107/42 IX 519.

(1091) JURISDICTION Trial Court.

Trial Court acted without Jurisdiction.. Court of Appeal bound to take the point as to Jurisdiction. CA 37/43 X 169.

(1092) KADI Sharia Court.

Not a Magistrate, and therefore, in a case where he considers that there has been contempt of Court, cannot act under the Contempt of Court Ordinance. In other words the Contempt of Court Ordinance

Khoulou

KUSHAN

LAND

is not applicable to the Sharia Court.
HC 81/43 X 478.

(1093) KHOULOU Right of..
Existence of Right of Khoulou established- when can such right be defeated. HELD It can be defeated only upon payment to the person entitled thereto of the amount expended by him, plus such sum as represents the improved value of the property attributable to the work effected, therein.
CA 285/43 XI 329.

(1094) KUSHAN. Cancellation of - Onus of proof.
In an action for the cancellation of a kushan the onus of proof is on the party seeking to cancel to establish that the Kushan in question was improperly obtained.
CA 137/42 IX 596.

(1095) KUSHAN. May be attacked.
A Kushan issued in substitution of an original kushan as result of a correction of area is not sacrosanct and may be attacked.
CA 160/43 XI 397.

(1096) KUSHAN. Settlement Officer.
The question whether a kushan covers a given area may be one of law and of fact, but where the Settlement Officer hears evidence and examines the ground, the question would eventually be one of fact for his decision, with which a Court of Appeal will not interfere.
CA 188/41 VIII 465.

(1097) LAND - adverse claim to - Notice of.
When a person had notice of an adverse claim to land and

nevertheless proceeds to effect registration of the disputed land in his name, he is not a bona fide purchaser without notice, and if he proceeds to complete the purchase he must take the consequences.
CA 23/41 VIII 101.

(1098) LAND - Adverse Possession.
It is for the person relying on adverse possession as contemplated by s. 2(1) of the Land Law (Amendment) Ordinance to rebut the presumption that he occupied and possessed the land in dispute on behalf of the heirs not in occupation and that his possession was adverse to those heirs.

(1099) LAND (Acquisition for Public Purposes) Ordinance, 1943, s.26
Meaning of "proceedings" in second proviso to.
CA 61/44 XI 313.

(1100) LAND COURTS
ORDINANCE.
See Companies Ordinance s.155

(1101) See Mag. Courts Jurisdiction Ordinance, 1939 s. 4.

(1102) LAND COURT.
Action in Magistrate's Court sitting as Land Court. Value of subject matter more than L.P.250 Action dismissed. Procedure to be followed.
CA 200/43 X 497.

(1103) Jurisdiction of, in altering registration in Land Registers.
CA 216/42 IX 739.

(1104) A Land Court has jurisdiction to entertain a claim on the alternative plea under the wide powers conferred

 LAND COURTS ORDINANCE - LAND COURTS (AMENDMENT) ORD. - LAND CODE

by the Land Courts Ordinance (Cap. 75) as amended.

(1105) A Land Court cannot give Judgment for payment of money.
CA 75/41 VIII 214.

(1106) LAND COURTS ORDINANCE.

s. 3.

See Land (Settlement of Title) Ord. s. 66.
CA 245/41 IX 24.

(1107) LAND COURTS (Amendment) Ordinance 1939 s. 3(d) Since the amendment of the Land Courts Ordinance by the Land Courts (Amendment) Ordinance 1939, any Judgment for ownership must be deemed to include an order for possession and, since the enactment of the Land Courts (Amendment) Ordinance, 1939 it is no longer necessary for the holder of a Judgment for ownership to proceed to a Magistrate's Court and obtain an order for possession and, when the Judgment for ownership is put into execution, the Chief Execution Officer, cannot refuse to give possession to the holder of that Judgment.
HC 35/43 X 210.

(1108) LAND COURTS ORDINANCE.

s.3(d)

Mortgage, release of, without consent of co-mortgagor - refusal of Director of Land Registration to carry release - Whether Director correct in his view.
HC 116/43 XI 39.

(1109) s. 4(1) SEE
CA 4/42 IX 62, CA 251/41 IX 56.

(1110) s. 4
CA 29/44 XI 348

(1111) s. 6
CA 281/44 XI 579

(1112) LAND COURTS ORDINANCE

s.8

CA 155/41 VIII 417

(1113) s. 11

There is only one Land Court the constitution of which is laid down under s. 11 of the Land Courts Ordinance; and where an action is brought in a Magistrate's Court sitting as a Land Court and it is found that the value of the subject matter in dispute is in excess of the jurisdiction of the Magistrate trying the case the Magistrate concerned should not dismiss the action but should remit it to the Land Court seized with that action.
CA 200/43 X 497.

(1114) LAND CODE.

Art. 41

Meaning of the words "at the time of the transfer" See Awlawiya.
CA 183/43 X 429.

(1115) Art. 41

Claim to share of miri land under.
CA 245/40 VIII p.8

(1116) Art. 45

It is not necessary that a person claiming a right of prior purchase under art. 45 should have the purchase money himself. 48
CA 229/40 & CA 230/40 VIII

(1117) Art. 52

See Guardians and Minors.

(1118) Art. 78

For a claimant of miri land to succeed in a claim under Art. 78 he must establish both possession and cultivation for a period of ten years and in case where the land is incapable of cultivation a claimant cannot invoke that article.
CA 21/43 X 231

LAND CODE - LAND - LAND-LORD AND TENANT

(1119) LAND CODE
Art. 78

Land Registrar unwilling to effect registration of certain immovable property unless so directed by a competent Court. Application to H.C. by Applicants for registration to direct Director of Land Registration to register the property in their names. HELD Land Court - only competent Court to entertain application.
HC 107/40 VIII 13.

(1120) Art. 81
CA 288/43 XI 408(1121) Art. 103
CA 160/43 XI 397(1122) LAND - Taking Possession of-
See Requisition.(1123) LANDLORD AND TENANT.-
Alternative accommodation.
Material date of availability of..
See Kimpson v Markham, 1921 2 K.B. 157- where it was held- was the date of hearing of action.
CA 265/42 X 60.

See However Supreme Court. Judgments CA 45& 51/44 XI PLR 320 where it was held that the alternative accommodation must be available at the date of adjudication in first instance and the latest Judgment of the Supreme Court in CA 2/45 where it was held by Edwards J. that the alternative accommodation should be available at or about or reasonably near to the time when notice to quit is given; but the landlord should also prove that after the unreasonable refusal on the part of the tenant, he, the landlord did not unduly delay in filing his statement of claim applying for eviction.

(1124) Alternative accommodation.

S. 3(1) Rent Restrictions(D.H.) Ordinance not intended to exclude a hotel or boarding house from being considered as alternative accommodation under s. 8(1) (c) of the Ordinance.
CA 141/43 X 289.

(1125) Alternative accommodation-

Matter for the Court and not for the Chief Execution Officer.
HC 65/43 X 351.

(1126) Alternative accommodation.

See Consent Judgment.
HC 95/43 X 610.

(1127) Alternative accommodation.

Eminently matter for Trial Court.
CA 350/43 XI 84.

(1128) Alternative accommodation.

Considerations to be taken into account in deciding upon suitability of..R.R. (D.H.) ORD s. 8(1) (c).
CA 396/43 XI 389.

(1129) Alternative accommodation.

Sub tenancy need not always be held as an inadequate alternative accommodation for the purposes of the R.R. (D.H.) Ordinance 1940. It is an element, which Courts should properly take into consideration, and when they have considered it, they may well decide the matter either way in the light of the particular circumstances.
CA 272/44 XI 582.

(1130) LANDLORD & TENANT.
Co - owner.

Action for eviction by all co-owners- Judgment in favour

LANDLORD & TENANT

of one co-owner only. Judgment effective.

CA 384/43 XI 283

(1131) Co-owner.

A tenant who during the pendency of eviction proceedings has become a co-owner in the property leased to him cannot be evicted because by his becoming a co-owner, the relationship between landlord and tenant has come to an end.

CA 250/43 XI 99.

(1132)

Consent Judgment - Action for eviction + consent Judgment for eviction given - eviction not to be carried into effect before 30th June 1943. In December 1942 Rent Restrictions (B.P.) Ordinance 1941, made applicable to area in which premises to be evicted situate. Whether tenant entitled to protection. HELD: Rose J... Tenants were not debarred from claiming the protection of that Ordinance in so far as the bakery was concerned - because at the time when the consent Judgment was given, the R.R. (B.P.) Ordinance 1941 had not been declared applicable to the Jaffa Area. In principle no distinction should be drawn between the consent of a tenant to vacate obtained by means of a consent Judgment and that obtained by any other kind of agreement between the parties.

HC 114/43 X 706.

(1133) Consent Judgment.

Action for eviction - agreement concluded between the parties - Mag. gave Judgment in accordance with the agreement which was embodied in the Judgment. Whether tenant can be evicted. HELD: The Judgment of the Magistrate which was given in accordance with, and embodied, the agreement was a consent Judgment

ORD & TENANT

and could be executed.

HC 106/42 IX600 (distinguished. HC 94/42 IX 599. See also HC 10/42 IX 81.

(1134) Consent Judgment

Between landlord and tenant. Landlord not having done anything after the consent Judgment to show that he wished to depart from its terms.

HELD: He is entitled to an order for eviction.

HC 127/43 XI 31.

(1135) Cooperative Society.

Claim for rent and for eviction of tenant. Tenant pleading to be a member of a Cooperative Society which is part owner, effect of such plea.

CA 56/42 IX 345.

(1136) Date of delivery.

Landlord asked tenant to deliver premises by a certain date. Tenant delivered premises by fixed date and made certain proposals as to those premises to which the landlord did not agree.

HELD: Landlord not entitled to rent of the premises so delivered.

CA 61/43 X 228.

(1137) Death of lessee.

Lessee of flat holding over by virtue of Rent Restrictions (D.H.) Ordinance 1940. Death of lessee. Whether heirs or servant of deceased lessee entitled to protection of Ordinance.

CA 319/43 XI 270.

(1138) Discretion.

Intention of Legislator in matters which a landlord is required to establish under the Rent Restrictions (D.H.) Ordinance 1940 and the question whether he has established them or not, should be left to the Court of First Instance and Court of Appeal will only interfere if it is abundantly

LANDLORD AND TENANT

satisfied that, that discretion has been improperly exercised - not necessarily mistakenly exercised.
CA 272/44 XI 582.

(1139) Discontinuance of payment.

The question whether a tenant continued to pay rent must be a question of fact and degree and that a trifling degree of punctuality (11) days should not be regarded as a discontinuance of payment.
CA 186/42 IX 665.

(1140) Execution - suspension of

Agreement between defendant and plaintiff that plaintiff suspend execution until a certain date in consideration of withdrawal of appeal. Effect given to such agreement.
HC 10/42 IX 81.

(1141) Government.

Premises leased from Government of Palestine for use as a cafe only. Closure of premises by order of Military Commander-Dual capacity of Government as landlord and guardian of Public Security - closure effected in latter capacity. HELD: Rent payable for period of closure.
CA 198/40 VII 513.

(1142) Implied consent.

Landlord claimed eviction of tenants alleging that leased premises were used for purposes other than those in contract. Landlord had knowledge of the purposes for which the premises were being used. Whether landlord would succeed. HELD: That the change in the object of the lease was of no materiality whatever, since it had been proved by evidence that the alteration in or the continuation of the use of the premises for the purposes of leather trade was made with the implied consent and know-

LANDLORD AND TENANT

ledge of the landlord himself.

CA 110/42 IX 437

(1143) Judgment founded on agreement.

Action for eviction - During the proceedings the parties came to an agreement. The Magistrate dismissed the action and then confirmed the agreement - Whether the tenant can be evicted on the strength of the order of the Magistrate. HELD: That there was no judgment for eviction which could be executed since the action between the parties was dismissed and the agreement arrived at between the parties which was confirmed by the Magistrate after the dismissal of the action could not be executed unless a Judgment was founded on it.

HC 94/42 IX 599.

(1144) Laches.

Action for eviction of tenant, tenant instituted proceedings for eviction of his sub tenant - Landlord had knowledge of tenant's breach of the contract of lease - sub tenant failed to pay the rent due - whether landlord entitled to an order of eviction. HELD: That there were laches on the part of the landlord and he was therefore too late in complaining of the breach of contract on the part of the tenant which breach the landlord knew and condoned thirteen months before.

CA 101/42 IX 576.

(1145) Marriage.

Landlord anticipating to get married. The question is whether the landlord who has become engaged to be married and who owns and wants a flat for his own personal occupation with his prospective wife can reasonably require the tenant to give up possession of such flat. HELD: Yes, Since Magistrate had found as a fact that at the

LANDLORD AND TENANT

expiration of the tenancy there was alternative accommodation available of which fact landlord had notified the tenant.
CA 265/42 X 60.

(1146) New Landlord.

A tenant may query a new landlord's title and refuse to recognise it, if it has been made in the form of a disposition not valid in law.
CA 264/43 X 639.

(1147) Property leased acquired by a new landlord by a deed of sale outside the Land Registry. Whether the New Landlord entitled to evict tenant.

HELD ROSE J. The new landlord could not be regarded as a landlord within the meaning of the Rent Restrictions (D.H.) Ordinance 1940 although the Ordinance is so worded as to include a new landlord who acquires by good title under the original landlord, because the tenant had never accepted the change of ownership and there was no evidence that the first appellant had derived a good title to the property to be evicted.

(1148) Promissory Notes.

Contract of lease contained provision for payment of the rent by promissory notes, whether giving of notes amounted to payment
HELD The giving of the promissory notes amounted to payment of the rent as contemplated by s. 8 of the Rent Restrictions (Dwelling Houses) Ordinance, 1940; the Ordinance being an ordinance to protect tenants under the special circumstances which prevail at the present time.
CA 248/42 IX 788.

(1149) Notice of Renewal.
Action for eviction on the

LANDLORD AND TENANT

ground of failure to give notice of renewal as required by the tenancy agreement. Whether landlord entitled to an eviction order against the tenant.

HELD The effect of the Rent Restrictions (Business Premises) Ordinance 1941 in cases where the tenancy agreement has come to an end is to extend the tenancy on the old terms, and that a tenant who remains in the premises holds over by operation of the law and not by virtue of any provision in the tenancy agreement, and that failure to give notice of his intention of holding on under the ordinance does not affect the tenant's position.
CA 225/42 IX 769.

(1150) Rent- non payment of. Action by lessor for eviction of lessee on ground of non payment of instalment of rent. HELD Failure to pay in time gave lessor right to terminate contract.
CA 55/41 VIII 179.

(1151) Relatives.

Condition in contract of lease that number of occupants not to exceed a definite number - tenant taking with him some of his relatives - number not exceeding that in contract - all living as one family.
HELD Relatives not sub tenant.
CA 133/44 XI 520.

(1152) Sub letting contrary to terms of contract.

Where a landlord by a contract of lease restricts the use of the property leased to the tenant only the latter cannot without the former's consent sub let it to others.
CA 384/43 XI 283.

(1153) Sub - letting - prohibited.

LANDLORD AND TENANT

Contract of lease prohibiting sub letting Part of premises sub let on which no action taken by landlord. Subsequent sub letting of whole premises to same person to whom part thereof sub let - action for eviction on ground of breach of contract of lease.

HELD Landlord entitled to eviction.

CA 83/44 XI 411.

(1154) Sub letting.

Sub letting without consent not a trifling breach or one in respect of which Equity grants relief - unless such consent has been applied for and was unreasonably withheld.

CA 260/42 X 38.

(1155) Synago gue.

Claim for eviction on the ground that tenant committed a breach of the contract by converting the premises into a Synago gue.

HELD Onus of proving that tenant had not complied with the terms of the tenancy on landlord.

CA 122/42 IX 550.

(1156) Sub tenant.

Suffers the fate of the tenant when eviction Order made sub tenant not to be joined in eviction actions.

HC 59/41 VIII 353.

(1157) Tenant.

Action by tenant for eviction of his sub tenant - whether sub tenant entitled to protection of the Rent Restrictions (B.P.) Ordinance 1941. HELD The only inference to be drawn from the fact that s. 6(2) of the Rent Testrictions (B.P.) Ordinance provides for the protection of a sub tenant as regards the amount of rent payable by him was that the sub tenant was entitled against his immediate landlord (The tenant of the original premises) to the pro-

LANDLORD AND TENANT

tection afforded by the Ordinance.

CA 221/42 IX 775.

(1158) Trivial matters Rent due was attached and paid to District Commissioner Tenant deducted L.P.1 for whitewashing of flat with consent of landlord. Landlord denied that fact. HELD Landlord not entitled to an eviction Order matter wholly trivial.

CA 121/42 IX 531.

(1159) Written permission. Landlord not precluded from objecting to sub letting because he may have consented orally to previous sub letting, to another person. Six weeks not too long a period in which to take steps to avoid lease for sub letting without written permission.

CA 138/41 VIII 412.

(1160) Waiver.

Action for eviction of tenant on ground of sub letting part of premises without landlords consent in writing as stipulated in contract of lease Landlord had knowledge for a period of ten months of sub tenancy and received rent during such period without objecting to the sub letting. Tenancy agreement providing that by not making immediate use of his rights flowing under it this should not be considered as a waiver, consent or admission on landlord's part of the breach Whether landlord can evict tenant.

HELD As the landlord had knowledge of the fact which would give him legal cause for obtaining a decree of eviction and with that knowledge had received rent from the tenant and had not made use of that knowledge and taken the necessary procee-

LANDLORD & TENANT

LAND REGISTERS

dings, he could not take such proceedings at a later stage notwithstanding the specific clause in the tenancy agreement that if the landlord did not make immediate use of his rights flowing from that clause, that in itself should not be considered as a waiver consent or admission on his part and that he might make use of such rights at any time he desired.
CA 242/42 IX 789.

(1161) LANDLORDS AND TENANTS (Ejection and Rent Restrictions) Ordinance 1934.

Landlord holding over under. Terms of lease that tenant should give Promissory Notes in respect of Instalments of rent - Failure by tenant to comply - a breach - entitling to eviction.
CA 80/40 VII 302.

(1162) LANDLORDS AND TENANTS (Ejection) and Rent Restrictions (Extension) Ordinance 1935.
Surplusage and - no doubt for this reason that it was omitted from the rent Restrictions (B.P.) Ordinance 1941.
CA 225/42 IX 769.

(1163)
The words "any part of any premises" appearing in the definition of "sub tenant" in... must mean as including any number of parts up to and including the whole of the leased premises.
CA 101/42 IX 576.

(1164) s. 10(2)
The word "terms" in s.10(2) includes the period of the original contract of lease, so that the tenant by exercising his rights under s. 10(2) of continuing in occupation of the premises became

a statutory tenant for a period of one year and it was immaterial that the ordinance expired during the said year
CA 195/41 VIII 530

(1165) LAND REGISTRAR.
Unwilling to effect registration of immovable property Land Court only competent Court to entertain application.
HC 107/40 VIII 13.

(1166) LAND REGISTRY.
Admissions in... Sec Estoppel.
CA 123/42 IX 565.

(1167) LAND REGISTERS.
Rectification of -Fraud.
Application to Land Court for rectification of Register on ground that a decision given by a Settlement Officer and confirmed on appeal to the Land Court was obtained by fraud. Forgery was the basis of the alleged fraud - Forgery not established in the Criminal Court. Land Court ordered the hearing of evidence as to possession in order to determine the rights of the parties. Whether good order.
HELD: The Respondents had to satisfy the Land Court beyond any doubt that there was fraud and since the fraud was based on forgery they had to satisfy the Court that there was forgery. The mere allegation of fraud was not enough and it must be proved.
CA 85/42 IX 497-

LAND SETTLEMENT

(1168)

LAND SETTLEMENT. Correction of areas- Process of correction of areas has been followed in Palestine for over Twenty Years and has sanction of authority, and must be recognised by the Courts.
CA 160/43 XI 397

(1169) LAND SETTLEMENT OFFICER Appeal from... can also be made on question of fact.
CA 55/40 VII 291

(1170) LAND SETTLEMENT Officer

Claim to land in Land Settlement- Statement by claimant of his desire to prove by evidence his cultivation of the land- Question of cultivation not made an issue- Inspection of land by Land Settlement Officer- Land Settlement Officer not entitled to make finding as to cultivation without hearing evidence- Government not estopped from claiming ownership of land by accepting payment of urban Property tax by claimant. CA 122/41 VIII 448

(1171) L.S.O. Construction of contract by... CA 12/40 VII- page 72

(1172) L.S.O. discretion See Adjournment.

(1173) L.S.O. entitled to inspect land under settlement and draw his own conclusions from what he sees.
CA 160/43 XI 397

(1174) L.S.O. Procedure. While the Court of Civil Appeal would always be reluctant to hold that the Land Settlement Officer should be bound by strict rules of procedure, yet there must be some regularity in the hearing of cases by him.

He should make every endeavour to allow each party to present his case as a whole so that it could be considered as such and to cross examine the witnesses of the opposing side.
CA 135/41 VIII 509

(1175) L.S.O. entitled to determine during course of hearing who should be plaintiff and who should be defendant. CA 210/41 VIII 556

(1176) L.S.O. refusal by.. to allow claimants to adduce evidence as to cultivation and occupation. CA 65/40 VII 288

(1177) Onus of proof in claim to land in Land Settlement.
PCA 21/40 VIII 181

(1178) LAND SETTLEMENT OF TITLE (AMt) Ordinance 1939 Effect of... on pending appeals from Land Court in Settlement cases. CA 8/40 VII 76

(1179) Land(S.of Title) Ord. s.(4)(1)

Ass. L.S.O. appointed under.. should also be the person who should decide whether leave to appeal should be granted or not.. CA 324/43 XI 67

(1180) s. 10(3). VIII 499

(1181) s.11 (3)

A L.S.O. is bound by the advice of a Kadi invited to sit as an assessor unless advice palpably wrong or there is legal evidence to contradict it.
CA 107/41 VIII 398

(1182) LAND SETTLEMENT OF TITLE (PROCEDURE) RULES. r. 13

The view taken by the L.S.O. of r.13 namely that a L.S.O. cannot enquire into the authenticity of documents authenticated before the Court, Notary Public or Similar authority- open to argument and should not be taken as a precedent for the interpretation of that rule.
CA 113/41 VIII 323.

LAND SETTLEMENT

LAND TRANSFER

(1183) LAND SETTLEMENT OF
Title) Ordinance s.14

"Matters of common interest" in which the Village Settlement Committee may represent the village are matters in which village as a whole interested. CA 15/41 VIII 209

(1184) s. 14(1) IX 536

(1185) s. 27 X 383

(1186) s. 27(1) & 27(2)
Land S. Officer bound to hold two completely separate enquiries one under s. 27(1) and another under s. 27(2)
CA 307/43 XI 151

(1187) s. 27(4) CA 8/40 VII 76

(1188) s. 27(4) empowers L.S.O. to allow a claimant to add a new claim. CA 210/41 VIII 556

(1189) s. 31 CA 236/42 X 383

(1190) s. 48 CA 236/42 X 383

(1191) s. 52 The words "may enter" are purely discretionary. CA 224/41 IX 58

(1192) s. 63(1)
An appeal from a decision of the S.O. only lies as to any right to land. CA 173/40 VII 471.

(1193) s. 63(1) as Am-d.
Application to L.S.O. under.. refused reference of application to Chief Justice to be made within 30 days of refusal and not of notification of refusal. CA 172/40 VII 547

(1194) s. 63(1)
By s. 63(1) of... Civil Procedure Rules not applicable to applications for leave to appeal but deal only with appeals. CA 135/41 VIII 509

(1195) LAND SETTLEMENT OF
TITLE ORDINANCE
s. 64

PCA 56/38 VII 105.

(1196) s. 66

"omitted" in this s. means "wrongly omitted" Onus on party seeking rectification of register to show that entry which was prima facie right ought not to be there
PCA 21/40 VIII 181

(1197) s. 66

CA. 85/42 IX 497

(1198) s. 66

Instances in which this s. may be invoked. CA 409/43 XI 358

(1199) s. 66

Action in Land Court under. Failure by claimant to prove fraud- claim that omission or incorrect setting out of rights in old register not entertainable as alteration of register pursuant to decision of L.S. Officer. CA 116/39 VII 26

(1200) s. 66

The jurisdiction of a Mag. sitting as a Land Court is limited to matters set out in s/ 3 of the Land Courts Ordinance.
CA 245/41 IX 24

LAND TRANSFER ORDINANCE.

(1201) Mortgage executed before L.T. Ordinance not affected by provisions of.. CA 201/44 XI 556

(1202) s. 2..

Partition of Immovable property - between co-sharers thereof.. Non registration of Partition in Land Registry- sale by some co-sharers of the shares they received as result of partition- Partition not a disposition within the meaning of s. 2 of the Land Transfer Ordinance. Other co-sharers not entitled to awlawiya.
CA 15/44 XI 489

LAND TRANSFER Latins - Land Valuers-

(1203) LAND TRANSFER Ord.
 s. 4 & 11

see Waqf.

(1204) s. 11.

CA 38/44 XI 274

(1205) s. 14

Original Order of sale must be made by the President D.C. and any further order in the Ex. Office can be made by an As. Ch. Ex. Officer.

HC 126/43 XI 539

(1206) s. 14

HC 19/40 VII 206

(1207) s. 14(1)(b) as

amended. This s. gives the P.D.C who is the C.E.Of. power to postpone sale of mortgaged property if, c inter alia having regard to all the circumstances of the case, it would involve undue hardship to sell the property.

HC 47/40 VII 355

(1208) s. 14(2) This sub-section deals only with procedure and cannot be said to support the proposition that a mortgage is the same thing as a Judgment.

HC 74/40 VII 486

(1209) s. 11. See

Contracts- sale of land outside Land Registry.

(1210) s. 14.

The power of the P.D.C. under s. 14 ..is not limited to property situated in the district in which he exercises jurisdiction. The Provisional Law for the Mortgage of Immovable Property could not be read into the Land Transfer Ordinance with regard to the question of Local Jurisdiction and therefore the President of a District Court has power to order the sale of mortgaged property situated in another Judicial District.

HC 74/41 VIII 370

(1211)

LAND TRANSFER ORD.

s. 14(2)

This sub section deals only with procedure and cannot be said to support the proposition that a mortgage is the same things as a Judgment.

HC 74/40 VII 486

(1212) LAND TRANSFER (Fees) Rules 1939.

Replaced the Transfer of Land (Fees) Rules 1935

HC 85/40 VII 594

(1213) Proper course for party (petitioner) to pay the fees demanded and then sue under the Crown Actions Ordinance for the recovery of the sum alleged- wrongly collected.

HC 41/42 IX 299

(1214) s. 3.

CA 159/42 IX 637

(1215) r. 8

Order of Registrar under.. Order of competent Court.

HC 98/44 XI 491

(1216) LAND VALUERS

Director of Land Settlement to be satisfied that applicant is fitted by his knowledge of the principles of Land Valuation to practice as Land Valuer.

HC 46/44 XI 208

LATIN ECCLESIASTICAL COURT

(1217) OF APPEAL.

High Court not Court of Appeal from. H.C.103/42 IX

(1217) 579.

(1218) LATINS.

In 1901 a member of the Latin Community in Palestine could make a will and leave mulk property by will.

CA 250/41 IX 231.

LAW COUNCIL - LAW

LEASE - LEAVE

(1219) LAW COUNCIL ORDINANCE 1938- to be read together with the Advocates Ordinance 1938. M.A.5/40 VII 51

(1220) LAW AND PRACTICE Practice which is contrary to the law, however convenient it may be cannot when challenged, override the provisions of the Law. HC 42/43 X 239.

(1221) LAW COUNCIL - Discretion. Exercise of.. by the Director of Education under r. 5(3)(b) of the 1933 Jerusalem Law Classes Regulations as to adequacy of secondary education- matter pure question of opinion. HC 45/44 XI 257

(1222) LAW COUNCIL- Ordinance s. 4(1)(h) Mis.A. 5/40 VII 51

(1223) LAW COUNCIL RULES 1938. r. 16

"conduct" derogatory to profession of an advocate" meaning of..

M.A.5/40 VII 51

(1224) LAW- Ignorance of.. Misunderstanding of the law not a good cause for granting extension of time within which to lodge appeal. CA 191/44 XI 292.

(1225) LAW of Procedure (Amendment) Ord. s.6 The effect of s. 6 is that in any existing proceeding the Attorney General might appear and be heard therein and that this section does not give power to the A.G. himself to file an appeal His only right is to intervene in an existing appeal. CA 274/42 X 105

(1226) LEASE of land by one of two co-owners without his co-owner's consent- CA 232/37 PLR 1938 p.77 lays down that if one joint owner lets the jointly owned property without the consent of the co-owner the lease is void. CA 91/41 VIII 290

(1227) LEASE- period of .. over three years- lessee acted on lease more than twenty years whether party can be heard to argue that lease null and void.

HELD. That even if the lease was an invalid lease, to^olate for appellants to come forward and try to disclaim, since for twenty years and upwards they had been enjoying the benefits conferred by the lease. CA 90/42 IX 449

(1228) LEASE- subsequent to mortgage. Automatic termination of lease of mortgaged property. HC. 18/40 VII 175

(1229) LEASE transfer of.. An oral arrangement to transfer a lease is an agreement to transfer and not a transfer There can only be transfer of a lease when completed by registration in the Land Registry CA 142/40 VII 398

(1230) LEAVE- Government Officials

The service of.. is at pleasure and according to Regulations The grant of leave to officers is a matter of privilege and not a right of the officer. HC 16/42 IX 83

(1231) LEAVE TO DEFEND. Matter for discretion of the Judge trying a case. CA 78/42 IX 376

LI-

LE

LO

LU

(1232)

LIQUIDATED DAMAGES

A plea that a sum claimed as liquidated damages a penalty must be specifically pleaded. The denial by a party of liability to pay liquidated damages does not include a plea that if he was liable to pay damages then the sum claimed as liquidated damages was a penalty.

CA 85/40 VII 304

(1233) LIBEL Action against Company & Directors thereof Publication of...

CA 62/40 VII 244.

(1234) LIBEL Since there is no civil remedy for libel in Palestine, English Law could be imported.

CA 113/40 VII 363

(1235) LIBERTY OF THE SUBJECT

The Palestine Courts owe a duty to all persons who are under the protection of the Palestine Government and entitled to resort to them to secure for such persons any rights which they may have, whether they be aliens or alien enemies. HC 67/41 VIII 363

(1236) LICENCES. Motor Vehicle

Application for transfer of motor vehicle licence in purchaser's name - expiration of existing licence before transfer effected - refusal by authorities of application after expiration of existing licence on the ground of change of ownership without the approval of the Local Licensing Authorities under r. 78(1) of the Road Transport Rules - Ground assigned incorrect. Proper course for Licensing authority to follow.

HC 5/44 XI 166

(1237()) LIMITATION.

Period of limitation for claim by Mamour Awquaf. PCA56/38 VII 105.

(1238) LOAN See Cheque.

(1239) LEGISLATION - New. See Judicial Notice.

(1240) LEGAL TENDER

French Francs not Legal Tender in Palestine. No Judgment could possibly be satisfied in foreign Currency - unless, perhaps a litigant had been suing for specific coins.

HC 59/42 IX 351

(1241) LOSS Lies where it falls. Claim for balance of price of wood work. The wood work was placed on the premises Part thereof stolen from the premises.

HELD. The loss lay where it fell and if the wood work was in fact delivered on the premises, it became the property of the person on whose account it was done and he must be the loser. CA 76/42 IX 386

(1242) LUNATIC. Cannot make any valid disposition of his property except through a curator duly appointed by the Appropriate Court. Mejelle Arts. 979, 966, and 1530.

CA 254/40 VIII 134

(1243) LOCAL COUNCILS (Kfar Yona) Order 1940 para 10(p)

The Local Council empowered to limit even the number of cafés for which licences might be granted in the area under their jurisdiction.

(b) The mere fact that applicant was one of the first of a large number of applicants to apply for a licence was no reason why he should be given preference - provided that the Council did not act capriciously or with obvious bias or from wrong motives,

(c) By virtue of the powers conferred upon it by paras 10(o) 10(p) the Council empowered to approve a Zone within which cafés should be situated even although no town Planning Scheme had yet been made for the area within its jurisdiction

LOCAL COUNCILS MAGISTRATES COURTS-

and it was not deprived by s.7 (1) of the Trades & Industries (Reg) Ordinance as amended by s. 4 of the Trades & Industries (Reg) (Am) Ordinance 1939 of the power of approving such a zone. HC 3/42 IX 75

(1244) LOCAL COUNCILS (Ramat Gan) Order. S.7 & 9.
CA 106/42 IX 510

** M **

(1245) MAGISTRATE & CHIEF
MAGISTRATE

There is only one Magistrate's Court, in which various Magistrates sit, the fact that a Magistrate's Court is constituted by a British Magistrate (wrongly called as Chief Magistrate) does not make that Court cease from continuing to be a Magistrate's Court, although in such instances such Court has a higher jurisdiction than a Magistrate's Court, constituted of a Palestinian Magistrate and if a case comes before a Palestinian Magistrate which is in excess of his jurisdiction, the Palestinian Magistrate should not dismiss it but should pass the claim to a Magistrate of the Magistrate's Court of the District having jurisdiction to hear the matter. CA 175/43 X 340

(1246) MAGISTRATE'S COURT AND
LAND COURT

See Land Court Ordinance s. 11.

(1247) MAGISTRATES COURTS
JURISDICTION ORDINANCE
1939

Section 3. See (Accounts No.3)

(1248) s. 3. C.A. 92/42 (IX-503)
(1249) s. 3 (c) CA 66/44 XI 310
(1250) s. 3, 12. Cr.A. 9/40 VII
67

(1251) s. 4. CA 378/43 XI 234

MAGISTRATES COURTS JURIS
DICTION ORDINANCE 1939

(1252) s. 4. does not confer Jurisdiction on a Magistrate to deal with Immovable property where the value of that property falls within the ambit of his jurisdiction. Actions concerning immovable property must be determined in accordance with the provisions of the Land Courts Ordinance. CA 343/43 XI 303

(1253) s. 4.

Where a claim to ownership of immovable property is principally involved it is the Land Court that has jurisdiction, but that the jurisdiction of a Court is not ousted merely because some ancillary relief is asked for which, taken by itself, would be beyond the jurisdiction of the Court- provided that the principal matter or claim is within its jurisdiction. CA 110/44 XI 422

(1254) s 6 & 9 Cr.A 108/42
IX 469

(1255) s.8 VII 131

(1256) s.9 IX 469

(1257) s.11(3) XI 515- See
Attorney General

(1258) s. 11(4)

Action in Mag. Court sitting as a Land Court referred to arbitration and award of arbitrators confirmed by that Court.

HELD Appeal against decision of the Magistrate lies to the Supreme Court.

(1259) s. 11(4)

An appeal from a Mag. Court sitting as a Land Court lay direct to the Supreme Court (Sembler) although Magistrate had no jurisdiction to sit as a Land Court.
CA 295/42 X 71

(1260) s. 11(5)
s. 11(10)

CA 196/41 IX 204

MAGISTRATES COURTS JURISDICTION

MAGISTRATES COURTS PROCEDURE

(1261) MAGISTRATES COURTS (Jurisdiction) Ordinance 1939

s. 11(5)

Jurisdiction of Mag. to try claim of co-owner in the half of his share- CA 37/40 VII 131

(1262) s. 11 (6) CA 230/44

XI 586

(1263) s. 11 (6) CA 358/43

XI 212

(1264) s. 11(7) CA 118/41

VIII 314

(1265) s. 11(8) See Elections

CA 257/43

X 625

(1266) s. 12

The powers of the Court of Criminal Appeal are not specifically set out and there is no reason why they do not extend to a power to remit a case when it appears proper so to do. Cr.A.109/40 VII 590

(1267) s.12.

Silent as to the exact powers of the appellate Court; yet, District Court in appellate capacity has power in criminal proceedings to remit a case to a Magistrate for retrial. Cr.A.137/44 XI 555

(1268) s. 12- Ad .2/40 VIII

& See Cr.A.9/40 VII-67 339

(1269) s. 12 Cr.A.76/43 X 375

(1270) s. 14(2) Provisions mandatory - nothing therein to enable Supreme Court to extend time beyond the period of 15 days mentioned in section. CA. 380/43 XI 49-; and see CA 184/41 VIII 492 and CA 195/42 IX 691.

(1271) s. 16.

The wording of s. 16 -wide enough enough to cover the holding of a preliminary Enquiry ordered by the A.G. A Preliminary Enquiry is a proceeding in a Magistrate's Court. Cr.A.62/42 IX 304

(1272) MAGISTRATES COURTS Jurisd. Ordinance

s.20.

Shree Charge-Amendment of.

(1273)

MAGISTRATES COURTS

Procedure Rules 1940

The appropriate Court where the defendant resides must be the Magistrate's Court situated in the sub district in which the defendant resides and nothing in the Establishment of Courts Order can in any way conflict with the Mag.Courts Proc. Rules 1940 CA 117/41 VIII 293.

(1274) Action in Mag.Court

sitting as a Land Court. Mag. Courts Proceed. Rules inapplicable thereto.

CA 192/40 VII 527

(1275) r. 41.(CA 92/42

IX 503

(1276) r. 59. (CA 128/42

(IX 587

(1277) r. 69 HC 59/41 VIII 353

(1278) r.110 CA 317/43 XI 42

(1279) r.143 CA 190/44 XI 547

(1280) r.146 CA 190/44 XI 547

(1281) r.147 Cr.A.57/44 XI 184

(1282) r.147 CA 215/42 IX 737

(1283) r.149 CA 190/44 XI 547

(1284) r.156

EDWARDS J.... I cannot leave this case without expressing the hope that at no far distant date the substantive Law that is Art.1 of the Ottoman Law of Execution will be amended so as to require that the document to be handed to the Execution Officer will be a "decree" as envisaged by Rule 156 of the Mag.Courts Procedure Rules 1940 instead of a Judgment. Till some such amendment is made, I am afraid that rule 156 will continue to be regarded as a dead letter. HC 97/43 X 569 at page 577 bottom.

MAGISTRATES

(1285) MAGISTRATES COURTS PROCEDURE RULES 1940
Rule 163 CA 272/40 VIII 90
----- and see CA 118/41 VIII 314

(1286) r. 171 does not widen the jurisdiction of a Magistrate. It merely empowers a Magistrate in the course of the hearing of any action falling within his jurisdiction to direct the taking of accounts. See Accounts.
CA 48/42 IX 346

(1287) r. 240 VII 492
(1288) r. 240 IX 204

(1289) r. 242(2)
Accused charged before Ch. Magistrate elects trial by District Court- Objection in D.C. that charge not signed by C.M. HELD:- The case having been sent to the D.C. it prima facie fell under the D.Courts (Summary Trials) Rules 1938 which provide that the charge shall be read to the accused by the proper person, in his own language or in a language which he understands, but do not provide that the charge should be signed by the Chief Magistrate. Cr.A.109/41 VIII 386

(1290) r. 242(2)
Objection that Charge Sheet not signed by Chief Magistrate Proper- if taken at the beginning of proceedings in the D.C Cr.A.107/41 VIII 384

(1291) r. 263 XI 184

(1292) r. 265
The words "any complaint" at the beginning of the rule, includes the A.G. or his representative or any Police Officer who brings an accused before a Magistrate's Court on a complaint. Cr.A.144/43 X 619

(1293) r. 268. X 375
(1294) r. 268(2) see "Guilty"

MAINTENANCE

MAG. COURTS PROC. RULES 1940
(1295) r. 277

The words "written by the Magistrate" appearing in r. 277 mean "reduced to writing at the instance of the Magistrate" and that should a Magistrate dictate a Judgment to a stenographer and afterwards revise and sign it, that would be a good Judgment. Cr.A.130/43 X 578

(1296) r. 284
intended to deal with Orders made during the pendency of proceedings No provision in Mag.C.P.Rules analogous to r. 317 C.P.Rules 1938 HC 71/42 IX 452

(1297) r. 284.
Time fixed by law- Court cannot extend it. CA 149/44 XI 567

(1298) r. 285 CA 91/41 VIII 290

(1299) MAINTENANCE.
See Alimony.

(1300) MAINTENANCE.
Claim by wife against husband in Rabbinical Court- Claim admitted by husband to be claim for maintenance- consent of husband to jurisdiction necessary. CONSENT INFERRED from appearance by husband without protest at nine hearings before Rabbinical Court HC 79/40 VII 490

(1301) MAINTENANCE. Child
Claim by wife for maintenance of a minor child - Religious Court granted claim- Plea that Religious Court acted without jurisdiction as child could not consent to jurisdiction. HELD: Consent of child to Jurisdiction of Court was not necessary because the claim was by the mother for maintenance for the child, in other words it was a claim for money to recompense her for the cost to which she was put by maintaining the child, for which claim the child himself could not sue, and which differed from an action for guardianship to which the child would be a party. HC 9/43 X 122

MAINTENANCE

(1302) MAINTENANCE. Christian Claim for maintenance against husband and children- claimant's previous claim before Religious Court withdrawn- Claimant was a Christian converted to Islam divorced her Christian husband and married a Moslem.

HELD Not entitled to maintenance from first husband because having submitted to the Jurisdiction of the Religious Court, could not afterwards come to the District Court and claim same remedy.

(b) That by deserting her husband and children, changing her religion and marrying another man, could not come back and claim maintenance from a child of the first marriage. for, having repudiated her first marriage, she could not claim advantage under it.

CA 201/43 X 484

(1303) MAINTENANCE - Date from which payable.

Maintenance payable from date of the commencement of the action brought therefor. Not from date party ceased to maintain the children, nor from the date of the Judgment of the Court awarding maintenance.

HC 44/42 IX 300

(1304) MAINTENANCE Date from which payable.

Claim by wife of Palestinian member of the Jewish Community Rabbinical Law applicable- Refusal of Court to award part maintenance in absence of authority in law to prove such maintenance payable. Date from which maintenance payable- Discretion of Court to determine amount of..

CA 119/39 VII 20

(1305) MAINTENANCE Foreigners While a Rabbinical Court cannot issue a Judgment of divorce to a foreigner they can order the payment of a sum of money as maintenance, when the parties had agreed to go to them and comply with the Judgment to be issued by them. HC 108/41 VIII

570

MAINTENANCE

(1306) MAINTENANCE - Jurisdiction

Wife claimed maintenance before Rabbinical Court. Husband claimed divorce. Rabbinical Court ordered divorce -wife subsequently went to D.Court claiming maintenance- Personal law of the parties does not authorise the payment of permanent maintenance. Whether D.C. could award maintenance- Concurrent Jurisdiction -Whether wife could go to the D.C. she being dissatisfied with the R.Court- Whether a party having submitted to a Court vested with concurrent jurisdiction, could go to another Court having the same concurrent jurisdiction over the same matter.

HELD: Per GORDON SMITH C.J. That if it were a fact as found by the District Court that no permanent maintenance could, under Jewish Law, be awarded to a deserted wife, then the D.C. itself could not grant such relief, as under art. 47 of the Palestine Order in Council the personal law of the parties was applicable.

(2) That as the appellant had chosen the Rabbinical Court, any variation she desired in the Order of that Court must be obtained from it, and that her application to the District Court for maintenance would in effect amount to an appeal to that Court from the Order of the Rabbinical Court

(Followed CA 112/36 Rot. V.IX 750 CA 51/38 V PLR 262.) CA 47/42 IX 312

(1307) MAINTENANCE. Jurisdiction

Maintenance is a payment made to a wife by a husband who deserts her. Maintenance is a matter within the concurrent jurisdiction of the District Court and of the Rabbinical Court subject to the consent of the parties in the latter case. HC 146/42 X 24

 MAINTENANCE- MAKING AWAY - MARRIAGE & DIVORCE

(1308) MAINTENANCE - Jurisdiction

Consent- Respondent not member of the Jewish Community- whether Rabbinical Court has jurisdiction in a claim for maintenance by Respondent's wife.

HELD No amount of consent can give a Court jurisdiction where that jurisdiction was dependent upon the Law.

2. The primary requisite for jurisdiction of a Rabbinical Court whether over Palestinians or Foreigners was that the parties should be members of the Jewish Community.

HC 101/42 IX 553

(1309) MAINTENANCE - Putative Father.

Claim by mother of child against putative father- Paternity proved- maintenance ordered.

CA 243/41 IX 90

(1310) MAINTENANCE - Spanish Jew.

Claim by wife of ..

CA 41/40 VII 140

(1311) MAKING AWAY WITH..

Whilst "making away with" includes "theft" yet, it has a considerably wider meaning than theft. It means dealing in an unauthorised manner with the property. Cr.A.8/43 X 65

(1312) MARRIAGE & DIVORCE
(Registration) Ordinance.
s.2.

Per FRUMKIN J.. As regards Jews, the Rabbi entitled to be recognised by the District Commissioner as "Registering Authority" within the meaning of s. 2 of the Marriage and Divorce

Registration Ordinance was the Rabbi designated by the competent Religious Authority of the Jewish Community and that persons who were not members of the Jewish Community whether recognised as a congregation or not, had no statutory right to have their own rabbis officiating as registering authorities, so

long as Government had not availed itself of the powers vested in it by art. 65A(a) of the Palestine (Amendment) Order in Council, 1939.

(2) that under the law as it stands, the only rabbis to whom books of certificates of marriages and divorces should be issued for the celebration of marriages and sanctioning of divorces by the District Commissioners were

those rabbis designated by the Rabbinical Council or the Local Rabbi recognised under the Jewish Community Rules and whose names were notified to the respective District Commissioner.

(3) Although the District Commissioner was not bound by law to issue certificates of Marriages and Divorces, yet, the issue of such certificates had become, if not by law, at least in practice, part of the machinery of registration and thus a necessary link in the operation of the law, as the practice had been since 1918 not to register a marriage or a divorce except upon the contents of a formal certificate issued to competent persons by District Commissioners.

Per KHAYAT J. The term "Rabbi" appearing in s. 2 must be a special rabbi designated by the Jewish Community or by a Jewish independent congregation in the terms of s. 2 of the Jewish Community Rules.
HC 5/42 IX 191.

(1313) MARRIAGE - Cyprus
Valid according to Cypriot law but invalid according to Jewish Law- Decree of nullity not obtainable by husband.
CA 11/41 VIII 241

(1314) MARRIAGE - Cyprus.
Marriage between Palestinian member of the Jewish Community and non Jewess-before Marriage Officer Cyprus. ON PRINCIPLE the Court will enquire if Marriage lawful according to Palestine Law not that of Cyprus
CA 9/40 VII 228

MARRIAGE & DIVORCE

MARRIAGE & DIVORCE

(1315) MARRIAGE Breach of Promise of...

Whether an action for breach of Promise lies in Palestine. HELD: There is no reason why circumstances, in general in this country should exclude the application of the Common Law of England to Actions for breach of promise of marriage except in so far as, in the case of any particular community, such English Law might be excluded by an express Statutory Provision or by custom, the latter of course being a matter for proof. CA 129/42 IX 707.

An action for damages for breach of promise to marry does not raise any question of Personal Status.

(1316) MARRIAGE & DIVORCE

Declaratory Judgment of Divorce.

Application in District Court for declaration that Olga Azgour, was divorced from Samuel Azgour in December, 1940

Application made by way of Motion and cited A.G. only as respondent. Subsequently Sam. Azgour was joined as respondent Whether application properly made? Whether A.G. properly served with the Notice of Motion.

HELD. While the Rabbinical Court as a Court has no jurisdiction over Foreigners, there is nothing to prevent Jews from seeking the help of their Religious dignitaries in giving effect to their mutual desire to put an end to their matrimonial relationship by effecting a divorce in the prescribed ritual form. In C.A. 22/34 2 P.L.R. 365 a distinction was drawn between the function fulfilled by Rabbis in their judicial capacity as Judges of Rabbinical Courts and in their capacity as Religious dignitaries. Once a Rabbi ceases to act in his judicial capacity he can exercise his authority as Religious Head

over those Jews who seek voluntarily his help or submit otherwise to his authority be they Palestinians or Foreigners. When, whether by original consent or in obedience to a religious direction imposed upon him, a husband divorces his wife by giving her a bill of divorce, the couple are to all intents and purposes considered divorced under the Jewish Law..I consider it a proper statement of the Law that the Courts of this Country should take cognizance of a divorce issued by the Rabbinical Authorities if such divorce is recognised by the National Law of the parties.

FORM OF DECLARATORY JUDGMENT

That, having obtained a divorce valid under the Jewish Law and recognised under his National Law, A.B was divorced from her husband C.D. CA 22/42 IX 328

(1317) MARRIAGE - Different Communities
Courts in Palestine have taken the view that in marriages between members of different Communities, or different religions, the law under which the marriage was celebrated prevails. CA 11/41 VIII 241

(1318) MARRIAGE Foreign Jew
Law applicable for determination of validity of marriage of Foreign Jew during the life time of first wife. CA 71/44 XI 381

(1319) MARRIAGE Foreign
Substantial validity of... determined by Religious Law - that of the husband. CA 9/40 VII 228

(1320) MARRIAGE
Jurisdiction. Conflict. The Court of the Community within which the marriage was solemnised should be the Court which should exercise jurisdiction over such marriage. MA 19/42 IX 264.

Marriage - Mamour- Manslaughter
map - Mash 'a - Mashad -

MASTER & SERVANT

MARRIAGE & DIVORCE See Judicial Separation.

(1321) MARRIAGE - Nullity.
A District Court has jurisdiction to issue a Judgment declaring that a so called religious marriage ceremony - is a nullity CA 274/44 XI 639

(1322) Marriage - of Jewish girl under 18 with a Moslem according to Moslem rites. (Religious Community (Change) Ordinance.
Application by girl's father for a Writ of Habeas Corpus. No valid marriage according to Jewish Law.
HC 23/40 VII 151.

(1323) MARRIAGE & DIVORCE (Registration) Ordinance s.2.
As the result of the decision of the Supreme Court in H.C. 5/42 IX PLR 191, the D. Commissioner refused to issue Rabbi Abraham Shorr with Marriage & Divorce Registration Certificates. Whether District Commissioner correct in his refusal. HC 109/42 IX 715

(1324) MAMOUR AWQAF.
Evidence adduced by .. does not amount to prima facie proof of claim.
PCA 5/40 VII 51

(1325) MANSLAUGHTER. At empt.
The offence of attempted Manslaughter exists in Palestine See s. 29(b) C.C.O. 1936 which provides a penalty for such an offence. Cr. A. 163/42 IX 663

(1326) MAP.. tender ng of in Court. See Survey Dept.

(1327) MASHA (Land held in common) In a Masha land every owner and co-owner has an interest in every particle of it.
CA 52/42 IX 318

(1328) MASHAD EL MASHA is Registrable interest in land and also heritable and transferrable. CA 133/41 IX 101

MASTER & SERVANT

(1329) Nothing objectionable in an Employer and an Association of employees making agreement that in certain circumstances disciplinary action can be taken against an employee by a commission formed of representatives of the Employer and the Association of which the employee himself is a member. When an employer is called upon to show "good cause" for dismissal, it is sufficient for the employer to show that the "good cause" existed at the time of the dismissal even if it did not reach his knowledge until afterwards. CA 210/42 IX 764

(1330) MASTER AND SERVANT.
Employer and Employee - One of the terms of service governing relations between employer and employee entitles employer to dismiss employee on ground of criminal guilt proved to both employer and Union of which employee is a member. Guilt of employee in respect of the act committed before his dismissal proved to satisfaction of employer and Union after dismissal of employee whether employer showed good cause for dismissal. CA 210/42 IX 763

(1331) MASTER & SERVANT. Negligence. There must be reasonable evidence of negligence. But where the thing is shown to be under the Management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendants, that the accident arose from want of care.
CA 59/40, 60/40 VII 179

(1332) MASTER AND SERVANT.
Principle that person cannot by stipulation excuse himself from wrongful act of servant unless he does so in plain and unambiguous language.
CA 59/40 VII 179

(229)

DIGEST OF CASES

(230)

Maximum Penalty ~ Medical-evidence
practitioners

MEJELLE

(1333) MAXIMUM PENALTY.

Where a maximum penalty is imposed by legislation, that maximum penalty should not be treated as a dead letter, the presumption is that if there are no redeeming features, it is necessary for the protection of Society to impose that maximum penalty.

CR. A 120/44 XI 507

(1334) MEDICAL EVIDENCE

Post mortem examination - Death caused by asphyxia - whether it is necessary to carry out an autopsy on all the organs in order to exclude the possibility that death had been caused by some means or disease other than that alleged by the prosecution.

HELD that the conclusions arrived at by the Assize Court to the effect that the omission to make a more exhaustive examination - in other words, to open the three main cavities of the body, namely the head, the chest and the abdomen, did not invalidate the diagnosis which Dr. Torian had definitely made, although a more exhaustive examination was very desirable in this particular case (See Post mortem examination) Cr.A. 146/42 IX 621

(1335) MEDICAL PRACTITIONERS
ORDINANCE s. 4

Provides that the Director of Medical Services must be satisfied before the granting of a licence to practice medicine, as to certain requirements laid down in the section. Not for the High Court to substitute its own satisfaction for the satisfaction to be felt by the Director, nor was the H.C. entitled, merely because it might have exercised its discretion differently or been satisfied, if originally the discretion or satisfaction depended on it, to substitute its discretion or its satisfaction for the discretion or satisfaction exercised by the authority in whom such discretion or satisfaction is vested in law. (b) That the H. Court would interfere if it were satisfied that the Director had not acted in

good faith or that he had taken into consideration matters which he was not entitled to take, or in other words he had been moved by irrelevant considerations.

HC 79/42 IX 543

(1336) MEJELLE.

Nature of Maxims of ...

CA 5/40 VII 80

(1337) MEJELLE provides no remedy for injuries to the person. CA 113/40 VII 363

(1338) MEJELLE applies only to claims for damages to property and not to claims for damages to the person.

CA 113/40 VII 363

(1339) Under the Mejelle although responsibility for damages may be wide, yet, a plaintiff cannot sue a defendant for damages due to his the plaintiff's negligence.

CA 146/40 VII 382

(1340) MEJELLE - Commentaries on .. however learned, they may be are not law.

CA 169/41 VIII 438

(1341) MEJELLE Application of its provisions, in modern times

CA 179/42 IX 798

(1342) MEJELLE art. 226.

Provisions of art. inapplicable where there was never a sale ..

CA 187/43 X 615

(1343) Art. 427, 428

CA 384/43 XI 283

(1344) Art. 443 not applicable to relations between Advocate & Client.

CA 74/40 VII 255

(1345) Art. 478 CA 134/40 VII 405

MEJELLE

MEJELLE

(1346) MEJELLE Art. 494

The effect of this article is that when a contract is made on a monthly basis without stating the number of months, the contract is automatically renewed each time when twenty four hours of a new month have passed without the contract having been annulled by either side. This article distinctly deals with months and of no other period. The article applies only when at the expiration of the month either party could annul it, not having done so, it is assumed that they consented to renew it. Whatever may be the effect of this article it could hardly be maintained that when a contract expired and was not renewed by consent and remained dead for a year it could then be revived and considered as having been automatically renewed by consent.
CA 179/40 VII 493.

(1347) MEJELLE- Art. 690. See Assignment.

(1348) Art. 711, 232

Apply only to such fixtures as are the property of the owner who sold the property.
CA 238/41 IX 115.

(1349) Art. 906

Applicable where wall built on wrong boundary where value greater than that of land.
CA 68/40 VII 224.

(1350) Art. 910, 1635

C A 33/42 IX 378

(1351) Art. 974. See Guardianship.

(1352) Art. 990, 994, 1002

CA 91/40 VII 314

(1353) Art. 1028, 1035 Claim to pre-emption must be in exact form laid down in Mejele.
CA 70/44 XI 367.

(1354) Art. 1029, 1030 VIII 57

(1355) MEJELLE Art. 1028, 1029

A claim of Shufa should be made immediately upon hearing of the sale in the words of art. 1028 or at the moment of hearing of the conclusion of the sale, in the words of art. 1029.
CA 115/43 X 252

(1356) Art. 1028, 1029, 1030

Shuf'a . C A 225/44 XI 570

(1357) MEJELLE- Muhaya'a

According to Article 1176 Ali Haidar's Commentary, the Muhaya'a must be practicable and not absurd. CA 220/42 IX 773

Art. 1226 XI 252.

Art. 1228 XI 252

(1359) Art. 1595. Not applicable in regard to estates of Christians since the enactment of the Succession Ordinance.
CA 147/41 VIII 426

(1360) Art. 1637 PCA 57/38 VII 261

(1361) Art. 1641 IX 70

(1362) Art. 1645 See Mukhtars

(1363) Art. 1645 Where an action is brought in accordance with the provisions of art. 1645 the requirements of rule 65 of the CPR 1938 must be complied with beforehand. Rule 65 is not in conflict with art. 1645.
CA 312/43 X 586

(1364) Art. 1664 CA 179/42 IX 798

(1365) Art. 1667. Time commences to run from the date when the right accrues to the plaintiff to claim the subject matter of the action.
CA 28/42 IX 269

(1366) Art. 1674. Whether a document constituted an admission. It is as follows: I received from Government a sum of £300 as compensation for the land of ...on account of all the heirs of my late father.
HELD. It did constitute an admission. CA 139/40 VII 376

Mejelle- Merger- Mewat- Minors - Miri land

(1367) MEL ELLE- art.1746

Cases in which it is appropriate for administering the oath under.

CA 225/44 XI 570

(1368) Art. 1818

Gives a substantive and fundamental right, is still of effect. For the abolition of the right given by the article in question a legislation far more certain and passed by a greater authority than an authority which makes rules of Court is required.

CA 349/43 XI 333.

(1369) Art. 1239.

An owner of land has no registrable rights in the waters of a public river or over the land in which that river flows

CA 39/43 X 186

(1370) MERGER

Judgment for possession partly executed- later Judgment confirming title to land Application for completion of execution of Judgment for possession. Earlier Judgment not merged in later Judgment.

HC 57/44 XI 260

(1371) MEWAT LAND.

Claim by Government to land as ... CA 57/40 VII 173

(1372) MEWAT LAND. Meaning of revival of..

In order to redeem land from the category of Mewat, the claimant must prove revival. i.e. conversion from the unfruitful to the productive.

CA 65/40 VII 288

(1373) MEWAT LAND. Revival of .. CA 226/42 X 302

(1374) MINORS.

Damages- Guardian executed a contract imposing liability in damages on minors in case of breach by guardian. Guardian authorised by competent authority to sell but not to bind

MINORS (continued)

minors in damages. HELD that in contracts entered in to on behalf of minors where by a liability is imposed on the minors, the approval of the appropriate Court to such contracts ought to be obtained. CA 88/43 X 202

(1375) MIRI LAND

See Ottoman Land Code Art.78

(1376) MIRI Built upon

The High Court in refusing an application for an order nisi calling upon the Land Registrar Haifa to show cause why a piece of land registered in the Land Registers of Haifa described as "miri built upon" should not be registered in accordance with the Sharia distribution.

HELD. That, as the Petitioner would be entitled to a share in the land if it were "miri built upon" but not if it were miri and, as, although the land was registered as "miri built upon" as petitioners alleged it to be, the first respondent on the application of the second and Third Respondents having regard to an Inspection Report decided that it was miri, there was a dispute with regard to the category of the said land which involved a dispute in effect as to ownership, and therefore the proper Court to decide the petitioner's application was the Land Court and consequently the High Court could not entertain it HC 89/40 VII 525

(1377) MIRI LAND Could not be subject of a Charitable Trust. CA 117/40 IX 291.

(1378) MIRI LAND Can be transferred by way of gift- and without consideration.

CA 281/42 X 64

Miri- Misconduct- Misrepresentation- mistake - mortal sick-
 -- Mortgage -- ness

(1379) MIRI LAND. Gift
 Can be transferred by way of gift during the lifetime of the transferor.

(1380) MIRI Planted- since 1329- allegation by claimant -land miri- Defence of ten years prescription under O.L.C art. 20- not admission that land miri.

CA 54/40 VII 196

(1381) MIRI Planted with trees prior to 1331 devolve on inheritance as mulk. A claim to priority therefore, not enter tainable.

CA 127/40 VII 357

(1382) MIRI LAND Prescriptive title to..

In order to set prescriptive title to..under art. 78 of the Ottoman Land Code it is only necessary to prove occupation and cultivation for a period of ten years.

CA 65/40 VII 288

(1383) MISCONDUCT of arbitrator. See Arbitration Proceedings.

(1384) MISREPRESENTATION OF THE LAW.

A misrepresentation of law, generally speaking does not amount to fraud but there are circumstances in which it may amount to a misrepresentation of the speaker's view of the state of the law which might amount to fraud. CA 153/42

IX 635

(1385) MISTAKE OF LAW.

The fact that a person did not know that the Landlords and Tenants (Ejection & Rent Restrictions) Ordinance 1934, was not applicable to a certain town did not constitute a mistake of fact but a mistake of law on his part.

CA 179/40 VII 493

MORTAL SICKNESS. Admissions made in..See-Mortal Sickness Serial No. 34.

(1386) MORTGAGE. Assignment of.. An assignment of a mortgage is a disposition of land with in the meaning of the Land Transfer Ordinance, and a Registrable right in land. The question of its validity not a question of contract alone, and - within the sole jurisdiction of the Land Court CA 154/40 VII 467

(1387) MORTGAGE Deed Date of issue of mortgage deed date of actual delivery thereof to mortgagee for the purpose of the Companies Ordinance section 127

HC 82/40 VII 528

(1388) MORTGAGE- Right of Mortgagee to delivery of..

HC 85/40 VII 594

(1389) MORTGAGE Deed District Court entitled to look at document other than mortgage deed to determine whether any thing due under mortgage. Chief Execution Officer limited to Mortgage Deed itself.

CA 249/40 VIII 34

(1390) MORTGAGE- English & Palestine

The essential difference between an English Mortgage and a Mortgage in Palestine is that in an English Mortgage the legal ownership passes to the mortgagee.

CA 238/41 IX 115

(1391) MORTGAGE Heirs Payment of mortgage debt by some of the heirs; payers claimed the proportionate share they paid on behalf of others liable under the mortgage- whether payers entitled to claim.

CA 10/42 IX 245

MORTGAGE

MORTGAGE

(1392) MORTGAGE Deed- Interest
mention of..in. HC 27/40 VII
213

(1393) MORTGAGE not a register
ed interest in land.
CA 217/41 VIII 547

(1394) MORTGAGE not a Judgment
and therefore no Court (Collect.)
ion)fee is exigible under Item
55 of the Schedule to the Court
Fees Rules 1935 on the sale of
mortgaged Immovable property.
HC 74/40 VII 486

(1395) MORTGAGE Law (Amendment)
Ordinance S. 5.
Repealed the Ottoman Provisional
Law Concerning the Mortgage of
Immovable Property art. 4
HC 85/40 VII 594

(1396) s. 8 VIII 349)
CA 79/41)

(1397) MORTGAGE- Minors.
Validity- contested on ground
that one of mortgagors was a
minor at time of mortgage.
C.E.O. granted contestor time to
apply to competent Court.
HELD C.E.O.'s Order not unreason-
able. HC 20/42 IX 95

(1398) MORTGAGE - Prescription
Once a mortgage, always a mort-
gage. There is no prescription
with regard to a mortgage.
CA 192/40 VII 527

(1399) MORTGAGE- Release of
without consent of co-mortgagor
HC 116/43 XI 39

(1400) MORTGAGE- several mortgages
in respect of one property- no
need for separate valuation in
respect of each.
HC 26/40 VII 210

(1401) MORTGAGE- Several mortga-
ges in respect of separate prope-
rties- properties to be advert-
ised separately and separate bids
to be made. HC 26/40 VII 210

(1402) MORTGAGE Validity of
contested

A mortgagor could not where
a consent had been given to
a postponement of the sale of
the mortgaged property come
forward and contest the vali-
dity of the mortgage.
HC 84/42 IX 529

(1403) MORTGAGE Validity of
The question whether a mortg-
age is or is not valid is a
question of title to land and
and that, that was a matter in
which the Land Court alone had
jurisdiction. The question of
the validity of an assignment
of a mortgage is equally within
the sole jurisdiction of the
Land Court. CA 154/40 VII 467

(1404) MORTGAGED PROPERTY- value
of is what it would fetch
at an auction sale, and not as
per the valuation of Land Valu-
ers. HC 84/42 IX 529

(1405) MORTGAGE- Validity of...
Assignment of...
within sole jurisdiction of the
Land Court. CA 154/40 VII 467

(1406) MORTGAGOR- Tenant of..
The question is whether the
tenants of a mortgagor whose
house was sold in execution
are protected by the R.R.(D.H)
Ordinance 1940
HELD: The term landlord in s.2
includes any person deriving
title from the original land
lord A person buying from the
Execution Office derives his
title from the mortgagor who
is therefore the landlord.
HC 18/42 IX 96

(1407) MORTGAGEE According to
the Land Law of Palestine the
rights of a mortgagee depended
on the validity of the title
of the mortgagor, and the que-
stion whether a mortgagee was
or was not a bona fide mortgagee
is immaterial.
CA 72/42 IX 494

Mortgage- Moslem- MOTIONS Motive MUKHTARS

(1408) MORTGAGEE Right of ..to delivery of mortgage deed.
HC 85/40 VII 594

(1409) MORTGAGE LAW (Amend't) O. s. 8

Confers on a purchaser in execution an indefeasible title as against the mortgagee- Yet, there is nothing to prevent a purchaser from making an agreement with the mortgagor to return the property to him on payment of the purchase price or as might be arranged.

CA 223/40 VII 610

(1410) MOSLEM LAW OF PERSONAL STATUS See Cyprus & India

(1411) MOSLEM Marriage of with Jewess under 18

HC 23/40 VII 151

(1412) MOTION & Action See ACTION Serial No.15 . Vol.1

(1413, MOTIONS

Whether an application for a declaratory Judgment that parties are divorced should be brought by action or by motion. GORDON SMITH C.J.... Although there is a discretion in the Court to hear such matters by way of motion, and which should be carefully exercised, in my opinion it is the most expeditious, convenient and satisfactory manner of obtaining a declaration of this nature.

CA 22/42 IX 328

(1414) MOTION Affidavit
An application by motion need not be supported by affidavit where the facts are not in issue, but where the facts are in issue it has to be supported by affidavit. C A .72/44 XI 325

(1415) MOTIONS - Motion for setting aside an Order.. At hearing of motion affidavit produced by opponent
Course open to person moving Court in such instance.

CA 123/44 XI 379

(1416) MOTIONS - Evidence
Court bound to hear evidence where a party to a motion wishes to lead evidence.

CA 159/44 XI 220.

(1417) MOTIONS Practice to be followed in filing of..
In filing a notice of Motion in accordance with r. 305 C.P.R. 1938 two documents have to be filed (1) The Notice of Motion as in form No.30 in Schedule 1 and (2) An affidavit as contemplated by the second paragraph of r. 305 stating sufficiently the facts.

CA 232/43 X 563, See Also CA 48/43 X 251 and CA 249/43 X 549

(1418) MOTIONS. The practice to be followed where applications by Motion are made under r.305 including ex parte as well as non ex parte applications is for such applications ordinarily to be supported by affidavits.
CA 48/43 X 251

(1419) MOTIVE

Not always important in a murder case. Cases when it becomes important.

Cr.A.9/42 IX 46

(1420) MOTOR VEHICLES See Licence

(1421) MUHAYA'A See Mejelle a.1176

(1422) MUKHTARS

hold their office solely at the pleasure of the District Commissioner who appointed them and could dismiss them for any reason or for no reason at all.
HC 43/42 IX 302

(1423) MUKHTARS.

As such have no power to represent the inhabitants of a village so as to agree to an arbitration off their behalf- because art. 1645 of the Mejelle by virtue of which they could represent the villagers specifically referred to proceedings in "an action" and "an action" is a proceeding in Court while an arbitration is not such a proceeding. CA 283/42 X 44

Municipal Corporation
Negligence

Municipal Tribunal
Notarial

Murder

(1424) MUNICIPAL CORPORATIONS
Ordinance 1934. s.111(4)
An appeal from a Judgment of a
District Court given under s.
111(4) lies as of right to the
Supreme Court. CA 124/44 XI 153

(1425) s.96(4)(e) HC 6/40 VII
117

s.96(5) has reference
to markets for the sale of food
and drinks and does not author-
ise the collection of fees in
respect of immovable property
in the Execution Office.
CA 191/40 VII 511

(1426) s. 107
s. 115
s. 116
s. 117

CA 92/42 IX 503

(1427) s. 104(3) Whether
Municipal Council competent to
make By laws under..
CA 49/44 XI 607

(1428) s. 133(1) Repeals Otto
man Laws mentioned in the 13th
Schedule.HC 43/42 IX 302

(1429) 8th Schedule s. 1(1) &
2(1). Deposit payable at time
of nomination- candidate nominat-
ated when his name is written
on the Nomination paper and
handed to Returning Officer
S. 2(1) of the 8th Schedule
must be read with s. 1(1) of
same Schedule- At time of nom-
ination it is the duty of the
candidate to deposit with the
returning officer the sum dema-
nded. HC 45/40 VII 342

(1430) MUNICIPAL CORPORATIONS
(SEWERAGE DRAINAGE AND WATER)
Ordinance, 1936. s. 15(c)
21,
24

HC 6/40 VII 117.

(1431) MUNICIPAL RATES
See Rates and Taxes.

(1432) MUNICIPAL TRIBUNAL
The Municipal Tribunal is not
a Magistrate's Court and no
appeal in view of the provi-
sions of Reg. 6 of the Defence
(Municipal Tribunals) Reg. 1941
lay from a Judgment of a Muni-
cipal Tribunal.
Cr.A. 147/42 IX 626

(1433) MURDER- Attempted
In order to obtain a conviction
of..attempted murder- premedit-
ation which is a necessary ing-
redient of the offence must be
present.

C.C.O. s.222(2) Cr.A.33/42
IX 203.

(1434) MURDER see Onus.

** N **

(1435) NEGLIGENCE of servant
Onus of proof..CA 59/40 VII 179

(1436) NEGLIGENCE Fact that
A was walking in his left side
of the road and was overtaken
from behind by a motor car,
well over on its wrong side of
the road- prima facie evidence
of negligence.
CA 113/40 VII 363

(1437) NOMINEE See Damages

(1438) NOTARIAL CONTRACT OF
LEASE for 3 years.
HC 41/44 XI 438; HC 105/44 XI
478.

(1439) NOTARIAL DEED.
Before a Notarial deed can be
executed it is essential that
a Notarial notice be served-
on the debtor claiming payment
of the sum sought to be execu-
ted. HC 154/42 X 28

NOTARY PUBLIC

(1440) NOTARIAL DOCUMENTS
COPLAND J..

Notarial documents are of two kinds, those drawn up by a Notary Public and those on which the signatures are merely attested by a Notary. When I say "drawn up" I do not mean these words to be taken literally, the document may actually be written by the Notary or it may be expressed to be drawn up by a Notary. At the present day this latter procedure is the one more usually followed, The document is drawn up privately in the form of a deed drawn by a Notary and he attests the content and the signatures, but both documents come within the category of those drawn up by the Notary. These documents drawn up by a Notary can be executed directly but a document on which the signatures only have been attested cannot be executed except after Judgment is given on it. The date of, and signature on such a document only can be considered as proved.
HC 58/41 VIII 414

(1441) NOTARIAL NOTICE

A Notarial Notice is not necessary to be served on a party to carry out a contract he entered into, if that party has put it out of his power to carry out that contract.
CA 90/43 X 225

(1442) NOTARIAL NOTICE

Where parties to a contract have allowed the period fixed in that contract for the completion thereof to lapse although the said contract dispenses with the necessity of sending a notarial notice in case of breach by either party they must be deemed to have impliedly extended the time mentioned in the contract, and in order to fix the new time for completion, it is necessary to serve a Notarial Notice.
CA 90/43 X 225

(1443) NOTARIAL NOTICE

No need to serve.. by dismissed employee if Co. in liquidation.

CA 58/40 VII 187

(1444) NOTARIAL NOTICE- When not necessary.

Art. 106 of the Ottoman Civil Procedure Code provides in general terms for the necessity to serve a Notarial Notice in all claims for damages for the non performance or delay in the performance of a contract, but where the breach complained of could not be remedied by performance a Notarial Notice in such a case would be useless- and hence unnecessary.

(b)

The requirements for serving a Notarial Notice is a substantive requirement of law as a condition precedent to the validity of a claim for damages- and is applicable equally in proceedings before arbitrators. CA 126/42 IX 604

(1445) NOTARY PUBLIC - Documents drawn up by Notary Public can be executed like a Judgment and put in execution directly This is the settled Law.

HC 58/41 .

VIII 414 HC 41/44 XI 438

(1446) NOTARY PUBLIC Law
ar.69

See Notarial Deed

(1447) NOTARY PUBLIC LAW
art. 71

Concerned merely with providing machinery to compel eviction upon failure to vacate and does not extend the time for a period of fifteen days after the expiry of a contract of lease. HC 41/44 XI 438

(1448) art. 72.

should read "drawn up by a Notary or attested by him" since the original Turkish text does not contain the words "drawn up privately but"
HC 58/41 VIII 414

NOTARY	Notes	Notice	Novelty	Oath	Onus	Opposition
OPTION			ORDER IN COUNCIL			

(1449) NOTARY PUBLIC LAW
Art. 72

Undertaking in lease by lessee to execute notarial pledge to secure rent..Notarial pledge executed in accordance therewith- Pledge and lease to be regarded as one for the purpose of art. 72 .HC 52/40 VII 396

(1450) NOTES OF TRIAL COURT. It is unnecessary and indeed impracticable for a Trial Court to take a note of every thing said in the cross examination of witnesses.
Cr.A.39/43 X 212.

(1451) NOTICE OF APPEAL
See Appeal. CA 89/40 VII 258.

(1452) NOVELTY.
A Court of Civil Appeal on an appeal from the Appellate Judgment of the District Court will not deal with questions which are not of Novelty, complexity or general importance.
CA 115/41 VIII 296

** 0 **

(1453) OATH see Mejelle
art. 1746(4)
CA 225/44 XI 570

(1454) ONUS OF PROOF.
Parties may agree on whom it should lie- As a matter of agreement between parties onus of proof of any particular fact or its non existence may be placed on either party in accordance with agreement made between them.PCA 34/39 VII 273

(Re Hooley Hill Rubber & Chemical Co. v Royal Insurance Co. 1920 1 K.B . p.257)

(1455) ONUS OF PROOF Whether the onus of proof shifts to a litigant who proved prescription to prove that he occupied as a tenant
HELD Onus not on respondent to prove a negative namely that he was not a tenant.
CA 167/42 IX 701

(1456) ONUS. General rule is that onus always on prosecution to prove all constituent elements of the offence charged in the information, in a murder case- if prosecution proves a prima facie case of murder, then the burden shifts to the defence to show or to prove that there was absence of premeditation or such degree of provocation as will reduce the crime. Cr.A.199/42 X 1

(1457) ONUS OF PROOF
in criminal cases always on the prosecution (unless there was provision in the statute to the contrary) Cr.A.17/42
IX 240

(1458) OPPOSITION Third Party.. duly made before the Civil Procedure Rules 1938 came into force must be appealed under the rules laid down in the Judgment by Default (District and Land Courts) Rules 1926.
CA 152/41 VIII 409

(1459) OPTION Mejelle art 226
A Party wishing to take advantage of the option provided by art. 226 of the Mejelle it is necessary for that party to manifest the exercise of its option by some act.
CA 60/42 IX 372

(1460) ORDER IN COUNCIL.
Prima facie an Order of H.M. in Council must come into operation from the day upon which it is made, and therefore, as there was no provision in the Palestine Citizenship (Amendment) Order 1939 as to the date upon which it was to come into force, it must have come into operation on July 25th, 1939 which was the date thereof.HC 55/41 VIII 327.

(1461) ORDER IN COUNCIL can never be ultra vires.HC 69/42 IX 425

(1462) ORDER IN COUNCIL cannot be varied by an Ordinance unless power to vary in any manner is conferred by the O.I.C.itself
CA 279/42 X 96

Originating Summons
Orphans Fund.

OTTOMAN CODE OF CIVIL PROCEDURE.

(1463) ORIGINATING SUMMONS
See r. 266 C.P. Rules, 1938

(1464) and see r. 260.

(1465) ORPHAN'S FUND

The question is whether instalments paid on account of the mortgage deed should be debited against the capital or the interest account.

HELD that since the object of investment is that the orphans should get interest. Execution Officer should be instructed that the payments on account must be credited on the income account first.

HC 70/40 VII 478

(1466) OTTOMAN C.P. CODE
Land Settlement Officer not bound by. CA 172/41 VIII 470

(1467) art, 80

A defence against a document may only be proved by documentary evidence, the admissions of the opponent or entries in the opponent's books.

CA 168/41 VIII 563

(1468) Art. 80. Proper interpretation of.. See Evidence O. s. 14. & see CA 15/42 IX 157

(1469) Art, 80 CA 245/43 X 520

(1470) Art. 80 has no application to a case where the provisions of s. 28 of the Partnership Ordinance apply..

The question is whether oral evidence admissible to prove that a partnership agreement had come to an end.

CA 263/43 X 556

(1471) Art. 80 XI 204

Art. 80 Land Court not bound by.. CA 317/44 XI 641

(1472) Art. 82 IX 710

Art. 106. See Notarial Notice.

Art. 110 See (Profit) Damages. CA 69/42 IX 422

OTTOMAN C of C. PROCEDURE

(1473) Art. 111 correct translation of..

" If it is pointed out and provided in the body of the contract that in the event of failure of any of the parties in the carrying out of what he undertook he pays to the other party a fixed amount as damages no greater or less should be awarded. PCA 30/39 VIII 116

(1474) Art. 111, 112
Correct translation of ..
PCA 30/39 VIII 116 at p. 118, 119

(1475) Art. 110, 111
CA 85/40 VII 304

(1476) art. 111, 112
See Damages. These articles are independent though when it comes to assess the damages caused the plaintiff may fall back on art. 112
PCA 30/39 VIII, 116

(1477) Art. 112. Applies not only to a single obligation to pay money but also to a contract where there are reciprocal undertakings. PCA 30/39 VIII 116

(1478) Art. 117
Not limited to a joinder as a defendant. It contemplates a statement of claim by a third party which could be upheld as against either or both of the parties to a suit. PCA 57/38 VII 261

(1479) Art. 271 & 280
CA 216/41 VIII 607

(1480) Art 282
When art. 282 applies and the third party is a Government Department the resultant proceedings between the creditor and the third party are such as fall within the ambit of the Crown Actions Ordinance.
CA 165/40 VII 476

OTTOMAN LAWS

OTTOMAN LAWS

(1481) OTTOMAN COMMERCIAL CODE

art. 57) see Carrier
 63)
 145 - VII 191
 145 X 271
 204 VII 94
 305 X 271

(1482) Chap. V applicable to taxis.. see Carrier.

(1483) OTTOMAN PROVISIONAL
 LAW REGULATING THE RIGHT TO
 DISPOSE OF IMMOVABLE PROPERTY
 1331.

Article 17 has not been impliedly repealed by s. 8 of the Mortgage Law (Amend) Ord the only effect of that section being to deprive the mortgagor of the right to challenge the title of the purchaser after sale, even if he had good cause for his delay in bringing his claim.

(b)

From the wording of art.17 there is no support for the proposition that that article is not a bar against a claim of ownership based on a registered title.
 CA 79/41 VIII 349

(1484) art. 5.

Extends to application under art. 41 of the Ot. Land Code.

(b)

accepted translation of..
 "The rules for disposal and transfer in the manner specified above of vines and trees plants and buildings together with the fixtures and additions constructed on ...waqf land will be the same as for the land itself. CA 245/40 VIII 8

(1485) Art. 15. VIII 232

(1486) OTTOMAN LAW OF INTEREST
 ART. 4. IX 70

Art, 6. IX 443

(1487) OTTOMAN LAW OF INTEREST
 Article 6

Charging of usurious as opposed to excessive interest not contrary to Public Policy in Palestine. PCA 54/38 VII 94.

(b)

Lenders rights under art. 6 preserved. CA 49/40 VII 199

(c)

Applies only to transactions of lending and borrowing and not to all transactions between a debtor and a creditor.
 CA 7/43 X 395

(1488) OTTOMAN LAW OF INHERITANCE OF IMMOVABLE PROPERTY
 1331 art. 9

not applicable to cases of Waqf Sahih. CA 203/40 VII 584

(1489) OTTOMAN LAND CODE.

Art. 20 CA 54/40 VII 196

Art. 20 LA 56/38 VII 105

Art. 41 CA 127/40 VII 357

Art. 47.

Applies to sales between private persons as well as to an original grant of land by the State. CA 160/43 XI 397

Art. 78. Claim to land under. CA 122/41 VIII 448 See also CA 65/40 VII 288

Art. 78 To establish title necessary to prove both possession and cultivation
 CA 57/40 VII 173

Art. 105 VII 421

(1490) OTTOMAN MAGISTRATES
 LAW.

Art. 24 See Recovery of possession.

Art. 24. VII 331)
 CA 107/40)

OTTOMAN LAWS

OTTOMAN LAWS

(1491) OTTOMAN MAGISTRATES LAW
Art 24.

In an action under the second part of art. 24 it is for the plaintiffs to prove forceful ejection by affirmative evidence. CA 190/41 VIII 484

b.

The last paragraph of art. 24 is an administrative arrangement to prevent disputes between cultivators and the owners of land and to inform the public that the only resort for settling disputes is the law and the Courts, although the person taking possession of the land has a legal right to it. CA 200/42 IX 776

c.

Essential requisites of art. 24. CA 66/44 XI 310
HC 86/43 XI 46

(1492) Art. 26. CA 50/41 VIII 218
Art. 53. CA 91/41 VIII 290

(1493) OTTOMAN LAW OF PARTITION OF JOINT IMMOVABLE PROPERTY.

Under this law all the various acts to be done in partition proceedings are Judicial acts and must be carried out by a Judicial Officer and not by an Administrative officer in other words, by a Magistrate in his capacity as Magistrate and not in his capacity as Chief Execution Officer. HC 42/43 X 239

Art. 6

Effect of ... Judgment is sent by Magistrate for information only and should not be acted upon until a copy is served through the E.Of. HC 36/40 VII 269

(1494) OTTOMAN LAW OF PARTITION.
Art. 9.

Correct translation of..

" Duties in connection with partition are given by law to the Magistrate and not Execution Officer. Nothing in art. 9 that Execution Officer must inform Registrar of Lands. HC 36/40 VII 269

(1495) OTTOMAN PROVISIONAL LAW FOR MORTGAGE OF IMMOVABLE PROPERTY, 1328
Art. 1.

Applies to all proceeds such as rents found in the hands of a receiver. HC 16/41 VIII 155

art. 4

repealed by the Mortgage Law (Amendment) Ordinance s.5 HC 85/40 VII 594
CA 255/42 X 34

(1496) OTTOMAN LAW REGULATING THE RIGHT TO DISPOSE OF IMMOVABLE PROPERTY 1329
art. 4.

The effect of art. 4 is to put an end to the undesired practice of having land registered in names other than those of the real owners. CA 207/42 IX 794

(1497) OTTOMAN LAW OF SOCIETIES

Registration of club under.. Club not a public body and member thereof not a public officer. HC 49/40 VII 381

(1498) OTTOMAN LAW ON WERKO and Musaqqafat.
Impliedly repealed by the Urban Property Tax Ordinance in area in which it applies.(1499) OWNERSHIP
Proof of ownership not mere technicality
Cr.A.101/43 X 506

b

Ownership- Judgment for- See Land Courts (Amend) Ord. 1939, s. 3(d)

OWNERSHIP

PALESTINE ORDER IN COUNCIL

(1500) OWNERSHIP

When used in reference to the Civil Law of Palestine may import the sense of a limited as well as absolute title or proprietary right, nevertheless, when it is used or has to be given a meaning in connection with Waqf Sahih then the distinction disappears since the Haqabeh and equivalent of Tassaruf are according to Moslem Law merged together in the waqf itself and the beneficiaries therefore must be and are generally denied any proprietary status therein.
CA 100/40 VII 318

(1501) OWNERSHIP admission of by Government- See "admission" Page 5 Serial No.32 (Vol.1)

** P **

(1502) PALESTINE (Amendment)

Order in Council 1935

Since the coming into force of .. the term "FOREIGNER" in the Succession Ordinance 1933 must be read with reference to the new art. 59 of the P.O.C 1922 substituted for the former art. 59 by the said amending Order in Council.PCA 58/39 VIII 274

(1503) PALESTINE (Appeal to Privy Council) Order in Council Art. 2

"Judgment" includes "sentence" In spite of this it must be pointed out that the recital of this Order in Council refers to the provision of the previous Palestine Order in Council whereby the right to appeal to the Privy Council is RESTRICTED only to Civil claims Application for forfeiture of ships should be made to the District Court on its criminal side- and leave to appeal could therefore not be granted the case being a criminal action.
PCLA 2/42 IX 79

(1504) art. 3(a)

Case under..if value of land exceeds L.P.500

PCLA 1/40 VII 160

7/40 VII 450

24/43 XI 33

Art. 3(a)

An appeal lies to H.M. in Council where issue in dispute is capable of being estimated in sterling value to the amount of L.P.500 or upwards- no provision under article is made for appeals not capable of being estimated-

The sterling value of the consequences of an eviction is incapable of being assessed.
PCLA 7/44 XI 388

Art. 6 (a)

Supreme Court cannot vary a Statutory provision of the law the power to enlarge the period not given either expressly or impliedly.PCLA 1/42 IX 144

Art. 6

The provisions of art. 6 are applicable to appeals to the Privy Council whether such appeals come under art. 3(a) or 3(b) of the Order- and therefore there is no substance in the submission that the provisions of art. 6 are not applicable to an appeal that lies as of right but only to an appeal that lies at the discretion of the Court under art. 3(b)

b- Art. 20

that if the Supreme Court is given power under art. 20 to rescind an Order granting leave to appeal where the applicant has complied with the conditions a fortiori it must have jurisdiction to rescind an Order granting conditional leave where the applicant has not complied with the terms of that order.

PCLA 9/43 X 608

art. 6(a)

PCLA 20/43 XI 50

PALESTINE ORDER IN COUNCIL

(1506) PALESTINE (Appeal to Privy Council) O in Council art. 7

Power given to the Court under.. to direct that the execution of the Judgment be suspended pending the appeal to the P.C. -can be exercised by the Court only when granting leave to appeal POLA 3/44 XI 394

(1506) PALESTINE CITIZENSHIP (Amendment) Order in C. 1939-

came into force on July 25th 1939-Palestine Courts will take judicial notice of Order as it had been enacted and published in the Gazette. Cr.All5/41-VIII 420

art. 7(1)(a)

The temporary residence for the purposes of travel or health or business is not residence within the meaning of art.7(1)(a) and the qualifying residence for naturalisation under the art. only begins to run from the date of registration as an immigrant. HC 23/41 VIII 161

b

Interpretation of words "resided in Palestine" appearing in article. Order empowers legislative to prescribe conditions under which persons may lawfully enter and reside in Palestine. HC 62/44 XI 337

(1507) PALESTINE (Holy Places) Order in Council

Object of..to take disputes of certain category out of jurisdiction of Palestine Courts .It could be used as a protective measure as a means of defence -Could be invoked to preserve Statu#s quo- Party cannot claim land and rely at the same time on Order.CA55/40 VII 291

(1508) PALESTINE (Holy Places) Order in Council 1924 arts. 2 & 3

It is for the Court of trial to make up its mind whether a question has generally arisen within the meaning of art. 3.

(2) Open to Court of Civil Appeal to interfere if it thinks that the Court of Trial had come to a mistaken view on whether such a question had generally arisen.

CA 55/40 VII 291 (See Judgment of FRUMKIN J. dissenting

--

cemetery

Holy place only when there are special facts to make it so, evidence should be adduced to this effect.CA 28/40 VII 242

(1509) PALESTINE ORDER IN COUNCIL 1922

art. 40(1)(a) XI 153

art. 43

The word "Judgment" includes "Interlocutory Order" CA 154/40 VII 467

VII 35)

Art.43 VIII 593)

Art.43

Excluded by s. 8(3) of Registrars Ordinance - not excluded by s.17 of that Ordinance and an application lies to the H.C. to set aside an order of the Registrar thereunder. HC 74/40 VII 486

Art.43

By art.43 the S.C. sitting as a Court of Appeal shall have jurisdiction subject to the provisions of any Ordinance to hear appeals from all Judgments of a District Court in first instance. There is no Ordinance restricting appeals from trials by a District Court sitting summarily in Offences under the Immigration Ordinance and the right of Appeal cannot therefore be affected.

Adm. 2/40 VIII 339

PALESTINE

PALESTINE

(1510) PALESTINE ORDER IN
COUNCIL 1922 (Cont)
Art. 46

cannot be invoked to authorise the introduction of English Rules of Procedure which have not been embodied in the Rules in force in Palestine.
CA 66/40 VII 220

(1511) Art. 46 VIII 274

(1512) Art. 46
When and under what circumstances is to be invoked.
Enriches the jurisdiction of the Palestine Courts.
(PCA 1/35 2 PLR 390)
CA 113/40 VII 363

(1512) Art. 47
Meaning of "persons in Palestine" in...CA 11/41 VIII 241

(1513) Art. 50
Crown Actions Ordinance in force despite repeal of..
Ad.8/40 VIII 15

(1514) Art. 51 & 54
The words "suit" and "action" mean "any proceeding of a Judicial character in which the powers of a Court are invoked Neither word strictly appropriate to denote non litigious proceeding.PCA 41/42 X 328

(1515) art. 51 - 52
consistent with s. 5 of the Civil and Religious Courts (Jurisdiction) Ordinance.
CA 100/40 VII 318

(1516) Art. 51.
Action for decree of nullity a "suit regarding marriage" within the meaning of..
CA 11/41 VIII 241

(1517) Art.52
Moslem Religious Courts have under art. 52 exclusive jurisdiction in matters of Personal Status where all the parties to the dispute are Moslems.
HC 80/42 IX 467

(1518) Art. 54 (2)
CA 149/42 IX 619

(1519) Art. 55
Action for Breach of Promise of Marriage within Jurisdiction of D.C.
Sp.T. 2/43 XI 76

(1520) Art. 55
Sp.Tr.1/41 VIII 216

(1521) Art. 55
MA 20/43 X 124
MA21 /42 IX 220

(1522) Art. 55
Application under should be made before case listed- or at least comes up for hearing in the particular Court concerned.
MA 28/44 XI 396

(1523) Art. 55
The applicant envisaging the institution of proceedings for a decree of nullity of marriage or a decree of divorce against his wife on ground of adultery applied to the C.J. to determine which Court shall have jurisdiction in such matter. The C.J. ordered the D.C. Tel Aviv to assume Jurisdiction.
MA 27/42 IX 268

b
Decision of C.J. under first part of ..could not be challenged

c
Where the C.J. under the first part of.. determined which Court shall have jurisdiction- the question of the consent of the parties concerned to the jurisdiction of the Court so determined to assume jurisdiction does not arise. HC 144./42 X 4

(1524) Art.59 VII 310
Art. 64(ii) XI 381
Art. 64 VII 140

(1525) PALESTINE JEW award of maintenance to wife of..
Rabbinical and not English law applicable. See Maintenance.

PARTITION

Partnership

(1526)

PALESTINE - Territorial limits of..

Palestinian Legislation not empowered to legislate with regard to acts committed outside .. Cr.A.63/39 VII 1

(1527) PARCELLIATION not a disposition. See Disposition. CA 78/40 VII 237.

(1528) PARTITION

If property could not be partitioned, the only remedy in law is to sell. CA 140/41 VIII 579

b

Jointly owned immovable property partitioned unofficially. Partitioned property remained registered in name of joint owners- action for partition- Which party should go to competent Court to have registration set aside. CA 183/44 XI 619

o

Judgment for partition & parcellation and not for possession a separate action for possession under art. 24 of the O.M.L. should be brought. HC 86/43 XI

46

d.

Action for partition of jointly owned immovable property - Disclaimed by certain co-owners in favour of others. Court to take cognizance of such disclaimer. CA 378/43 XI 234.

e.

Partition of Immovable property ordered- property knocked to highest bidder- application by highest bidder for withdrawal on ground of discovery of material misdescription of the property sold. Refusal of application by Magistrate on ground of being functus officio. HELD Magistrate order for sale a JUDICIAL DECISION. HC 24/44 XI 117

(1529) PARTNERSHIP- See Arbitration sub misconduct. Serial No. 138 page 27 Vol.1.

(1530) PARTNERSHIP

In order to prove a partnership a party must do more than adduce evidence that a partnership was commonly believed to exist CA 5/44 XI 562

(1531) b

Application for dissolution of a partnership and consequential action thereupon should normally be made by an Originating summons. CA 61/42 IX 428

(1532) c

Resolution for expulsion of partner from. There are two principles which should be taken into consideration in determining the validity of a resolution to expel a partner. (a) that the clause in the partnership agreement providing for the expulsion of a partner should not be relied upon unless there was good faith and (b) the partner whom it was desired to expel should be given an opportunity of defending himself.

2

The written notice of the meeting to consider the expulsion need not set out the allegations against the partner

3

Whether a member is detrimental to a partnership business is essentially a matter for the partners to decide and the Court can only look to see if there was evidence upon which the partners could reasonably come to that conclusion. CA 242/40 VIII- 4

(1533) PARTNERSHIP -Existence of to be proved by a note or Memorandum in writing- not necessary that party to be charged must have signed the note or memorandum. CA 155/44 XI 204

(1534) (b) Expulsion of partner from- ..principles to be taken into consideration in determining validity of resolution. CA 242/40 VIII 4

**Partnership- Patents Pensions Penalty Personal Injury
Personal Law**

(1535) PARTNERSHIP Interpretation of deed of..
CA 107/44 XI 550

(1536) PARTNERSHIP ORDINANCE
s. 2(2) CA 155/44 XI 204

(1537) s.18
Does not debar Judgment being given against a partner in an action brought against the partnership and the partners thereof, but that it debars the execution of the Judgment so obtained against the partner under certain conditions.
CA 147/43 X 297

(1538) s 70
Foreign partnership. A Foreign Partnership by forming a partnership in Palestine must be regarded as carrying on business in Palestine and if it does not register in Palestine, it is an illegal body under s. 70 of the Partnership Ordinance.
CA 223/41 IX 174

(1539) PATENTS & DESIGNS.
s. 11(1)

Application for grant of a patent- application opposed- opposer succeeds in his application under s. 11(1)..Application refused. CA 28/43 X 109

(1540) PENSIONS ORDINANCE
as amended by the Pensions (Amendment) Ordinance No.2 of 1938
s. 18 A

It appears from a comparison of paras(1(and (ii) of s. 18A that the legislature intended one pension to be paid in respect of the widow or widows of a deceased officer.

(b)

When the High Commissioner has exercised his discretion vested in him by s. 18A and has granted a pension to the widow he has performed the functions vested in him and it becomes the duty of the Administrative Officer charged with giving effect to the High Commissioner's decision to pay the widow entitled to, the pension and such Officer,

may therefore be called upon to distribute between the widows of the deceased officer so long as there are more than one a pension of an amount which has been fixed. There is no express provision in the law directing that the pension should be allocated in any particular way.
HC 38/41 VIII 237

(1541) PENSION.

Claim by a deceased wife for pension as of right- claim not falling within the provisions of the Crown Actions Ordinance Action dismissed as it was not entertainable under the Crown Actions Ordinance s. 3(1)(b) Whether claimant can succeed Course to be adopted was to apply under r. 21 of the C.P.R.

b

It is settled law that a widow of a deceased officer has no statutory right to a pension
CA 222/42 IX 766

(1542) PENALTY See Maximum Penalty.

b.

A penalty cannot be imposed in respect of the future.
Cr.A 6/41 VIII 61

(1543) PERSONAL INJURIES

Loss of time and damage to business due to the incapacity of plaintiff- properly classed as personal injuries.
CA 113/40 VII 363

(1544) PERSONAL LAW.

When there is a clash between the personal law of the parties the law of the defendant should be applied. CA 11/41 VIII 241

b

Will good and valid in accordance with civil form not invalidated by containing provisions or dispositions against the Personal Law. (See Succession)
CA 106/40 VII 310

Personal Status

PERSONAL STATUS

(1545) PERSONAL STATUS

Alimony & Maintenance

The allowance awarded to a wife consequent upon a Judgment of separation comes under the heading of "ALIMONY" and not Maintenance. HC 144/42 X 4

(1546) b

Alimony is a payment made to a wife after a decree of divorce or a separation has been issued or during the pendency of an action for divorce or separation in certain circumstances.

Alimony is a matter within the exclusive jurisdiction of the Rabbinical Court HC 146/42 X 24

(1547) c

Alimony & maintenance

TRUSTED C.J.

As articles 53 & 54 of the Order in Council draw a distinction between alimony and maintenance I think these Courts are bound to enquire into the English meaning of these words but having ascertained that there under alimony is a payment by a husband to a wife in consequence of divorce proceedings, and that maintenance means certain other payments, such payments, when their nature is ascertained will respectively be governed by the Law of the Community concerned. I do not think the application of the English meaning goes further than that.

HC 12/42 IX 213

(1548) d

ALIMONY. Application by wife for alimony. Husband at time of marriage a member of the Melkite Community but since the marriage he reverted to his original community the Greek Orthodox. Wife a member of the Latin Community and never registered her change of Religious Community. HELD The Greek Catholic (Melkite) Court had no jurisdiction unless the husband and the wife were both members of the Greek (Catholic) (Melkite) Community and the consent of the wife could not clothe the Court with jurisdiction. HC 100/41 IX 121

(1549) ABSENTEES Consent

Religious Court issued a Certificate of Succession and appointed Administrator to administer the property of an absent person-

Held- That the consent of the absentee to the jurisdiction of the Religious Court to hear and determine the application made for the appointment of an administrator of his property was not necessary, for, the application for the appointment of an administrator was a proceeding to which the absent person was not, and could not be, a party.

CA 149/42 IX 619

(1550) PERSONAL STATUS

Estoppel

A member of the Latin Community by holding himself out to be a Latin Catholic is estopped in proceedings between himself and his wife from alleging that he was other than a Latin Catholic. Fact that the requirements of the Religious Community

Change Ordinance had not been fulfilled was of no avail to respondent in attempting to escape his liability under s.4(2) of the Ordinance. HC 7/44 XI 128 and see HC 100/41 IX 121

b

Husband born from a Moslem father and a Catholic mother and was baptized in the Latin Church, married in that church; Whether he can, for the purposes of a personal status action arising out of the marriage, dispute the jurisdiction of the Latin Ecclesiastical Court on the ground that he is a Moslem?

HELD; Husband must be deemed to have submitted to the Rules of the Catholic Church in all matters relating to his marriage as between himself and his wife and to the jurisdiction

PERSONAL STATUS

Pharmacists Rules - Plans PLEA - PLEADINGS
Policy Police

-ion of the Catholic Church in matters arising out of the marriage, and he is therefore estopped in any proceedings as between himself and his wife from alleging that he was not a Latin Catholic.
HC 6/43 X 78

(1552)

c

The Courts of Palestine when faced with a matter of Personal Status of persons who have no nationality have to apply the religious or Communal Law of the parties. CA 195/43 X 405

d

(1553) Custody of children Jurisdiction-

Husband Moslem- Wife Christian- Sharia Court has no jurisdiction- Parties must come to Civil Court. HC 80/42 IX 467

(1554) PHARMACIST'S RULES

r.2(2)(c)

Director of Medical Services has the discretion to recognise or not to recognise a particular Diploma, subject to that discretion being exercised in a semi

Judicial manner- and reasonably. HC 53/40 VII 460 at.p.461

(1555) PLANS - Application for change of registration- Applicant asked to produce a plan of the land.

HELD no legal power vested in the Director of L.Registrations empowering him to insist on the production of the plan asked for and that the H.Court accordingly had no power to order the rectification of boundaries. HC 58/43 X 349.

NOTE: Consequent upon this decision the Land Transfer (Amendment) Ordinance 1943 No.139 was enacted.

(1556) PLEA. The question of withdrawing a plea already made is a matter within the discretion of the Court of Trial. It has nothing to do with any co-accused nor does it vitiate the whole trial. Cr.A.44/43 X 283

(1557) PLEADINGS

Application for amendment of by the addition of a plea of fraud.

HELD Courts reluctant to permit the addition unless such fraud has been pleaded in the first instance.

CA 375/44 XI 560

(1558) POLICY OF INSURANCE

Ambiguity in..Courts inclined to interpret in favour of insured. PCA 34/39 VII 273

(1559) POLICE (Amendment)

Ordinance No.2 of 1939

s.2

repealed and replaced by Reg.2 of the Defence (Amendment of Police Ordinance) Reg.1941 Gaz. 1075 of 30.1.41
HC 109/40 VII 614

(1560) POLICE COURT OF DISCIPLINE

Accused entitled to be represented by Advocate before Police Court of Discipline.
HC 109/40 VII 614

(1561) POLICE Discharge of on grounds of his unfitness to perform the duties of a Police Officer- Discharge approved by the H.Commissioner Submission that Police Officer wrongly dismissed.

HELD Section 7(3) of the Police Ordinance had been properly complied with and Petitioner had been properly dismissed and that s. 7(3) had not been superseded by the Army Act 1881.

HC 71/43 X 423

(1562) POLICE FILES

Court of Trial not entitled to look at a Police File or any part of it., unless such part has been properly put before it as evidence, as occasion may arise (and in this case) the Police file was handed to one member of the District Court, the conviction should be quashed and the case remitted to the District Court for re trial

Police - Political- Possession- Post Office Power of attorney

(POLICE FILES (Continued)

under section 72(1)(c) of the Criminal Procedure (T.U.I.) O

b

Although there was no reference in the Grounds of appeal to the irregularity the Court of Criminal Appeal should consider the objection to the proceedings due thereto- as the irregularity had been brought to its notice and it was its duty to see that everything had been properly and rightly done.
Cr.A.66/41 VIII 330

(1563) POLICE ORDINANCE

s.7(3) HC 71/43 X 423
s.18(1)(i) & 50(1)(e)
HC 111/40 VII 615

s.23) HC 70/44 XI 372
26)

s.38(a) The essence of the offence under..is the "endeavouring to induce"
Cr.A.179/42 IX 782

(1564) POLICE Statements to..
See Statements to Police.

(1565) POLITICAL MURDER

Nothing in the Criminal Law of Palestine or England creating a Special Offence called Political murder. Once accused with in the jurisdiction he can be tried.
Cr.A.2/41 VIII 43.

(1566) POSSESSION. Doctrine Submission that possession by some of the villagers was possession on behalf of all- doctrine only applies to co-heirs and not to villagers.
CA 72/42 IX 494

b

Possession by one co-heir presumption that it is on behalf of the other co-heirs. See Adverse Possession

(1567) POST OFFICE ORDINANCE S. 83

Concealing Postal Packets Unnecessary to show accused had intention permanently to deprive owner thereof of postal packets.

Cr.A. 4/40 VII 29

(1568) POWER OF ATTORNEY Appeal General power of attorney given to Advocate by two persons- text thereof such as to enable Advocate to appeal and to do so on behalf of one only of the two persons.
CA 129/41 VIII 359

-b- Agent

Power of attorney constitutes agent and manager of donor's properties- power given pursuant to agreement between attorney and donor containing damages clause-
HELD Power revocable.
CA 156/41 VIII 453

- c - Bankruptcy

Attorney empowered to commence and prosecute any proceeding in any Court.
HELD word "proceeding" wide enough to cover an application for a Receiving Order in Bankruptcy. CA 60/41 VIII 191

- d - Defective power

An objection to a Power of attorney being defective should be taken before the filing of the defence and before the settlement of the issues.
CA 178/43 X 352

- e - Enemy subject

Giver of power having become enemy- authority of attorney ceases from date giver of power became enemy.
CA 300/43 XI 121

- f - Irrevocable power

When a person contracts to sell land to A and then sells it to B he has thereupon put it out of his power to transfer his land to A and for this purpose an irrevocable power of attorney has the same effect as a sale.
CA 90/43 X 225.

POWER of Attorney - Precedents - Premeditation - PREMISES Pre-emption Preliminary Enquiry Prerogative

POWER OF ATTORNEY (Cont)

(g) Interest

Power of attorney coupled with an interest- irrevocable
Frith v Frith 1906 A.C. 254

(h) Stamps

Objection to insufficiency of stamps on power on ground that it is general not specific. Court upholding objection Appeal lies from decision.
CA 401/43 XI 97

(i) Advocate & Client.

Where a party holds out an advocate on his behalf to settle a case and appears in open Court and asks the Court to ratify a settlement, that party cannot afterwards be heard to say that his advocate had no authority to settle even though the power of attorney given to that advocate does not authorise him to make such a settlement.
CA 277/43 XI 196

(1569)) PRECEDENTS

When will Supreme Court sitting as a Court of Appeal depart from its previous decisions
Cr.A.160/44 XI 633

(1570) PRE-EMPTION

Claim to...must be in exact form laid down in Mejelle arts 1028 to 1035. CA70/44 XI 367

(1571) PRELIMINARY ENQUIRY

conducted by two Magistrates Nothing wrong in proceedings
Cr.A.57/44 XI 184

-b-

Held partly in one place and partly in another - if both places are in same judicial district in which D.C. exercises jurisdiction- objection to preliminary Enquiry must fail. Cr.A.13/41 VIII 68

-c-

Discrepancy between evidence of witness at trial and at Preliminary Enquiry.
Cr.A.23/40 VII 217

(1572) PREMEDITATION

Question of fact. Trial Court could lawfully draw the inference that accused intended to kill his victim from the fact that she was attacked in a lonely place and a number of wounds inflicted on her.
Cr.A.57/40 VII 359

b

Premeditation- resolution Method of proving resolution
C.C.O. s.216
PCA 66/43 XI 237

c

Number and nature of wounds inflicted may prove resolution to kill
Cr.A.98/42 IX 390

d

See Onus of proof.

(1573) PREMISES- closed by order of Police. Lessee NOT entitled to pro rata reduction of rent for period of closure
CA 134/40 VII 405

(1574) PREROGATIVE of the Crown. The High Commissioner of Palestine cannot exercise on behalf of H.M. any prerogative of the Crown in the sense in which that term is generally used in the Text books unless the power so to do is expressly delegated to him. HC 67/41 VIII 363 (and see HC 82/41 VIII 429)

b.

Prerogative of the High Commissioner to arrest and detain.. The Prerogative to arrest and detain any person whether as an alien enemy or as a so called prisoner of war or otherwise, without charge trial, or enquiry, did not exist either in the High Commissioner or the Ex. Govt of Palestine unless such power had been expressly delegated and in such case such power should

PREROGATIVE

PRESCRIPTION

PREROGATIVE (continued)

be exercised strictly in accordance with such delegation.

Where a person had been detained under a nebulous, undefined, alleged or implied prerogative, then the Courts could inquire into such alleged or implied prerogative and a Writ, of or in the nature of habeas corpus would lie.

HC 7/42 IX 126

c

PREROGATIVE WRITS., such as are known in English Law do not apply in Palestine, and that the strict formalities attendant on such writs have never been applied here, but the general principles are applied.

HC 108/42 IX 668

(1575) PRESCRIPTIONAdministrative Privilege

No Law of prescription with regard to..HC 110/42 IX 572

b

Promissory note Prescription of action against guarantors of
CA 209/40 VII 569

c

Gregorian date. Where an action is founded upon a document bearing a Gregorian date, "YEAR" for the purpose of limitations is to be taken to be a Gregorian year.
HC 2/41 VIII 80

c

Joint owner. Proceedings taken by a joint owner in respect of the jointly owned property interrupted running of period of prescription against the other joint owners.

CA 329/43 XI 414

d

Long distance- Plea of no prescription on ground that party was absent in Damascus and Aleppo-- considerations to be taken into account in determining this question.

HELD : Although there were cases in the past where the Supreme Court had applied the archaic provisions of the Mejelle literally, yet, in these days regard must be had to the means of communication in modern times and the Settlement Officer was therefore justified in holding that the plea of prescription failed.

CA 179/42 IX 798

e

Minors. Prescription does not run against..CA 187/41
VIII 582

f

Mortgage No prescription with regard to a mortgage.
CA 192/40 VII 527

g

Ownership. Plea of prescription when no admission of ownership made by person advancing plea.

h

Right Prescription bars remedy but does not destroy right.
CA 216/41 VIII 607

i

Unlawful possession- Possession for more than prescriptive period Possessor admitted taking of possession unlawfully.

HELD No prescription and no account could be taken of the lapse of time and possession in accordance with the proviso to art. 20 of the O.Land Code.
CA 288/42 X 317

J

Waqf. Claim to waqf land by... prescription..CA 24/40 VII 133

k.

Waqf Claim by Mutawalli of waqf against previous Mutawalli for monies that came into the hands of that previous mutawalli over fifteen years ago. Whether action barred by limitation.
CA 28/42 IX 269

PRESS - Previous convictions**PRIVATE-
Principles****PRIMA FACIE
PRIVY****PRISONS****(1576) PRESS ORDINANCE**

Requires every paper to have a responsible Editor. A person so appointed must be held to be responsible for anything published in the paper irrespective of the extent of his actual control. HC 51/40 VII 431

(1577) PREVIOUS CONVICTIONS

must be proved and the details thereof should be recorded. Cr.A.52/40 VII 286

b

Before taking previous convictions into consideration a trial Court has either to obtain the admission of the accused person that those convictions have in fact been sustained or to call upon the prosecution to prove them, and an note to that effect should appear on the record. Cr.A.141/43 X 602

(1578) PRIVATE COMPANY

Attachment of shares. Whether permissible under art. 81 of the Ottoman Law of Execution. HC 37/44 XI 249

**(1579) PRIVATE INTERNATIONAL
LAW**

Rules of...applicable to Palestine. CA 85/40 VII 304

(1580) PRIVATE RIGHTS and Rights of the Community.

It is the duty of Courts to safeguard private rights and where such rights conflict with what are alleged to be the rights of the Community it is a fundamental principle of English Law that the private rights must prevail unless there is a definite and unambiguous statutory provision to the contrary. HC 97/41 VIII 533

(1581) PRIMA FACIE CASE

Where a prima facie case has been made by the prosecution Court of Trial must hear, determine and complete case. Cr.A 36/40 VII 267

(1582) PRINCIPLES.

The smaller of two harms is chosen. (Mejelle art.29) CA 113/40 VII 363

b

If an Institution (e.g. law of Torts) could not be made use of in its entirety, it may perhaps be better not to make use of it at all. CA 113/40 VII 363

c

It is a fundamental principle that people must have an opportunity of knowing what the Law is. CA 113/40 VII 363

d.

It is the duty of the Courts to interpret laws, not to make them. CA 113/40 VII 363

**(1583) PRISONS ORDINANCE 1940
s.12**

The Emergency Regulations not ultra vires s. 12 because they were made under the authority of the Palestine (Defence) Order in Council. HC 69/42 IX 425

(1584) PRIVY COUNCIL

Conditional Leave to appeal to Privy Council granted- application to the Court of Civil Appeal to extend the time for filing a guarantee- Court of Civil Appeal not empowered to grant the application- conditional leave to appeal rescinded. PCIA 11/40 VIII 79

b

Application for leave to appeal to Privy Council from Judgment of the Supreme Court sitting as a High Court of Justice- whether the S.C sitting as a H.C empowered to grant leave. HELD: The S.C has no power to grant leave to appeal to the P.C. from Judgments given by it. PCIA 22/43 X 600

PUBLIC

RABBINICAL

RAPE

RATE

(1596) PUBLIC MISCHIEF
C.C.O.105.

The two ingredients of the offence of Public Mischief are (1) that officers of the Public were caused by false statements to devote their time to the investigation of idle charges and (2) that members of the public -at any rate those members who answered- were caused by false statements to devote their time to the investigation of the idle charges, were put in peril. Cr.A.179/42 IX 782

(1597) PUBLIC OFFICERS.

In the absence of any law requiring a public officer to do something or to refrain from doing something the High Court cannot issue an order to such officer as contemplated by s.7(b) of the Courts Ordinance 1940
HC 43/42 IX 302

** R **

(1598) RABBINICAL LAW.

Applicable on a claim for maintenance by wife of a Palestinian member of the Jewish Community. CA 11939 VII 20

(1599) RABBINICAL COURTS

A right of appeal is inherent in all cases tried before a Rabbinical Court of First Instance. HC 18/41 VIII 140

(1600) RAPE-

Corroboration- Although as a matter of law corroboration may or may not be necessary in such class of cases yet, it had been the practice of the Courts that in such class of cases corroboration implicating the accused was necessary. A statement by Appellant in cross examination by the Prosecution that he was in the habit of sleeping on one mattress with his daughter and that his children slept on another mattress could not be regarded as being sufficient corroboration. Cr.A.122/43 X 590

(1601) RAPE

Contrary to s. 152(1) C.C.O. Facts justifying inference that complainant consented. Circumstances in which statement of accused to Police consistent with his guilt disregarded.
CR.A. 75/39 VII 15

b

Imbecile. Complainant imbecile and accused aware thereof- evidence of complainant not on oath -complainant's evidence not acceptable - Insufficient evidence to support conviction without complainant's evidence Conviction quashed. Cr.A.67/39

-c-

Information In offences in the nature of the present one, the Information charging the accused with the offence should state a particular date; if the date was known, and the allegations made that the act had been repeated on divers other previous occasions, so that the charge might be definite and unembarrassing to the accused and that if no specific date could be ascertained the charge should be dropped

-d-

In charges of this nature the doctor making the examination should always be called as a witness.

-e-

A complaint made by the complainant and the details of such complaint would be admissible in evidence.

Cr.A.118/42 IX 479

(1602) RATE OF EXCHANGE

The rate of exchange for conversion of Turkish Gold Pounds into Palestine Currency is the rate of Exchange prevailing at the date of actual payment and not that prevailing at the date of maturity. CA 17/40 VII

RATES & TAXES

RECEIVER

(1603) RATES & TAXES (Exemption)
Ordinance 1938 s. 15(b)

A petition could be properly presented to the D.C. under s.15 (b) without the A.G. being made a party thereto for the effect of the provision in that section that the Crown Actions Ordinance shall apply is merely to put the Municipal Corporations into the position of a Government Dept. for the purposes of claims to exemption from payment of rates.

b

The word "TAXATION" in s. 15(b) should be taken as meaning "all sums levied by the Government or by any Local Authority (the latter term including a Municipality).

c

The intention of s.15(b) and the effect of its language is to grant relief in the appropriate cases notwithstanding the provisions of the Municipal Corporations Ordinance, 1934.

CA 133/40 VII 417

d-

Proceedings initiated for exemption from Municipal rates were not authorised by s. 15(b) because the word "taxation" in s. 15 (b) which word may be used in either a more limited meaning or a wider meaning in view of the distinction preserved throughout the Rates and Taxes (Ex) Ord.1938 between "rates" as used in Part I and "Taxes" as used in Part II and III must be assumed to have been used in the narrower meaning in Part IV and did not cover a claim for exemption from Municipal Rates. PCA 34/41 X 517

e

Local Councils Claim for taxes
No resolution fixing and determining such taxes was passed whether L.C justified in its claim. CA 106/42 IX 510

(1604) RECEIVER

Appointment- Where a partner seeks to have a Receiver appointed against his co-partners "if the partnership is already dissolved" the Court usually appoints a receiver almost as a matter of course. CA 164/41 VIII 423

(1605) RECEIVER

Appointment of..when arbitration proceedings are in existence. See Rule 297 C.P.R 1938.

(1606) RECEIVER - Duties

A Receiver in an action is an impartial person appointed by the Court to collect and receive, pending the proceedings, the rents, issues and profits of land or personal estate which it does not seem reasonable to the Court that either party should collect or receive, or where a party is incompetent to do so as in the case of an infant. A Receiver can only be properly granted for the purpose of getting in and holding or securing funds or other property which the Court at the trial or in the course of the action will have the means of distributing amongst or making over to, the person or persons thereto entitled. (Kerr on Receivers 10th Ed. p.3)
HC 16/41 VIII 155

b

The duty of a receiver is to discharge any taxes rates and outgoings affecting the mortgaged property due even before the date of his appointment.

c

The appointment of a receiver does not involve any change of ownership.

HC 32/41 VIII 163

d

The High Court should not interfere with the distribution of money already paid over by a Receiver acting on the direction of the Ch.E.O. when that money had already been paid.
HC 16/41 VIII 155

e.

Rents. On entry of a Receiver into possession a Mortgagor ceases to be entitled to rents.
HC 16/41 VIII 155

(1607) RECEIVER Rents collected by..

The question is: Whether rents collected by a Receiver appointed by the Court to take charge of mortgaged property pending its sale are to be distributed pari passu between all the various mortgagees or whether they should be paid over to the mortgagee who is first in order of priority. HELD The rents should be paid over to the mortgagee who is first in order of priority subject to priority claims such as priority for taxes.
HC 16/41 VIII 155

(1608) RECEIVING ORDER

Single receiving order against three separate debtors invalid.
CA 152/40 VII 407

b

Where bankrupts are not partners nor joint owners of an estate a Receiving Order in respect of each one should be made.

CA 152/40 VII 407

(1609) RECOGNIZANCE Action on..CA 241/41 IX 16

(1610) RECOMMENDATION OF MERCY
No function of Court of Crim.
Appeal to make.Cr.A.83/41 VIII 267

(1611) RECORD Loss of..

Cr.A.96/44 XI 458

Cr.A.106/43 XI 8

(1612) RECORD of Court of Trial
Appellate Court bound by the record as it stands as showing a true narrative of what had happened before that Court.
CA 37/42 IX 362

b

The Court of Appeal is bound by the Record of the Trial Court and it must assume that it was correctly and properly taken down. Cr.A.132/43 X 583

(1613) RECORD OF PROCEEDINGS

It is most undesirable for any judicial officer to interpolate remarks into the record which really are not properly a part of the record. The Officer should keep his thoughts to himself until the end of the case and not put them down on paper where they are liable to cause misconceptions or express them in Court. He should keep his ideas to himself until the case is finished or he delivers judgment or unless he has to give a preliminary ruling on a point which is to be decided there and then.

CA 124/42 IX 501.

(1614) RECOVERY OF POSSESSION

Dispute as to ownership and possession of land. Order by Magistrate's Court for dispossession of possessor. Subsequent decision of L.S.O. that possessor entitled to be registered as owner thereof. Formal delivery of possession by Execution Officer to pffs in action for dispossession- after that decision- Action by possessor for recovery of possession.

HELD Possessor's action not maintainable owing to his being in possession.CA 107/40 VII 331

(1615)

b

Persons in possession possess by virtue of an agreement not put an end to, by either party. Whether they could be dispossessed. CA 46/42 IX 271

c,

Person in possession possesses by virtue of an agreement for sale- whether action for dispossession properly brought.
CA 140/43 X 421

d

Party asking for dispossession does not own the property he asks to be vacated. Party being merely a licensee of the owner- Party not entitled to an order of dispossession.
CA 4/43 X 57

(1616) RECOVERY OF POSSESSION

Action for... Ownership of plaintiff not in dispute- Magistrate's Court has jurisdiction to deal with claim even though plaintiff not having prior possession. CA 66/44 XI 310

(1617) REFORMATORY

See Young Offenders.

(1618) REGISTRARS ORDINANCE 1936

a

No appeal lies against Order of the Registrar of a District Court on application made to him under..HC 16/40 VII 155

b

s. 6(e)(4) & 8(3)
Application by mortgagee to Registrar for refund of 2½% collection fee. Refusal by Registrar to order refund- High Court not empowered to entertain application to set aside Registrar's refusal. HC 87/40 VII 521

c

Functus officio The refund of Court fees is within the power of the Registrar of the District Court to make- Once the Registrar had given the order - functus officio.

d

No direction can be made to the Registrar by the President of the District Court while performing his duties under the appropriate sections of the Registrars Ordinance. HC 50/40 VII 408

e

Section 8(3) . While the language of this section may be open to wider construction the better view is that it is limited to matters covered by s. 6 .This Section excludes art. 43 of the Palestine Order in Council 1922- Art. 43 however is not excluded by s.17.
HC 74/40 VII 486

(1619) REGISTRARS ORDINANCE s. 6(a)

Registrar District Court made formal order for attachment and sale of debtor's property- Whether proper Order.

HELD The order of the Registrar was properly made under s. 6(a) of the Registrars Ordinance 1936 and that the Petitioner having paid L.P.50 on account of the debt and undertaken to pay the balance within 3 months must have waived all the rights he might have had against the Registrar's Order.
HC 47/42 IX 317

(1620) CHIEF REGISTRAR

has power to extend the time defined by the Rules, he has however no power whatsoever to extend the time defined by Ordinance.

CA 184/41 VIII 492

(1621) REGISTERED TITLE

Rejection of..in favour of unregistered one- strong extenuating circumstances must be present.

CA 355/44 XI 642

(1622) REGULATIONS

Order made by virtue of powers conferred by Regulations Order bearing same date as Regulations under which made Whether Order effective
HELD Order ineffective as not in conformity with the requirements of s.13 of the Interpretation Ordinance in that the power conferred by Reg.46A could not be exercised till after the Reg. had been promulgated by its publication in the Gazette. Cr.A.59/43 X 319

(1623) RELATIONS. in Palestine even of a remote degree of consanguinity are regarded as members of the immediate family. CA 133/44 XI 520

RELIEF - RELIGIOUS

REMEDY

REMITTAL

RENT

(1624) RELIEF

Party claiming under a contract declared null and void by law not entitled to any relief.
CA 99/44 XI 533

(1625) RELIGIOUS COMMUNITY
(Change) Ordinance
s. 3(1)

Jewish girl under eighteen years of age converted into Islam without her parents consent
Whether change has legal effect
HELD: The girl must return to the custody of her mother because she was on the evidence produced under eighteen years of age and her change of religion had no legal effect unless it was consented to by her parents.

b

If girl over eighteen there would have been no question of the High Court exercising habeas corpus proceedings. HC 102/42 IX 535

o

The Religious Communities (Change) Ordinance which is validated by art. 51 of the O. in C. is a substantive provision of the Law. Sp. T. 1/41 VIII 216

(1626) RELIGIOUS COMMUNITY
means the Community of a particular religion.
HC 109/42 IX 715

(1627) RELIGIOUS ORDER
H. Court has power to question act done by Head of a Religious Order; HC 14/44 XI 191.

(1628) RELIGIOUS COURTS Judgment
As Judgments of Religious Courts are executed by the Civil Courts the Supreme Court has in proper cases taken upon itself to enquire into the exercise of their jurisdiction.
HC 18/41 VIII 140

(1629) REMEDY.
(Where an alternative remedy exists the High Court will not interfere.
HC 62/42 IX 430
HC 69/44 XI 371
HC 1/44 XI 592

(1630) REMITTAL OF CASE to
Lower Court

Court of Appeal will not remit case to Court below if it is bound to fail.
CA 26/40 VII 346

(1631) RENT.

Lessee bound to pay rent even if he cannot use the premises unless there is some defect in the premises themselves.
CA 198/40 VII 513

b

When a Receiver is in possession of mortgaged property the rent goes to him.
HC 91/41 VIII 497

o

Rent-Legal tender of ..
Tenant offered to pay rent in accordance with terms of tenancy agreement - Landlord refused to sign receipt acknowledging the receipt of the rent in which it was stated that payment was in accordance with R.R. Ordinance 1940 and in accordance with agreement of Tenancy.
HELD: Manner in which the tenant offered the rent was a legal tender since the receipt which the landlord was asked to sign did not demand more than what was in fact the law. CA 86/43 X 204

(1632) RENT RESTRICTIONS (B.P.)
Ordinance 1941

While the term "premises" may sometimes be used to cover land unaccompanied by buildings the use thereof in the Rent Restrictions (B.P.) Ordinance 1941 having regard to the limited contents and scope of the Ordinance did not cover land unaccompanied by buildings and therefore, the R.R. (B.P.) O. was not applicable to unbuilt land. CA 240/43 X 584

b

The date which a Court has to take into consideration when adjudicating in an eviction matter under ... is the date when it adjudicates on that matter. CA 265/43 X 565.

RENT RESTRICTION

RENT RESTRICTIONS (B.P.) O.1941
(continued)

^e
The term "Landlord" does not include a tenant who sublets to a sub-tenant. The Ordinance contains separate definitions for "sub-tenant" and "tenant". It does not however contain a definition for "landlord" CA 221/42 IX 775

^d
Does not contain a proviso similar to the proviso to s. 8(1) R.R. (D.H.) O. 1940. HC 15/43 X 148

(1633) RENT RESTRICTIONS (D.H.)
Ordinance, s. 2 & 3

A Chief Execution Officer may exercise powers of Execution Officer, under s. 8.
HC 18/42 IX 06

^b
s. 2, 8 & 9.
Alternative accommodation offered consisting of flat occupied by person claiming eviction - contract of lease enables person claiming eviction to sub lot. Person who will occupy the alternative accommodation offered protected by the Ordinance.
CA 223/44 XI 599

^c
Section 8. In cases under ... it is the intention of the Legislator that whether eviction should be ordered or not, should be left to the discretion of the Court of first instance. An appellate Court can only interfere if it is abundantly satisfied that that discretion has been improperly exercised. It is not sufficient that an appellate Court should think that perhaps it would have been better if the discretion had been exercised in another way.
CA 327/43 XI 456

^d
Section 8(1). The words "other conditions of the tenancy" refer to matters altogether unconnected with the payment of rent. A tenant to whose tenancy the R.R. O. 1940 applies and whose period of tenancy has expired is entitled to the protection of s. 8 and his position is not

RENT RESTRICTION

affected by the absence of any notification from the landlord to vacate the premises nor by the absence of any communication on his part to the landlord expressing his intention of holding on under the Ordinance. CA 186/42 IX 665

^e
Section 8(1)(c) - Considerations to be taken into account in deciding upon suitability of alternative accommodation.
CA 396/43 XI 389

^f
Section 8(1)(c) Crucial date on which alternative accommodation should be available. HELD TIME of adjudication in first instance.
Referred to: CA 99/42 IX 443
CA 110/42 IX 433
CA 265/43 X 565
CA 45/44 XI 320
CA 51/44 XI 320

NOTE:

See however Serial No. 1123 on page 193 (Vol. 11) and the S.C. Judgments referred to Nos. CA 45/44 and 51/44 XI PLR p. 320, and the latest Judgment CA 2/45, where it was held (2/45) that the alternative accommodation should be available at or about or reasonably near to the time when notice to quit is given, and see also CA 59/45 Nassar v Milki explaining CA 2/45. This last Judgment was reported in the Haifa Law Reports, at page 136.
1945

^g
Section 8(1)(c)
Claim for eviction by landlord on ground that the leased premises were needed by him. Mag. applied his mind to relevant considerations under s. 8(1)(c) The D. Court reversed the Mag. HELD: D.C. NOT justified in substituting its own discretion for that of the Mag.
CA 78/43 X 178

(1634) RENT RESTRICTIONS (D.H.)
Ordinance, 1940

Section 8(1)(c) The words "for himself" not limited to the landlord himself his wife and children but include those dependent on the landlord. CAL70/43 X 432

Section 8(3)

Tenant who got married left lease premises while his family (mother and younger brother) continued occupying the premises in question. Landlord claimed the vacation of the premises.

HELD Tenant who ceased to reside in the premises was a tenant in respect of, or for the benefit of his family within the meaning of the R.R. (D.H.) Ordinance 1940 s. 8(3) CA 40/43 X 170

(1635) REQUISITION of flat by competent authority under r.48 of the Defence Regulations 1939.

HC 73/44 XI 424

HC 78/43 X 526

HC 90/44 XI 483

HC118/44 XI 574

(1636) RESIDENCE- The question whether a person is or is not resident in a certain place depends upon the particular facts and circumstances of the case.
Cr.A.48/42 IX 258

(1637) Res ipsa loquitor
CA 59/40 VII 179

(1638) RES JUDICATA

No res judicata on re-trial

In order that a defence of res judicata may succeed, it is necessary to show not only that the cause of action was the same, but also that the plaintiff has had an opportunity of recovering and but for his own fault might have recovered in the first action that which he seeks to recover in the second. A plea of res judicate must show either an actual merger or that the same point has been actually decided between the same parties. CA 234/40 VII 603

(1639) RES JUDICATA- ESTOPPEL

There could be no question of res judicata or estoppel by virtue of the Judgment of the Mag. Court as (a) The Judgment was, in effect, given in default of appearance and was ineffective in as much as it was impossible of performance by defendants as neither of them had possession of the car which was in "custodia Legis" and which was confirmed.
CA 252/41 IX 109

(1640) RETRIAL

Return by Court of appeal of case on one point does not mean a retrial ab initio. CA 177/41VIII 470

b

District Court in appellate capacity has power in criminal proceedings to remit a case to a Mag. Court for retrial.
CR.A.137/44 XI 555

(1641) RIVER- Public River
See Mejele Art.1239

(1642) ROAD TRANSPORT ORDINANCE

s.3 VIII- 11

18 VIII 252

ROAD TRANSPORT RULES

r. 77 - VIII 11

78 XI 166

ROAD TRANSPORT (Am) Rules
r. 77 VIII 11

(1643) ROAD TRANSPORT (R & Tariffs) Regulations 1939

Discretion of Licensing Authority High Court cannot indicate to Licensing Authority how to exercise its discretion in the future.
HC 76/39 VII 31.

(1644) ROUTE PERMITS

A route permit for running a motor vehicle - not an asset nor does

ROUTE PERMITS (Continued)

it form part of the goodwill thereof because it is personal to the holder thereof, is renewable annually at the discretion of the authority and cannot be transferred without permission. CA 174/43 X 402

(1645) RULES OF COURT (Income Tax Appeals) 1941 paras a, b & c of Rule 11.

must be read subject to the overriding provisions of the main r.11 that is to say, that the question as to which party to the appeal should get the costs is one for the discretion of the Judge. ITA 7/43 X 307

(1646) RULE NISI

For a petitioner to succeed in having the rule nisi made absolute he has to satisfy the Court that respondent had infringed a statutory duty or had not complied with any statutory duty laid upon him in regard to the petitioner. HC 92/43 X 513

(1647) RURAL PROPERTY TAX ORD 1935 s. 2

Applies to all lands whether registered or unregistered since the reputed owner may or may not be a registered owner. HC 66/41 VIII 389

** S **

(1648) SALT ORDINANCE s. 9(6)

Although the words "shall be confiscated by order of the Court" in s. 9(6) leave the Court no option and in fact mean the same as "in the event of a conviction the means of transport shall be confiscated" was a logical one, yet "shall be confiscated by order of the Court" mean "that the method of confiscation is for the Court to order" and if the Court does not make an order, then there is no confiscation.

As this particular provision of the law is open to two constructions the construction more favourable to a convicted person must be given to it. Cr.A.138/43 X 592

(1649) SENTENCE

The Chief Justice most reluctant to grant leave to appeal. Judgments of District Courts in their Appellate capacity from Magistrates Courts in criminal prosecutions on the question of sentence.

Cr.A.140/44 XI 561

and see Cr.A.65/42 IX 316 and Cr.A. 80/42 IX 399.

b

Alteration of..

A Magistrate after pronouncing sentence has no power to alter it later, on discovery that it was in excess of the maximum laid down by law to pass such sentence. The position remains as it was prior to the making of the alteration. In such cases where there is a plea of guilty and a trial Court passes a sentence which it is not entitled by law to pass, the Judgment of the trial Court should not be considered as a nullity and the conviction quashed, but the appellate Court would put itself into the shoes of the trial Court and decide what it considers would be a reasonable sentence to pass within the limits of the trial Court's jurisdiction in the matter. Cr.A.130/43 X 578

c

Reduction of sentence Fact that accused comparatively young and offence a first one, and given good character by the Police. are grounds for reduction of sentence. Cr.A.133/41 VIII 528

d.

Plea in mitigating circumstances to be considered. Cr.A.18/44 XI 101.

SENTENCE

SERVICE

SERVICE

SERVITUDE

(1650) SENTENCE - Interference with. While an appellate Court is always most reluctant to interfere to the detriment of an accused person in a matter of sentence from the Court below, yet, in certain cases where the sentence is too light an appellate Court will interfere. Cr.A.52/44 XI 449

b

(1651) SENTENCE Irregularity of Procedure.

More than one accused charged together -plea of guilty by one of them- time proper for passing sentence on accused pleading guilty.

HELD That although it is the general practice to pass sentence on an accused who has pleaded guilty immediately after the plea, yet, in the present case, the passing of the sentence on the person who pleaded guilty after the close of the proceedings was not an irregularity of procedure to be regarded as a successful ground of appeal.

Cr.A.140/43 X 505

c

(1652) SENTENCE -In determining the amount of sentence that should have been passed by a trial Court- appellate Court looks at the language used by the Court below.

d.

Improper for a trial Judge to increase what he would otherwise regard as the appropriate sentence because of his opinion the accused has committed perjury in the witness box.

Cr.A.19/43 X 120

e

Consecutive sentences. Should not be imposed save in special circumstances.

Cr.A.81/42 IX 356

Uniformity of sentences- One of functions of Court of Criminal Appeal is to try and get uniformity of sentences

Cr.A.111/42 IX 477

(1653) SENTENCE- Practice

The practice to be followed by a District Court is that it should not increase a sentence on an accused person on appeal before it, or vary the sentence to the prejudice of the accused, without the accused being present and having the opportunity of being heard

Cr.A.65/42 IX 316

(1654) SENTENCE Consecutive Consecutive sentences to be imposed only in most exceptional circumstances.

Cr.A.147/41 IX 8

(1655) SENTENCE- Aggravating circumstances

ROSE J. The fact that a man is of a good family and has served ten years in the Police Force must be regarded as an aggravating rather than a mitigating circumstances.

Cr.A.90/41 VIII 305

(1656) SENTENCE- Allocutus See Allocutus.

(1657) SENTENCE - matters to be taken into consideration in awarding...Cr.A.24/41 VIII 125

(1658) SERVICE

Unless substituted service is ordered- service must be personal on the Judgment debtor himself or on some member of his family living with him Failing which, service bad and all subsequent proceedings void.

HC 57/40 VII 441 at p.447

(1659) SERVITUDE

There is no such a thing in the Ottoman Law as a servitude over land owned by a title deed exercisable by villagers for the purpose of threshing floors because threshing floors are areas set apart ab antiquo for use as such and their category is of the Metruke land.

CA 156/42 IX 641

(1660) SHARE REGISTER
Rectification of..
CA 231/41 VIII 612

(1661) SETTLEMENT OFFICER
Functus Officio - Once a
Settlement Officer has decid
ed a case- he is functus off
icio and has no power to re
open it unless directed to do
so by a superior Court.
HC 108/42 IX 668.

b
has no power to declare a Ju
dgment of a Land Court a nul
lity on ground of fraud.
CA 144/43 X 407

(1662) SETTLEMENT OF TITLE
PROCEDURE RULES.
Rule 13. CA 177/41 VIII 470

(1663) SETTLEMENT OF TITLE
(Registration Fees) (Amend) Or.
1939. Registration fees pay
able at date of registration
in Register of Rights not
at date when mortgage enter
ed in Schedule of Claims.
HC 44/40 VII 341.

(1664) SETTLEMENT OFFICER
Adjournment of case by...
See Vol.1 Serial Nos.
23, 24, and 25.

(1665) SHARIA COURT- Contempt
of Court Ordinance not applic
able to... See Wadi
HC 81/43 X 478

(1666) SCHEDULE OF RIGHTS
Entry of Lease & Mortgage
thereof..CA 34/40 VII 129

(1667) SHIPS. not exceeding
1000 tons. See Immigration
Ordinance.

b
(1668) SHIPS- Forfeiture of
The District Court on its
Criminal side has jurisdic
tion to entertain an applica
tion by the A.G. for
forfeiture. Cr.A.1/42 IX 29

(1669) SHIP-FORFEITURE OF
The forfeiture of a ship and
the acquittal of the Master on
a charge under the Defence
(Immigration) Regulations 1940
reg.4 are two entirely differ
ent things. Cr. A.1/42 IX 29

(1670) SHIP- Forfeiture of
Leave to appeal to Privy Council
could not be granted the case
being a criminal action.
PCIA 2/42 IX 79

(1671) SHUF'A When should claim
be made. Mejelle 1028 & 1029.
CA 115/43 X 252

b
(1672) Provisions of the Mejelle
as to..should be strictly applied
CA 267/40 VIII 57

c
(1673) A claim for Shufa must
be immediately made at the moment
the sale is heard of. (b) That
although the provisions of the
Mejelle on the subject of shuf'a
are very formalistic and comple
tely out of date in a modern
world, yet it had always been
the practice to apply those
provisions with the utmost strict
ness. CA 109/42 IX 435

(1674) SIGNATURE By thumb print
Proof of...CA 83/40 VII 240

(1675) SLIP RULE See Rule 358
C.P.R.1938 CA 226/38 VII 153

(1676) SODOMY Time not of the
essence of offence. Ora 151/44
629

(1677) SPECIFIC PERFORMANCE
Alternative remedy. It is a rule
of equity that specific perform
ance cannot be decreed when dama
ges are an appropriate remedy.
CA 201/42 IX 696

b
Action for... CA 95/41 VIII 302

c
Jurisdiction of Mag.Court sitting
as a Land Court to decree.
CA 404/43 XI 341

SPECIFIC PERFORMANCE

-d- -Continued.

An action in the District Court for specific performance of a contract for sale of immovable property- entertainable by D.C since it is not a claim strictly speaking to the ownership of land but an action to obtain a fulfilment of a contract CA 153/41 VIII 377

e -

Contract providing that vander and occupier of a flat in property sold to vacate such flat by fixed date- Action for S.P. of contract. Submission that relation between landlord & tenant existed and remedy lay in bringing eviction proceedings Trial Court ordered S.P. of contract Whether correct order HELD District Court right in exercising its discretion and ordering S.P. CA 287/43 X 642

f

The doctrine of S.P. does not extend to cases where no consideration had been paid or where there had been no part performance of agreement. CA 157/43 X 315

g

A property having been sold to another a respondent could not apply for S.P. of the contract and his remedy lay in bringing a claim for damages for breach of the contract, to sell. CA 181/43 X 424

(1678) SPECIAL COMMISSION

Magistrate may grant an order of eviction although dispute pending before but not yet decided by the Special Commission provided for in s. 19(1) of the Cultivator's Protection Ordinance. CA 340/43 XI 248

(1679) STATEMENTS BY ACCUSED

Accused charged at time statement made to the Police with a particular offence- Statement put in at trial of accused of a graver offence. Whether such statement admissible in evidence. Cr.A. 54/42 X 140

(1680) STATEMENTS TO POLICE Preliminary Enquiry Defence not entitled to peruse statements of witnesses made to Police when such witnesses give evidence before the Examining Magistrate. Cr.P.(T.U.I) Ordinance s.16(2). HC 14/43 X 127

(1681) STATEMENT OF CLAIM

a

Application for amendment of Statement of Claim made orally in Court. Whether new cause of action created by amendment. CA 317/43 XI 42

(1682)

b

Striking out of.. An order or ruling striking out a statement of claim under r. 21 C.P.R. is not a decree within the meaning of r.2 because it does not conclusively determine the rights of the parties in that r.23 CP.R provides that the striking out of a Statement of Claim shall not preclude the plaintiff from presenting a fresh statement of claim in respect of the cause of action, and leave to appeal is necessary under r.317 CA 54/42 IX 306

c

Order striking out statement of claim on ground that it disclosed no cause of action- Order dealing fully with all the merits of the case- Although Order so described a Decree within the meaning of r.2 CPR. CA 191/44 XI 292

(1683)

d

Not sufficient to attach a document e.g. a P.Note to the Statement of Claim, the details of the document itself should specifically be stated in.. CA 54/43 X 220

(1684) STAMPS.

In event of an objection to the sufficiency or otherwise of stamps being taken in Court below, and being overruled no appeal lies in such instance yet, there is NO principle that if stamp objection is sustained, aggrieved party may not raise that matter in appeal. CA 401/43 XI 97

b
No appeal lay from a decision that the stamp upon a document was sufficient or that a document did not require a stamp
CA 11/40 91

CA 225/40 VII 601
CA 169/41 VIII 438
CA 140/42 IX 615

(1685) STATUTES Amendment of
See Amendment.

b
It is a canon of construction that when a Statute is amended the amendment takes the place of the amended words and the section must be construed accordingly unless there is a specific saving of the original provision for certain purposes. Cr.A. 146/44 XI 611

c
STATUTES- Construction of..
It is an established practice of Appellate Courts to be most reluctant to construe a statute as to imply that the consistent practice of the Courts for some substantial period has been incorrect.
Cr.A. 48/42 IX 258

(1686) STAY OF PROCEEDINGS
no bar to further proceedings A.G. appealing from Judgment of District Court acquitting accused on ground that the Stay of proceedings amounted to an acquittal. Whether appeal properly made
HELD There is no bar to an A.G. when once he stays proceedings upon an Information or Charge, filing a new information or charge

A nolle prosequi puts an end to the prosecution but does not operate as a bar or a discharge or acquittal on the merits. The Court is of opinion that a stay of proceedings or a nolle prosequi is no bar to the filing of further proceedings against the person concerned.
Cr.A. 82/42 IX 357

(1687) STRIKE

Whether a strike is illegal or not is very largely a question of fact and degree. Test for a trial Court to apply in determining this question of fact. Cr.A. 27/44 XI 179

(1688) SUBSTITUTION

Principle- Where anything is substituted the whole of that thing is substituted.
HC 93/42 IX 567

(1689) SUCCESSION Administrators
Appeal

a
If Administrators can sue and be sued - it is obvious that they can appeal. CA 233/40 VIII 20

(1690) b Administrators
English Principles.

There is nothing in the practice or procedure in the Courts of Palestine to warrant the application of the English Principle whereby administrators pay the costs personally and then reimburse themselves. In the absence of an order of the Court ordering the Administrator to pay personally the costs of proceedings the Chief Execution Officer has no power to order the administrator to pay the costs personally.
HC 73/42 IX 539

(1691) c Heirs
Nothing in the law compelling an heir to take Letters of Administration or to take his or her share in the Estate if that heir did not wish to do so.
HC 113/42 IX 586

SUCCESSION - Certificate

SUCCESSION - Certificate

(1692)

Estate already distributed

Application for appointment of Administrator of Estate already distributed to the heirs.
 HELD- Administrator could not be appointed. Cr.A.165./42
 IX 675

(1693)

Order of administration not a decree

A mere Order for administration of an estate is not a decree as it does not finally and conclusively determine the rights of the parties and it is therefore appealable only by leave under r. 317 C.P.R.1938.
 CA 242/42 X 21.

(1694)

ORDER of Administration not a decree

Order of Administration made- Such Order not a decree- application for amendment of such Order may be repeated under r. 16 of the Succession Rules.
 CA 369/43 XI 277

(1695)

Certificate of Succession

validity of.. Issued by District Court. CA 140/40 VII 374

(1696)

Certificate of Succession

Competency of District Court to issue. CA 6/40 VII 56

(1697)

Certificate of Succession

Issue of.. discretionary. Court not bound to issue one, if the position is uncertain- on the contrary in such a case it should not issue one. (See CA 103/40 VII PLR 338)
 HC 55/40 VII 441
 HC 57/40 VII 441

(1698)

Certificate of Succession to owner issued in 1925 by Ecclesiastical Court
 Certificate of Succession issued by District Court in 1936 not made an issue in Land Court despite the fact that its existence brought to notice of Appellant by Respondent. Land Court justified in ordering registration on basis thereof.
 CA 140/40 VII 374

tence brought to notice of Appellant by Respondent. Land Court justified in ordering registration on basis thereof.
 CA 140/40 VII 374

(1699) CERTIFICATE OF SUCCESSION is merely a

certificate stating who are the heirs and what are their shares in movable and mulk property in the event of an intestacy and that a registration following on a certificate of succession cannot be allowed to stand if there is a valid will covering the property.
 CA 250/41 IX 231

(1700) CERTIFICATE OF SUCCESSION Jurisdiction

Application for the issue of a certificate of Succession opposed on ground that deceased could not leave the property as he was a monk. Whether Certificate could be issued.

HELD. A District Court sitting in its Probate capacity has power only to issue probate or Letters of Administration as the case may be, or to issue certificates of Succession and that in such capacity it has no power to determine what property does or does not pass under the Certificate of Succession.

(b) That where a District Court is satisfied that there are heirs to a deceased person but that a dispute exists as to whether deceased left any property to be distributed or that for some reason or other he was incapable of leaving property the Certificate of Succession should still be issued, with a rider to the effect that no action should be taken on the certificate issued pending the determination of question of ownership of the property so left - by the competent Court.
 CA 82/42 IX 602.

Followed CA 83/39 VI PLR 462

SUCCESSION

(1701) SUCCESSION -Certificate-

Is not a declaration that such and such property belongs to the estate of a deceased person nor is it a declaration that there is in fact anything for the heirs to inherit, its only effect is to determine who are the heirs of the deceased who may be entitled to share in the property as may be found to have belonged to the deceased.

CA 290/42 X 159

(1702) SUCCESSION ORDINANCE
Ultra vires.

Point that Succession Ordinance ultra vires Palestine Order in Council 1922 - cannot be raised on appeal if not raised in Court of First Instance.

CA 106/40 VII 310

(1703) SUCCESSION ORDINANCE

The articles of the Mejelle regarding admissions made in mortal sickness do not apply and have no effect in regard to estates of Christians.

CA 147/41 VIII 426

(1704) SUCCESSION ORDINANCE.
appeals

An Administrator is empowered under..to appeal.

CA 233/40 VIII 20

(1705) SUCCESSION ORDINANCE.
C.P.Rules proviso
to r.3

The proviso to rule 3. of the Civil Procedure Rules expressly excludes the application of those rules to proceedings brought in the District Court under the Succession Ordinance. The Rules applicable are the Succession Rules 1923 (Drayton Vol.111 p.2381) It does not follow however that the CPR are not applicable to, and must be observed in regard to an appeal from a decision of the District Court, which is not a proceeding in the D. Court. CA 245/42 X 21..

SUCCESSION

SUCCESSION ORDINANCE 1923
s. 4(iii)

(1706) The effect of s. 4(iii) of the Succession Ordinance is that where the deceased was neither a Palestinian nor a member of one of the religious Communities his mulk land whether he be a foreigner or not is to be distributed in accordance with his national Law and where the national Law imports the law of the domicile of the law of the situation of the land, the law so imported is to be applied.

b

The phrase "the national law of the deceased" appearing in s. 4(iii) (a) of the Succession Ordinance does not mean "the Law which the Courts of the Nationality of the deceased would apply to the intestate succession to land of their own nationals in their own country" but means the law which the Courts of that country would apply to the particular case of the propositus, having regard to what in their view is his domicile (if they consider that to be relevant) and having regard to the situation of the property in question (if they consider that to be relevant)

PCA 58/39 VIII 274

(1707) SUCCESSION ORDINANCE
s. 9(1)

Application under... for an order prohibiting a Religious Court from dealing further with the succession of a deceased person- Refusal of application Order of refusal a decree and appealable as of right.

CPR .r. 2

CA 121/44 XI 508

(1708) SUCCESSION ORDINANCE
s. 12

This section was intended to provide alternative method of making a will to that provided under the law governing the personal status of a testator. Its provisions are in no way limited or restricted by the provisions of s. 11

SUCCESSION

SUMMARY PROCEDURE

of the Succession Ordinance.
CA 106/40 VII 310.

(1709) SUCCESSION ORDINANCE
s.12(b)

enables a testator who may wish to avoid restrictions of his personal or religious law with regard to dispositions which he may wish to make—that is to say a person can make a will according to his personal law or his religious law but on the other hand if he makes a will according to the provisions of s.12 that is equally valid and is an alternative method of testamentary disposition.
CA 106/40 VII 310

b
The expression "incapable of making a will" in this section means incapable of making a will at all and does not mean incapable of making certain dispositions because they are contrary to religious law applicable.

CA 106/40 VII 310.

(1710) SUCCESSION ORDINANCE
s. 15(2)

is intended to apply only to a person whose only interests in the estate is as a creditor and who claims to be appointed as such, and not to a person claiming the inheritance it, self, who may happen at the time to be a creditor of the estate. CA 369/43 XI 377

(1711) SUCCESSION ORDINANCE
s. 18

Application by Administrators to District Court for directions under..No appeal lies from Order made on such application.
CA 172/41 VIII 436

(1712) SUCCESSION ORDINANCE
s. 18

Order made under..not appealable. CA 99/41 VIII 269

(1713) SUCCESSION ORDINANCE

Meaning of the phrase "Eastern (Orthodox) Community in 1st Schedule to..refers to the Community in Palestine adhering to the Eastern (Orthodox) Church. A person domiciled and resident outside Palestine does not fall within the description of the Eastern Orthodox Community as used in the Ordinance merely because he is in fact an adherent of the Eastern (Orthodox) Church.
PCA 58/39 VIII 274

(1714) SUCCESSION RULES
rule 25

CA 47/41 VIII 172

(1715) SUBSTANTIVE LAW

amendment of.
The Substantive law cannot be amended by rules unless the substantive law in question empowers the making of such amendments, by rules.
HC 109/42 IX 715

(1716) SUMMARY PROCEDURE.

Appeals.
Action brought in Summary Procedure form—defendant's application for leave to appear and defend refused. On same day another order was made adjudicating against defendant in sum claimed. Whether leave necessary to appeal the order refusing to allow defendant to appear and defend.
FIELD Order not appealable as of right and leave to appeal against the order should be obtained in accordance with rule 317 Civil Procedure Rules 1938. CA 158/42 IX 690

b
In summary procedure proceedings Leave to defend should be given if a defendant shows that he has a fair case for defence or a fair probability of a defence, or a plausible suggestion of a defence, or if he shows facts which might constitute a defence or which raise a plausible dispute.
CA. 78/42 IX 376

(1717) SUMMARY TRIALS

The Magistrates Courts Procedure Rules do not apply to Summary Trials by District Courts because for that purpose there are Special District Court (Summary Trials) Rules and just because the equivalent of r. 265 was incorporated in the District Courts (Summary Trials) Rules is no reason for importing it into those rules.
Cr. A.82/42 IX 357

(1718)

SUPREME COURT DECISIONS

While the Supreme Court is bound by its own decisions and a fortiori the lower courts - unless and until such decisions have been varied by legislation or Decisions of the Privy Council, the Order in Council yet this does not mean that the decisions of the Supreme Court of Palestine which are subject to appeal to H.M. in Council are in themselves authorities to establish finally a rule of law contrary to English Law, where that Court resorts to English Law under the provisions of art. 46 of the Palestine Order in Council. A rule of law to have this consequence must be one laid down in Imperial Acts or Orders in Council or in Ordinances applicable to Palestine or in the former Ottoman Law so far as not superseded by Ordinances of Palestine.
PCA 1/42 X 271

b

SUPREME COURT Judgments final unless upset by the Judicial Committee of the Privy Council.
HC 108/42 IX 668

(1719) SUPREME MOSLEM COUNCIL

Dismissal of officials
The Supreme Moslem Council has power, under the Supreme Moslem Council Regulations, 1921 to control the Waqf Administration and has also the power to dismiss amongst other people

all Waqf officials and all officials employed in any Moslem Institution maintained from waqf funds and that as the petitioner had been appointed by the Supreme Moslem Council, his contract of service if any, was with that Council and that his proper remedy was an action in the appropriate Court for damages for wrongful dismissal, if he thought that he was wrongly dismissed.
HC 74/42 IX 540

(1720) SURVEYS DEPARTMENT.

Map prepared by..not necessary that it should formally be tendered to Court by official of..
CA 44/44 XI 577

(1721) SUPPOSITIONS.

As every person is supposed to know what the law is, he is also supposed to know what IS NOT the law.
CA 179/40 VII 493

(1722) STATELESS JEW.

Law applicable to a stateless Jew who is not a member of the Jewish Community as contemplated by the Jewish Community Rules - IS the Jewish Law.
CA 122/44 XI 522

** **

(1723) TAPPOU Register

Strict proof necessary before holding, entries, incorrect.
PCA 56/38 VII 105.

(1724) TAXES (Collection) Ord.

Order 54/41 by the High Commissioner is retroactive in effect and applies to all loans created both before and after the Order was made.
HC 75/43 X 503

(1725) TEL AVIV COURTS

are the more appropriate Courts for purely Jewish Cases.
Mis.A.47/44 XI 542

THUMB PRINT

TITLE

TIME

TORTS

TOWN PLANNING

(1726) THUMB PRINT.

Denial of affixing of..
Expert unable to identify..
Evidence of witnesses to be
heard.

CA 83/40 VII 240

(1727) TITLE DEED.

Claim for ownership and possession. Claimant does not hold a Title Deed. What remedy must claimant seek.

HELD. The appellants remedy lay in bringing an action for possession, specific performance or damages, and not in an action for ownership as he did not have a title to the land. CA 6/48 IX 143

(1728) TIME

ONE WEEK given for doing a certain act. The principle to be applied is that the period of seven successive days should exclude the day on which the order was made. HC 100/43 X 567

(1729) TORTS Law of..

Cannot be introduced in Palestine by means of art. 46 except in certain minor matters since in the words of the proviso the circumstances of Palestine and its inhabitants do not permit this course to be adopted. CA 113/40 VII 363

(1730) TOWN PLANNING ORDINANCE

Meaning of competent authorities. CA 78/40 VII 237

(1731) TOWN PLANNING ORDINANCE

In an acquittal under the State is the aggrieved party and the A.G. rightly represents the State in a case under that Ordinance, and he has the right of appeal against any prosecution thereunder. Cr.A.127/41 VIII 488.

s. 27

"Owner" must mean the person owning the land at the time of its expropriation and that any other interpretation would not make sense in view of the other provisions of the Ordinance and that in the absence of any special definition of the word "owner" the ordinary meaning of the word should be applied. CA 91/42 IX 419

(1732) TOWN PLANNING ORDINANCE

s. 35

Court has power to refuse to order the demolition of a building erected contrary to the law if in its opinion cause had been shown why the demolition Order should not be made. Cr. A.11/43 X 93

s. 35(1)(1)

(1733) The words "some other person" in.. do not mean the Town Planning Authorities. HC 9/41 VIII 95

(1734) s. 35(1)(4)

While the effect of s.35(1)(4) is to confer upon Mag. Courts and Municipal Courts Jurisdiction in a class of case which, were it not for that provision would be beyond their jurisdiction that by itself is by no means the something as providing that the jurisdiction of a District Court is ousted from cases which would normally fall within its jurisdiction and the effect of s. 35(4) is that such matters may be brought either before a D.C. or before a Mag. Court or a Municipal Court. Cr.A.88/44 - XI 451.

(1735) s. 35(2)

Conviction by District Court of contravention of.. Fine of L.P.1 imposed and Order for demolition by Local Town Planning Commission made-
HELD no appeal as of right lies from Judgment of D.C. Cr.A.105/41 VIII 455

(1736) TRADES & INDUSTRIES

(Reg) Ordinance

Store kept for storing the goods required for carrying on the general business. Test to be applied is whether the store formed an integral part of the general business which is a classified trade under the Trades & Industries (Reg) Ordinance. Cr.A.116/44 XI 317

TRADE

TRADING

Transaction

Transjordan

(1737) TRADES & INDUSTRIES
(Regulation) Ordinance
s. 4(2)

The Local Council has no discretion to refuse issue of licence unless and until he had paid arrears of rates due to it.
HC 12/40 VII 127

(1738) s.7

Authorises each of the Director of Medical Services and Inspector General of Police & Prisons to attach to any licence issued under the Ordinance conditions within the scope of control vested in each of them.
Cr.A 159/43 XI 69

(1739) TRADE MARKS.

Application for registration of two trade marks one under IODORAL and the other IODOSAL TRUPHA Registrar referred the matter to the High Court as the registration of both according to him was likely to cause confusion. HELD In the circumstances there was not such a resemblance between the two marks that any confusion would arise in the mind of any reasonable person.
HC 36/42 IX 310

s.17(b)

This section only applies when there are two or more applications pending. HC 68/41 VIII 394

s.18(1)

HC 47/43 X 379

(1740) TRADING WITH THE ENEMY
ORDINANCE 1939

There are three methods by which property can come into the possession of control of the Custodian of enemy property (1) under s. 9 (1) (a), 9(1)(b) and 9(2).
CA 193/40 VII 499.

(1741) s. 2(2) Certificate Under that a certain town in occupation of the Enemy- Certificate in question conclusive evidence of facts stated therein No necessity to prove Effective occupation. CA 300/43 XI 121

(1742) s. 3(2)(a)(ii)
Attempt to trade with the Enemy. Cr.A.1/41 VIII 39

(1743) s.4(1)
The expression "enemy" means amongst other things "any individual resident in Enemy territory"
CA 193/40 VII 499

(1744) s. 4(3) 5(1) and 5(3)
HC 80/40 VII 516

(1745) s. 4 (2)
The object of this provision is to deem certain persons to be enemies who are not so under the provisions of s.4(1)
CA 193/40 VII 499

(1746) s. 9(A)(2)
CA 143/41 VIII 467

(1747) TRADING WITH THE ENEMY
(Custodian) Order 1939
reg. 6(1) not

ultra vires s. 9(1) of the T.W.the Enemy Ordinance 1939
CA 300/43 XI 121

(1748) s.9.(1)
HC 90/40 VII- 539

(1749) s.11.
The words "shall be entitled to require any person to 'turnish' in.. must mean that a personal notice must be sent to each particular person.
(b) The Custodian of Enemy Property empowered by para 11 to require any particular person to furnish him with information or returns within the time which he, the Custodian, might fix although he cannot fix a time limit by a general notice in the Gazette.Cr.A.151/41 IX 22

(1750) TRANSACTION.
The test for determining whether a transaction is an agreement for sale or a sale, regard to be had to the intent of the parties and not to the form of contract. CA 195/40 VII 531

(1751) TRANSJORDAN.
Extradition to... of person arrested in Palestine.
HC 25/40 VII 162

Transjordan TREES Trespass Treatment TRIAL

TRANSJORDAN - Judgment of... COURT

(1752) A Judgment of a Transjordan Court cannot be enforced in Palestine in the absence of an order made by the High Commissioner under s. 5(2) of the Judgments (Reciprocal Enforcement) Ordinance applying the provisions of that Ordinance to Transjordan.

(b) The Foreign Judgment Rules do not by themselves make foreign Judgments enforceable; their only function is to lay down the procedure when enforcing foreign Judgments that are enforceable.

b
Appellant could have indirectly enforced the Judgment of the Transjordan Court by bringing an action on it; that is to say, by bringing an action for the debt and producing the Judgment in evidence in support of his claim.
CA 210/40 VII 537

(1753) TREES Damage to.
A person negligently allows animals to cause damage to trees if he fails to take proper steps to prevent those animals causing the damage to the trees.
Cr.A.2/43 X 90

b
It is an offence negligently to allow animals to cause damage to protected trees wherever those trees may in fact be situated. Cr.A.2/43 X 90

(1754) TRESPASS When a trespass occurs on a jointly owned property - one joint owner is entitled to sue and obtain Judgment for the recovery of possession of the whole property. CA 329/43 XI 414

(1755) TREATMENT- Special Medical grounds are not such grounds as should be taken into consideration in awarding special treatment or not. The medical condition of prisoners is under the control of the Medical Officer of the prison - and if the Medical officer is satisfied that special food is necessary

for the prisoner's health then, that will be furnished. The Court is not a Medical Officer and cannot possibly say whether he should have a special diet or not.

MA 2/42

EX-12

b

Generally speaking special treatment should not be given in crimes of Violence.
Cr. A.148/41 IX 10

(1756) TRIAL COURT

Duty of... when unrepresented accused pleads guilty. See Guilty. Cr.A.42/40 VII 285

- b -

Verdict

TRIAL Court's verdict is that of the majority of the Judges; the fact that one of the Judges dissented is a matter which is of no concern to Court of Appeal.
Cr.A 57/40 VII 359

c

Discretion of... to order taking of evidence on commission
CA 62/40 VII 244.

(1757) TRIAL Separate Trials of separate issues are nearly as expensive as separate actions and ought certainly not to be encouraged and they should only be granted on special grounds.

b

We have no rule in Palestine similar to the English Rule 7 of Order 36 under which inter alia one or more questions of fact may be tried before others
CA 28/41 VIII 127.

(1758) TRIAL OF OFFENCES Offences committed round about the same time, within a few days of each other by the same person, in similar circumstances, should, if possible be tried together, while, save

Trustee- Tribal Court

Urban-

Usurious loans Uttering
Valuation- VENUE

in the most exceptional circumstances such as where an offence is committed in prison by a person already serving a sentence, consecutive sentences should not be imposed. Cr.A.147/41 IX page 8

(1759) TRUSTEE-

When Trustee personally liable for costs- Principles which should guide the Courts in the matter-

....of course, a trustee in a case where there is a doubt as to who are his cestui que trust has a right to come to the Court for its directions, and a right that the costs of so applying to the Court should come to him out of the fund. But when that question has once been decided by a competent Court, if the trustee chooses to appeal, he is putting himself in the position of espousing the cause of the person who has been decided not to be the cestui que trust in order to displace the title of the one who has been decided to be that cestui que trust. If so, it would be in an ordinary case most unfair that funds which have been decided, and, decided rightly, to belong to that particular cestui que trust should be used to defray the expense of trying to displace him. Therefore as a matter of rule a trustee who under such circumstances appeals, appeals as an ordinary litigant, and if he is unsuccessful he has no right or claim on the Court to direct the costs to come out of the fund.

CA 84/40 VII 429

(1760) TRIBAL COURT

Before coming to the High Court if an applicant had reason to think that the Tribal Court of First Instance had given a Judgment which they had no jurisdiction to give or was not in accordance with law or Tribal custom, he should have raised those points before the Tribal Court of Appeal. Failure; FATAL

HC 67/40 VII 434

(1761) URBAN PROPERTY TAX
(Amd) Ord. s. 3(b)

Not retrospective.

CA 56/40 VII 183

(1762) S. 8 to be read as a whole. CA 56/40 VII 183

(1763) s. 8(3) (a)
HC 99/40 VII 579

(1764) s. 12 & 15
HC 3/40 VII 18

(1765) USURIOUS INTEREST

When a relationship between a debtor and creditor had been closed the question of Usurious Interest could not be reopened because that would enable claims being made at any period up to the time when they would be barred by limitation of actions. CA 99/42 IX 443

b

(1766) USURIOUS LOANS Doctrine of Equitable Construction applicable to.. CA 74/40 VII 255

(1767) USURIOUS LOANS ORD.
1934

not retrospective CA 49/40
VII 199

(1767) UTTERING false document
and charge of forgery
Cr.A73/39 VII 8

(1768) VALUATION & TAKING of
Possession

Immovable property mortgaged to different mortgagees- no need for valuation and taking of possession in respect of each mortgage.

HC 26/40 VII 210

(1769) VENUE.

A change on *venue* does not change the information but merely changes the place of trial of the information.
CR.A.114/41 VIII 403

VENUE Vesting Orders Village Villayet VISA WAIVER

(1770) VENUE.

In order to be justified in ordering the removal of proceedings from the jurisdiction of the Chief Magistrate's Court a Petitioner must satisfy the H.C. that the facts were such as would show a reasonable probability of such partiality or unfairness on the part of the C.Mag. sufficient to justify the removal of the proceedings from his jurisdiction.

HC 34/43 X 157

(1771) b

Application that a Land Settlement Case then in course of hearing by a certain S. Officer be removed for trial by another S. O. Allegations on which the application was based turned out to be false and unfounded.

Advocate ordered to pay the costs of the Respondent.

HC 76/42 IX 455

(1772) c

Application for change of Venue of Settlement proceedings. Alternative remedy existing, for relief asked for, H.C. will not exercise discretion.

HC 111/43 XI 3

(1773) VESTING ORDERS

Vesting Order entitles Custodian to ask for ownership of property

CA 300/43 XI 121

(1774) b

Vesting Order No. 2 of 1940 (An. V 1940 page 23) Vests all prescribed property belonging to an Enemy and comes into force with regard to such property at the date or dates when the owner or the person in charge becomes an enemy. CA 41/43 X 112

(1775) c

A District Court has NO jurisdiction to make a Vesting Order with regard to Immovable Property because jurisdiction to deal with any question regarding the ownership or possession of land is conferred exclusively on Land Courts. CA 279/42 X 96

(1776) VESTED RIGHT

No person is entitled, in the exercise of a right vested in him, to commit an offence in the exercise of that right. Cr.A. 2/43 X 90

(1777) VILLAGE SETTLEMENT COMMITTEE

has no Statutory Power to represent and bind individuals who can put forward their own claims- still less have they power to represent one section of the Musha' holders as against another section of the Musha' holders. CA 15/41 VIII 209

(1778) VILLAYET LAW 1281 A.H.

repealed before the British occupation of Palestine.

HC 43/42 IX 302

(1779) VISA to enter Palestine

The grant of a visa by a Consul to a person to enter Palestine does not give that person a right to stay in the country for any specified period, if the Immigration Authorities decided upon a stay shorter than that specified period. HC 54/42 IX 342

(1780) WAIVER.

The possible waiver of a breach of a previous tenancy agreement would not constitute a waiver of a new tenancy agreement.

b

There can be no waiver of a breach of a tenancy agreement which has not commenced to run.

c

Acceptance of the rent in advance could not be considered as a waiver or condonation of any future breaches of an agreement. CA 260/42 X 38

(1781) Action for eviction- acceptance of the rent during the pendency of proceedings HELD The acceptance of rent by the landlord subsequent to the taking of eviction proceedings did not constitute a waiver of

WAQF

WAQF WAQF

the right to eviction, because the taking of such eviction proceedings was an unequivocal act demonstrating an intention to put an end to the tenancy.
CA 328/43 X 633.

(1782) WAQF

Adverse possession Claim by beneficiaries of waqf to waqf property by adverse possession not entertainable CA 235/40 VIII 23.

(1783) - b-

Where a Waqf is made of property the proprietary rights of the grantor is divested and it remains therefore in the ownership of the ALMIGHTY the usufruct alone is applied for the benefit of human beings and the subject of the dedication becomes inalienable and non heritable in perpetuity. Further such dedication must be for a pious or meritorious purpose. The English conception of absolute ownership is entirely absent from Waqf Sahih.
CA 100/40 VII 318

(1784) c

No evidence of dedication as Waqf sahih although Antiquity of waqf NOT disputed.
HELD Waqf not waqf Sahih.
CA 133/41 IX 101

d

(1785) Action by beneficiary of ..against Manager thereof.
CA 84/40 VII 241.

e

(1786) Cemetery Use of land for cemetery prior to promulgation of Ottoman Land Code. Presumption that land properly constituted Waqf. CA 25/40 VII 138

f

(1787) Disposition- Property dedicated as waqf before the Sharia Court- consent, or conditional consent to dedication obtained from the Director of Land Registration. Death of dedicator before registration. Whether disposition complete.
CA 251/43 X 646

(1788) WAQF (Continued)

-g-

Dedication and disposition
A distinction has to be drawn between a dedication and a disposition and if, in accordance with the Sharia law property becomes vested in the Almighty by dedication, such dedication does not become a disposition until it has been registered under and in accordance with the provisions of the Land Transfer Ordinance. In other words, that, irrespective of the Sharia Law, a dedication of waqf of any description before the Sharia Courts is not valid and complete nor is the dedicator of the property intended to be transferred thereby divested of the ownership of the property, unless and until such dedication has become a disposition by registration as such under and in accordance with the provisions of the Land Transfer Ordinance.
C A 251/43 X 646.

(1789) h

Mulk immovable property dedicated as Waqf. Consent of Director of Land Registration not obtained.

HELD There was no valid dedication. Since the requirements of s. 4(2)(3) of the Land Transfer Ordinance had not been complied with and the disposition was therefore null and void under s. 11(1)
CA 255/43 X 552

(1790) i.

Once the consent of the Director of Land Registration having been obtained thereto- cannot be held to be null and void disposition under s. 11(1) of the Land Transfer Ordinance although no registration as waqf ever took place in the Land Registry. CA 290/42 X 159

WAQF

WAQF

(1791) WAQF (continued)

The dedication of property as waqf is a disposition within the meaning of section 2 of the Land Transfer Ordinance which should be registered in accordance with the provisions of the Ordinance- Failure to register of which, renders the dedication void.
HC 99/42 IX 608

(1792) WAQF- Oral evidence admissible to prove origin of Not admissible to upset right of party in possession on basis of a legal ground- such as purchase, gift, or inheritance
CA 55/40 VII 291.

(1793) WAQF- Mutawalli of.. Costs of litigation unsuccessfully initiated by..
HC 17/42 IX 146

(1794) WAQF dedicated before Moslem Religious Court in 1899 Application to D.C. to appoint Mutawalli- Jurisdiction of D.C. questioned - matter referred to Special Tribunal. Whether matter within jurisdiction of District Court.

HELD that the matter of the mere appointment of a Mutawalli, Nazer, Administrator or Trustee to a Waqf -the validity or constitution of the waqf not being in dispute was one of Internal Administration and therefore within the exclusive jurisdiction of the Religious Court of the Community in which the dedicator was a member. Sp.T.1/43 X 535

(1795) WAQF property owned in common by groups of beneficiaries- Separate Mutawalli for each group. Beneficiaries in one group claim their possession of waqf properties to be adverse to that of other beneficiaries-

CA 235/40 VIII 23

(1796) WAQF. Action by beneficiary of Waqf against Manager thereof. CA 84/40 VII 241

(1797) WAQF. Two mutawallis appointed to administer waqf property. One of them received money due to the waqf from the previous mutawalli. Whether previous Mutawalli discharged from liability.

HELD That the payment made to one of the two Mutawallis did not discharge the respondent from his liability towards the waqf. CA 197/42 IX 694

(1798) WAQF. Claim to waqf land by prescription. Waqf land not alienable. CA 24/40 VII 133

(1799) WAQF The Civil Courts have jurisdiction to entertain an action by a beneficiary of share in rent in waqf property Party relying on a Waqfiyeh should produce it.
CA 255/41 IX 60

(1800) WAQF SAHIH- admitted to be such. Question as to who is entitled to the benefit of the waqf.
CA 100/40 VII 318

(1801) WAQF SAHIH Ottoman Law of Inheritance of Immovable Property 1531 Art. 9 not applicable thereto. CA 203/40 VII 584

(1802) WAQF SAHIH routing of at Muqata'a rent.
CA 112/41 VIII 312

(1803) WAQF SAHIH Payment of KUMUS consisting of legal plus rental tithe prima facie evidence that Waqf is..Sahih. Absence of Waqfiyeh not determining factor. CA107/41 VIII 398

(1804) WAQF THERRY OR KHEIRY Land Court incompetent to determine whether waqf is..
CA 100/40 VII 318

(1805) WAQF Period of limitation for claims to TAKHSISAT Waqf. PCA 56/38 VII 105

WAQF WAR RISKS WASTE WATER Way WERQO WILL

(1806)

WAQF - Miri land planted with trees before 1331 A.H. The change of category of land planted with trees before 1331 the year in which the Law of Disposition of Immovable Property was enacted, applied only in questions of succession and did not apply in questions of Waqf and that whether before or after 1331 whilst the trees could be made waqf, the land for the purposes of Waqf law remained miri and could not be dedicated as waqf.
CA 137/42 IX 596.

(1807) WAQFIEH -interpretation Matter of interpretation of the terms of a Waqfieh admitted to be a Waqf Sahih- is one which concerns the constitution of the waqf and so falls within the ambit of art. 52 of the P.O. in C. and possibly also within that of art. 51 of the Order. CA 100/40 VII 318

(1808) WAR RISKS INSURANCE
ORDINANCE 1941
s. 9.

In interpreting this comprehensive section one must look at the whole intention of the Ordinance, and it does not necessarily follow, because a word is used in the Ordinance which in some respects has a particular and restricted meaning in regard to real property; that the meaning to be attributed to the words "vested in a person" in s. 9(1)(a) should be restricted to the technical sense. Cr.A. 198/42 X 41.

(1809) WASTE LAND
May be anything but Mulk land.
CA 55/40 VII 291

(1810) WATER
Claim by non riparian owner to right to take certain quantity of water from a certain stream. Right claimed an easement and not a right concerning immovable property. Claim NOT entertainable by Magistrate's Court or High Court. Entertainable by District Court
CA 199/40 VII 509

(1811) WATER- Rights
Action in Land Court for adjudication on a dispute regarding rights to water. Whether within the Jurisdiction of the Land Court or District Court, HELD Within the jurisdiction of the Land Court. CA 512/43 X 586

(1812) WAY. Right of
Right of way cannot be deemed to be included in any of the rights set out in s. 4(1) of the Land Disputes (Possession) Ordinance nor is it a right of a similar nature.
HC 94/41 VIII 516

(1813) WELFARE OFFICER
Ordered to take Jewish girl under 18 married to a Moslem.
HC 23/40 VII 151

(1814) WERQO REGISTRATION
Not Document of Title.
CA 39/40 VII 167

(1815) WILL. Confirmation of.. Confirmation is a declaration that the Will is valid in form that the testator was not under any incapacity and was not affected by fraud or mistake or undue influence. In other words, confirmation of a will means that the document propounded is a valid will or declaration in writing of the intentions of the testator. CA 23/43 X 152.

(1816) WILL valid in civil form not invalidated by containing provisions or dispositions against the personal Law. See Succession. CA 106/40 VII 310

(1817) WILL Definition of.. Definition of.. in the Succession Ordinance does not exclude an oral declaration subsequently reduced into writing.
CA 23/43 X 152

(1818) WILL if duly certified by the proper Ecclesiastical Authorities- the only Court to decide its validity is the Ecclesiastical Court of the Community concerned.
CA 103/40 VII 338

W I L L

W I T N E S S E S

(1819) WILL Where there is a will, which has been admitted in Probate all the mulk property left by the testator vests in the executor from the date of the testator's death. The Executor has power to sell such of that mulk property as may be necessary in order to pay the testamentary expenses and to provide for the payment of legacies. The legal estate vests in the Executors and in them alone- It follows that where there is a will an heir has no legal estate in the mulk - all that he has is an interest in the residuary estate or such part of it as has not been disposed of in carrying out the terms of the will- all that an heir has is a residuary interest- and the executor has an entire discretion subject to the terms of the will
HC 57/40 VII 447

(1820) WILL- If a person is not a member of the Jewish Community the Rabbinical Court has no power whatever to give any decision with regard to the validity of his will and no consent or no mistake on the part of litigants could give that Court jurisdiction where that jurisdiction was not conferred by Order in Council or by Ordinance
CA 246/40 VIII 55

(1821) WILL- Miri land cannot be left by will.
CA 288/43 XI 408

(1822) WILL - Oral Oral wills are recognised by Jewish Law. and the word "WILL" in the O.C. must mean a will according to the law of the Community and has a wider meaning than in the Succession Ordinance, and that the definition in the Ordinance cannot be imported into the Order in Council.
CA 23/43 X 152

(1823) WILL Validity of.. The question of the validity of a will is a matter of Jewish Law and exclusively within the jurisdiction of the Rabbinical Court.
CA 23/43 X 152

(1824) WITNESSES. Accomplish Factors for consideration whether a particular witness is an accomplice or not.
Cr.A.151/44 XI 629

(1825) b Accomplish Whether or not a witness is an accomplice is primarily a matter for the Court of trial provided of course they apply their minds to the proper test in coming to their conclusion. For a man to be an accomplice there must be a guilty intent
Cr.A.124/41 VIII 473

(1826) c Witnesses summoned by Court not appearing on date of hearing - Procedure to be followed.
CA 311/43 XI 72

(1827) d. Prosecution witnesses believed on a charge of forgery and uttering false documents- Not for Court of Criminal Appeal to say witness should not have been believed.
Cr.A.73/39 VII 8

(1828) e. Credibility of..whether they were saying the truth or not..for trial Court. Cr.A.8/44 XI 63

(1829) f. Witnesses could not be heard by Magistrate after case closed- and after parties had filed written pleadings in lieu of their final oral addresses - without the consent of both parties.
CA 190/44 XI 547

(1830) g. Canon Law. See Canon Law Art. 1771 - Litigants cannot attend examination of..and witnesses could not be cross examined except by leave of the Court.
HC 103/42 IX 579

(1831) h. Intimation by Trial Court to defence not to call further witnesses. NOTHING WRONG in that.
CPR.r.189. CA 82/44 XI 536

WITNESSES

(1832) WITNESSES Discrepancy of evidence of ..at preliminary enquiry and at Trial.
Cr.A.23/40 VII 217

(1833) Witness- Deposition of Sick witness. CrA 107/44 XI 527

(1834) WITNESSES giving false evidence. There is no reason why a witness who had given false evidence should not be committed for trial under s. 4 of the Cr.P.(Evidence) Ord. after the accused persons at whose trial he had given evidence were committed, in the same way as he might be committed for trial before they were committed. CrA144/41. IX 20

(1835) WITNESSES Information When Prosecution does not call some of the witnesses whose names appear on back of the Information - practice to be followed is that such witnesses should be submitted by the Crown for Cross examination by Defence if the Defence so wish.
Cr A 97/44 XI 445

(1836) WITNESS- Identification Witness as to Identification whether he should be believed after interval of time ; and in case where he had not given an early statement is eminently one for Court of trial- provided Court applies its mind to proper considerations.
Cr.A.8/44 XI 63

(1837) WITNESS recalling of.. Nothing in substantive law which prevents a Magistrate allowing a witness to be recalled, on more than one occasion
HC 63/40 VII 424

(1838) WITNESSES recalling of.. Courts should be most reluctant to recall a prosecution witness at a late stage of a trial and to the detriment of the accused.
Cr.A.126/41 VIII 478

WITNESSES

(1839) WITNESSES Recalling of A witness may be recalled by a Court to clear up a point and the Court may put up questions to him.
Cr.A.27/41 VIII 169

(1840) WITNESSES- Adjournment of case.

In cases where witnesses are summoned through the Court to attend the Court on a fixed date, and the evidence of those witnesses not having been heard on that date and the case having been adjourned to a future date, it is the duty of the party calling the witnesses either to have such witnesses summoned afresh- and to pay fees or to ask the Court to warn the witnesses to appear on the adjourned date in which later case the party desiring such witnesses to attend has to see to it that a further day's witness allowance is tendered to them or deposited in advance.
CA 392/43 XI 298

(1841) WITNESSES - Evidence of single witness.

Apart from certain well known exceptions a person can be convicted, and properly convicted on the evidence of a single witness, and there is no necessity for corroboration if that witness is believed. Whether he should be so believed is, of course, another question.
Cr.A.39/43 X 212

(1842) WITNESSES Tampering with Improper on the part of the Prosecution to tamper with witnesses for the defence.e.g. put in lock up for night and cross examine by Police.
Cr.A.66/43 X 373

(1843) WITNESSES evidence of .. required to identify thumb print
CA 83/40 VII 240

(1844) Witnesses- Weight of evidence. It is the duty of a trial Court, when weighing evidence of witnesses for the Prosecution to pay due regard to the statements that were made previously as well as to evidence given in Court. Cr.A.129/43 C X 596

WITNESSES

WORDS

WORDS & PHRASES

(1845) WITNESSES- Advice by Advocate to accused as to whether to go to the witness box. See Advocate Column 10 Vol.1 Serial No. 62.

(1846) WORDS - Construction of Statutory words. restated in the dictum of the Lord Chancellor, in Nokes v Doncasters Amalgamated C.Ltd 1940 3 AER at p. 554 where he says...Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where in construing general words the meaning of which is not entirely plain, there are adequate reasons for doubting whether the legislator could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

CRA 86/41 VIII 333

(1847) WORDS Different forms When the legislature in the same section in the same statute or Ordinance with regard to the same subject matter uses two different forms of words, the Legislature must have intended to mean something different in respect of each of those two terms.

HC 99/40 VII 579

(1848) WORDS Meaning of.. in a statute. When there is a doubt about their meaning..are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language..as in the subject or in the occasion on which they are used, and the object to be attained.

Cr.A.129 /43 X 596

(1849)

WORDS & PHRASES

Abnormal

"Abnormal conditions...meaning of..PCA 34/39 VII 273

Adjourn

"ADJOURN " meaning of..in C.P.R CA 66/40 VII 220

Allege

"ALLEGE" does not mean "PROVE" PCA 34/39 VII 273

Appropriate

"APPROPRIATE COURT " in r.4 CPR. means " Court having Jurisdiction.

Approval

"APPROVAL BY THE COMPETENT AUTHORITIES" Meaning of.. (in Town Planning Ordinance) CA 78/40 VII 237

beneficial

"BENEFICIAL OCCUPATION" in s. 18(1) Cultivators Protection Ordinance. Pitching of tents and inhabiting of locality not included.CA 122/39 VII 60

body

"BODY OF PERSONS UNINCORPORATE" in Cultivators Protection Ordd includes inhabitants of village and tribe.CA ;22/39 VII 60

Cancelling

"CANCELLING THE CLAIM" means "dismissing the claim. HC 94/42 IX 599

WORDS & PHRASES

Clear

"CLEAR" and "CLEARLY POSSIBLE" have same meaning.
Cr.A.39/43 X 212

Civil

"CIVIL COMMOTION" meaning of.. It indicates a stage between a riot and civil war- an insurrection of the people for general purposes though not amounting to rebellion but is probably not capable of any definition of a precise nature. The element of turbulence or tumult is essential. "An organised conspiracy to commit criminal acts where there is no tumult or disturbance until after the acts does not amount to Civil Commotion. It is not necessary to show the existence of any outside organisation at whose instigation the acts were done. PCA 34/39 VII 273

Constitution

"CONSTITUTION" to constitute to set up, ordain, appoint, to frame, form, to make up, compose, It means inter-alia "the action of constituting the way in which anything is constituted or made up and the system or body of fundamental principles according to which the nature, state, or body politic, is constituted and governed. CA 100/40 VII 318

Department

"DEPARTMENT" in "Government Department" may mean a Department of the Administration or a "PART" of the Administration. CA 150/40 VII 394

Incapable

INCAPABLE OF MAKING A WILL" Meaning of the expression.. in the Succession Ordinance. S.12(b) CA 106/40 VII 310

JABAL EL QAFZA

is the Arabic for Mount of Precipitation" CA 55/40 VII 291

Government

"GOVERNMENT DEPARTMENT" Whether an Organisation is a Government Department. CA 132/40 VII 352

WORDS & PHRASES

"HOUSE" in Municipal Corporation (Sewerage, Drainage & Water) Ordinance, 1938 means "any building or structure used for habitation" and no distinction is drawn between flats or apartments or parts of houses separately let. HO 6/40 VII 117

Owner

"OWNER" Ownership in Land Courts Ordinance S. 3 "Owner" means one who owns or holds something, one who has a rightful claim or title to a thing and hence ownership means the fact or state of being an owner. In English legal phraseology the word "ownership" is used in the strict sense of absolute "ownership" which includes the right of free, as well as exclusive enjoyment- and by this is meant the right of using, altering or destroying the thing owned at the owner's pleasure, so only that he does not violate any other person's right to security of person and property..; it includes free power of disposition which in modern times is generally incidental to and inseparable from any ownership. CA 100/40 VII 318.

Person

"PERSON" in section 19(1)(d) Cultivators (Protection) Ord. means "a body of persons" unincorporate which, having regard to local circumstances includes an Arab Village or Tribe.

"POSTPONE" in C.P.R. 1938. CA 66/40 VII 220

"PROPRIETOR" is one who holds something as property; one who has an exclusive right or title to the use or disposal of a thing. Proprietorship is the position or condition of a proprietor. CA 100/40 VII 318

"SOME OTHER PERSON" in s. 35 (1)(i) do not mean "the Town Planning Authority" (in the Town Planning Ordinance 1936-1938) HC 9/41 VIII 95

"STAY" in C.P.R. 1938
CA 66/40 VII 220

"WAQF KHEIRY " means Charitable Waqf.
"Waqf Thurry" means family waqf

"WAQF Sahih" Perfect dedication.

CA 100/40 VII 318

"WHOLESALE" Generally speaking must mean a Sale of specific articles to be resold as such
Cr.A.120/41 VIII 456

(1850) WORKMEN'S COMPENSATION

Whether digger Workman or undertaker.

CA 32/40 VII 143

(1851) WORKMEN'S COMPENSATION Ordinance.

Arbitration Award in favour of Workman Application by employer to Chief Magistrate's Court to set aside the award and order the Ch.Registrar not to register it pending decision- Order to Chief Registrar as prayed.

HELD: In view of s. 15(3) of the Arbitration Ordinance and para 6 of the 3rd Schedule to the Workmen's Compensation Ordinance, an appeal from an Order of this nature lies to the District Court and thence by leave, to the Supreme Court
CA 29/41 VIII 113

(1852) WORKMEN'S COMPENSATION ORDINANCE

Injury caused while Unloading goods from truck onto lift owing to defect in lift.
Injury not arising out of transport by motor vehicles and works connected therewith
HELD Injury not covered by Schedule to Workmen's Compensation Ordinance.CA 137/41 VIII 346

(1853) WRONG COURT.

Objection that action brought in Wrong Court- Remittal of action by Magistrate to himself sitting as a Land Court
No objection raised-
HELD Matter in order.
CA 201/44 XI 556

(1854) YOKLAMA

Fraud not inferable from omission from Yoklama registration.

CA 214/40 VII 564

(1855) YOKLAMA See Fraud
Page 144 No.858

(1856) YOKLAMA Registration
Common knowledge that Yoklama registration could be obtained without some of the precautions that are necessary and which have to be complied with in case of Land Registry Registration. CA 214/40 VII 564

(1857) YOKLAMA registration of lands partitioned in 1933 and assessed to rural property tax on basis of map approved by Government of Palestine-Miri kushans issued to purchasers of certain plots in certain of those lands. Government of Palestine estopped from denying that the said lands, of miri category and owned by claimants. CA 227/40 VIII 107

(1858) YOUNG OFFENDERS.

Detention in Reformatory
Minimum period of detention
Cr.Code Ordinance s. 43(1)

It would be of no use sending a young boy to a Reformatory School for a period less than two and a half years; as otherwise he would not get the benefit of tuition and discipline.

Cr.A. 113/42 IX 478

END OF VOLUME II

BZU/LIB Institute of Law



21950