حنا عضفور
محام

ANNOTATED
LAWS OF PALESTINE

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

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But it is desirable that the Court, after having dealt with one application, should adjourn or reserve judgment on the other, particularly if the evidence is the same in both applications, until expiration of the time for leave to appeal (*ibid.*). This would enable the unsuccessful party to test the matter in higher instance.

In that case the Court of trial had refused to set aside an award and, upon the parties bringing no further evidence, automatically gave judgment on the application to confirm. Only the refusal to set aside the award was taken on appeal and the Court of Appeal held that the unappealed judgment of confirmation had not made the matter *res judicata*.

The Court also held in that case that, whatever the technical legal position might be, the appellant would be suffering an injustice if he were not allowed to argue the merits of the appeal although he had not appealed the judgment enforcing the award.

When there are two applications before the Court, the one to revoke the submission, and the other to enlarge the time within which the award may be given, it is proper to hear the former application first as the latter would fall to the ground if the former were granted (C.A. 65/42)([57]). In such cases an affidavit in support of the second motion cannot be used as an affidavit in opposition to the first (*ibid.*). There was no order of consolidation in that case, but such applications may be consolidated, as was done in Mo.D.C.Jm. 465/43, 479/43([58]).

In C.D.C., T.A. 12/40([59]), after an action had been filed for the enforcement of an award([60]), an application was made to set it aside. The Court decided to hear the application, although it had been filed after issues were framed in the action for enforcement.

In C.D.C., T.A. 301/38, 302/38([61]), an order for consolidation under r. 304 C.P.R. was made in respect of applications under sec. 7, to appoint an arbitrator, and under sec. 10, for the enlargement of time. C.D.C., Ja. 133/43, 147/43([62]) was given on consolidated applications to remit and to set aside.

Sub-sec. (2).

Court or Judge: See next heading.

"Shall be heard by the Court": This sub-section was enacted before the Civil Procedure Rules made it clear that these applications are heard by the Court and not decided on the pleadings. (See notes to sec. 15(1) and title *CIVIL PROCEDURE*.) The intention of the sub-section should therefore (*semble*) be read in the word *heard* and not in the word *Court*, as the latter construction would bring the wording of this sub-section in conflict with sec. 10 which provides that the time for making an award may be extended by the Court or by *a judge thereof*. Again, the following powers exercisable by a Court are not set out in the sub-section as they should have been had the material word therein been *Court*: Leave to revoke a submission (sec. 3);

([57]) 9, P.L.R. 392; 1942, S.C.J. 429.
([58]) 1944, S.C.D.C. 172.
([59]) 1940, T.A. 170 (*in Hebrew*).
([60]) See *supra*, p. 156 for the use of this procedure.
([61]) P.P. 10.1.39.
([62]) 1944, S.C.D.C. 309.

power to supply a vacancy where a submission provides that the reference should be to two or more arbitrators (sec. 7); power to issue summonses etc. (sec. 9.). (All other powers under the Ordinance may be exercised by a Court or judge.)

It therefore follows that on a strict reading of the sub-section, all applications except those made under secs. 10, 11, 13 and 14, may be determined on the pleadings. Such a strict reading would be consistent with the interpretation placed by the Courts in a number of cases on the second part of the sub-section (providing for appeals) before its re-enactment as sub-sec. (3).

It does not appear that this view represents the present practice and it is doubtful whether it will be acted upon by the Courts if raised. The better view appears to be that the sub-section as a whole has been superseded by the Civil Procedure Rules applicable by virtue of sec. 15(1) and by r. 7 of the Arbitration Rules.

Court: See definition in sec. 2 and notes for the material jurisdiction. For local jurisdiction, see r. 2 of the Arbitration Rules, *post*.

Former Law: This sub-section was formerly printed together with the present sub-sec. (3). For amendments and their effect, see this note under the following sub-section.

Sub-sec. (3).

English Law: Provisions regulating appeals in England are contained in the Judicature Acts([63]) and in the Rules of the Supreme Court.

Court: See definition in sec. 2, and notes, for the material jurisdiction. As regards local jurisdiction, see Arbitration Rules, *post*, r. 2.

Former Law: The original Ordinance set out provisions relating to appeals in the following form:

> 15.—(2) An application to remove an arbitrator or umpire, to enlarge the time for making an award, or to enforce or set aside an award, shall be heard by the Court to which the petition is made. No appeal shall lie except by leave of the Court, or by leave of the Court of Appeal.

When the Ordinance was amended, in 1928, to make it apply to the Magistrates' Courts, the arrangement of the words was transposed, the sub-section divided into two paragraphs and additional words were inserted to apply to the Magistrate's Court. In the Revised Edition of the Laws, the sub-section was divided into sub-sections (2) and (3).

Effect of New Law: Under the law as it applied before the re-enactment of the Ordinance in the Revised Edition, various conflicting decisions were given as to whether leave to appeal from a decision of the District Court was required in all cases or only in the cases set out in the present sub-sec. (2) (C.A. 111/39)([64]). It was held in C.A. 164/37([65]) that the effect of the alteration in the section was to make leave to appeal a requirement in respect

([63]) The Supreme Court of Judicature Act, 1873, sec. 45; 1884, sec. 8; (Procedure) 1894, sec. 1.

([64]) 6, P.L.R. 561; 1939, S.C.J. 509; 6, Ct.L.R. 210.

([65]) 1937, S.C.J. (N.S.) 121; 3, Ct.L.R. 66. (*Order granting leave.*)

of decisions both under sub-sec. (2) and sub-sec. (3). C.A. 15/37([66]) was to the same effect. Both cases were followed in C.A. 111/39 (*supra*) where previous decisions were reviewed and finally in C.A. 234/41([67]).

Thereafter the position has remained settled. See e. g. C.A. 54/42([68]).

Decisions on the old law dealing with this question must therefore now be taken as obsolete([69]). In C.A.D.C., Ha. 69/42([70]) it was held that the provisions of sec. 15(3) do not apply only to appeals from the District Court in an appellate capacity.

"Decision", "Order": The fact that the word "decision" is not mentioned in sub-sec.(2), whilst it occurs in sub-sec. (3), where the last part of the sub-section also includes the word "order", does not alter the position regarding the necessity for leave to appeal; there being no distinction, for that purpose between the two words (C.A. 164/37)([71]).

"An Order", "The Order": Nor does the distinction between "an order" and "the order" as used in the sub-section have any bearing on the question of leave to appeal (C.A. 234/41)([72]). The decision of the District Court refusing to enforce part of an award and reject another should be termed "an order" but what the Court actually calls it is of no moment (*ibid.*).

See also heading *Procedure, infra.*

Applications for leave to appeal, by motion: Applications under this section are made by notice of motion (see sec. 15(1) and notes).

Evidence: No evidence is required on a motion for leave to appeal as it is confined to formal matters. See title *CIVIL PROCEDURE.*

Procedure: The procedure applicable in the relevant Courts on appeals and applications for leave to appeal also applies in arbitration matters by virtue of sec. 15(1) above (C.A. 239/41)([73]) and r. 7 of the Arbitration Rules, *post.* Reference should be made to Part XXXI of the Civil Procedure Rules, in title *CIVIL PROCEDURE.* In an appeal from the District Court in its appellate capacity there is no concurrent jurisdiction in arbitration matters under the Magistrates' Courts Jurisdiction Ordinance and the Arbitration Ordinance, so that the procedure applicable in ordinary appeals under the former Ordinance cannot be followed in arbitration matters (*ibid.;* C.A. 180/42([74])). Effect should be given to the difference in wording between sec. 15(3) of the Arbitration Ordinance and sec. 12 of the Magistrates' Courts Jurisdiction Ordi-

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([66]) 1937, S.C.J. (N.S.) 81; 2, Ct.L.R. 13.
([67]) 8, P.L.R. 587; 1941, S.C.J. 545; 11, Ct.L.R. 59.
([68]) 9, P.L.R. 306; 1942, S.C.J. 324; 12, Ct.L.R. 143. Earlier decisions to the same effect are: C.A. 174/32 (P.P. 6.7.33); C.A. 98/33 (2, P.L.R. 68) and C.A. 174/35 (7, R. 57; P.P. 9.6.36).
([69]) *I. e.,* C.L.A. 39/30 (1, P.L.R. 570); C.A. 105/32 (1, P.L.R. 810; 3, R. 1172; P.P. 14.12.32; 8.5.33) (*interlocutory order*); C.A. 85/33 (2, P.L.R. 90; 4, R. 1413; P.P. 8.5.34); C.L.A. 9/34 (7, R. 34; P.P. 10.5.35); C.A. 161/37 (1937, S.C.J. (N.S.) 331; 2, Ct.L.R. 113; P.P. 3.2.38); C.A. 142/38 (1938, 1, S.C.J. 404; 4, Ct.L.R. 23).
([70]) Sept. - Oct. 1942, Ha. 58.
([71]) 1937, S.C.J. (N.S.) 121; 3, Ct.L.R. 66 — *leave to appeal.*
([72]) 8, P.L.R. 587; 1941, S.C.J. 545; 11, Ct.L.R. 59.
([73]) 8, P.L.R. 590; 1941, S.C.J. 557; 11, Ct.L.R. 37.
([74]) 9, P.L.R. 745; 1942, S.C.J. 788.

nance. Application for leave to appeal should therefore be made to the District Court, under this section and not to the presiding judge who heard the appeal (C.A. 144/31)([75]) as under sec. 12 of the Magistrates' Court Jurisdiction Ordinance (*vide* C.A. 239/41, *supra*). After refusal, a further application should be made to the Supreme Court and not to the Chief Justice (*ibid.*; C.A. 180/42 (*supra*)). See, *infra.* headings *Grant of leave to appeal, Magistrates' Courts, District Court.*

Time: C.P.R., r. 322 provides a period of fifteen days from date of order or notification if the order is delivered in the absence of the applicant, for all applications for leave to appeal under any ordinance, where no special period is provided in such ordinance. This rule applies in arbitration cases (C.A 239/41) (*supra*).

The same period of fifteen days from order is provided by r. 319 for applications to the Supreme Court after refusal of leave by the District Court, or notification of refusal if made in absence of the applicant. R. 321 (b) C.P. R., providing a period of thirty days for appeals applies after leave has been obtained. The period begins to run from the date of the order granting leave. If the order is made in absence of the appellant, the period begins to run from the date of notification

See also the following headings.

The following cases so far as they deal with appeals under the provisions of the former Ottoman Code of Civil Procedure, are now obsolete: C.A. 13/31([76]); C.A. 131/31([77]); C.A. 138/32([78]); C.A. 1/34([79]); C.A. 13/34 ([80]); C.A. 126/34([81]); C.A. 2/36([82]); C.A. 33/36([83]); C.A. 161/37([84]); C.A. 75/38([85]); and see cases under heading *Effect of New Law, supra,* regarding cases on leave to appeal and heading *Grant of leave to appeal, infra.*

Special provisions apply in the case of Land Court or Land Settlement references, and in the case of Workmen's Compensation appeals. See these headings *infra.*

Review: It was held in C.A. 15/37([86]) and C.A. 111/39([87]) that a judgment on review of a judgment refusing the enforcement of an award is a matter under the Arbitration Ordinance and cannot, therefore, be appealed without leave. Provisions relating to review are now substituted in C.P.R. by rules 213 and 362, and in M.C.P.R. by rules 163 and 285. The principle appears, however, to remain unchanged.

([75]) 1,P.L.R. 704; 1,R. 160.
([76]) 1,P.L.R. 597. (*Interlocutory order*).
([77]) 1,R. 192.
([78]) 5,R. 1877; P.P. 13.8.33. (*Interlocutory order*).
([79]) 2, P.L.R. 127; 5, R. 1882 at p. 1887; 9, R. 917; P.P. 6.7.34.
([80]) 7,R. 46.
([81]) 1937, S.C.J. (N.S.) 85.
([82]) 8, R. 717; 2, Ct.L.R. 64; P.P. 19.3.37.
([83]) 9,R. at 934; P.P. 5.2.37 (*Interlocutory order*).
([84]) 1937, S.C.J. (N.S.) 331; 2, Ct.L.R. 113; P.P. 3.2.38.
([85]) 1938, 1 S.C.J. 264; 3, Ct.L.R. 222; P.P. 17.5.38.
([86]) 1937, S.C.J. (N.S.) 81; 2,Ct.L.R. 13.
([87]) 6, P.L.R. 501; 1939, S.C.J. 509; 6, Ct.L.R. 210.

Compare the closing paragraphs of headings *Land Court References* in the notes to sec. 14, *supra*.

Grant of leave to appeal: It was formerly held that leave to appeal may be granted by the District Court when delivering judgment (C.A. 80/34[88]) and see L.Jm. 78/28[89]), but that it was undesirable that the Court should do so in the absence of a special application (C.A. 80/34) (*supra*). The words "given in presence subject to appeal" (C.A. 219/26[90]; C.A. 38/33[91]) or "judgment in presence appealable" in the body of the decision, did not constitute an exercise by the District Court of its discretion to grant leave (C.A. 122/28)[92], as it was necessary that the Court should exercise a judicial discretion which the use of these formulae showed not to have been brought into play (C.A. 219/26) (*supra*). It was not open to the Court, on an *ex parte* application, to certify that the expression "judgment in presence and subject to appeal" used in the judgment signified a grant of leave in accordance with the provisions of the Ordinance (C.A. 38/33) (*supra*).

These decisions were rendered obsolete by the enactment of the Civil Procedure Rules and a separate application *by motion* should now be made (see e.g. C.A. 192/43)[93].

Leave to appeal will not be granted when only minute points are raised (C.A. 50/38)[94].

Magistrate's Court: Appeals from Magistrates' Courts lie, on the wording of the section, directly to the District Court without leave, irrespectively of the amounts involved, as such appeals fall under the Ordinance and not under the Magistrates' Courts Jurisdiction Ordinance (*vide* C.A. 239/41[95]; C.A. 180/42[96]). From the District Court a further appeal lies, by leave, to the Court of Appeal (C.A. 164/37)[97].

As regards appeals from the Magistrate's Court sitting as a Land Court, see *Appeals in Land Court References, infra*.

District Court: Applications for leave to appeal are first made to the District Court. If the District Court refuses leave, application should then be made to the Court of Appeal (C.L.A. 10/27[98]; C.A. 4/28[99] C.L.A. 58/28 [100];) - not to the Chief Justice (C.A. 239/41[101]; C.A. 180/42 [102]). The Court of Appeal cannot be approached before refusal by the

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[88] 8,R. 618.
[89] 2,R. 500.
[90] 1,P.L.R. 169; 1,R. 147.
[91] 1,P.L.R. 869; 1,R. 169; P.P. 13.12.33.
[92] 1,P.L.R. 372; 1,R. 188.
[93] 10,P.L.R. 437; 1943, A.L.R. 535 and see title *Civil Procedure*.
[94] 1938, 1 S.C.J. 235.
[95] Note 73 *supra*.
[96] Note 74 *supra*.
[97] 1937, S.C.J. (N.S.) 121; 3,Ct.L.R. 66 - *leave to appeal*.
[98] 1.R. 180 - *first ruling*.
[99] 1,P.L.R. 268; 1,R. 150.
[100] 1,P.L.R. 333; 4,R. 1558.
[101] Note 73 *supra*
[102] Note 74 *supra*.

District Court (C.A. 86/27[103]; C.L.A. 58/28[104]; C.L.A. 2/33[105]; C.L.A. 12/34[106]; — a long line of decisions which the Court of Appeal refused to upset in C.A. 142/38[107] where it was argued that on the wording of the sub-section an applicant had to choose whether to apply to the District Court or to the Court of Appeal and that an unsuccessful application to the District Court exhausted the remedy under the sub-section).

In C.A. 161/37[108] it was held that an application under sec. 15(3) could be made either to the District Court or to the Court of Appeal. The judgment is presumably overruled by C.A. 142/38 (*supra*), and the rule in C.L.A. 12/34 (*supra*) revived.

The Court of Appeal should be satisfied, when moved to grant leave to appeal, that the District Court has refused to grant such leave (order in C.L.A. 12/34)[109]. The same rules apply whether the order of the District Court is in first instance or on appeal from a Magistrate's Court (C.A. 164/37)[110].

Grounds of Appeal: As in other civil proceedings, a party in an arbitration case cannot appeal a judgment given in his favour (C.A. 5/37)[111].

In C.A. 68/37[112] the Court held that a defendant to an award could not appeal an order enforcing the award on the ground that a question of damages had been wrongly decided, when that question was decided in favour of the appellant; and in C.A. 5/37 (*supra*) an appeal was not allowed as the award originally made against the appellant had been set aside by the order appealed.

An appeal must be confined to the order appealed from, and matters in proceedings prior to that order cannot be taken (C.A. 17/35)[113]. But see *Ancillary Remedies, Powers of the Court, infra.*

In C.A. 174/35[114] the respondent had applied for enforcement of the award and had not appealed the refusal by the Court to enforce. He was held estopped from arguing on appeal that the lower Court should not have accepted the application to set aside on the grounds that no fees had been paid thereon. See *Powers of the Court, infra.*

Leave to appeal will not be granted on minute points (C.A. 50/38)[115].

Early cases, such as C.A. 10/27[116] holding that the Court would not grant leave to appeal in the absence of an error of law obvious on the

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[103] *Not reported.*
[104] Note 100 *supra.*
[105] 1, P.L.R. 856; 1, R. 194; P.P. 9.11.33.
[106] 2, P.L.R. 255; 1937, S.C.J. (N.S.) 82 at 83.
[107] 1938, 1 S.C.J. 404; 4, Ct.L.R. 23 - *leave application.* C.A. 239/41 is a later decision to the same effect. This is the sense in which C.A. 54/42 (9, P.L.R. 306; 1942, S.C.J 324; 12, Ct.L.R. 143) should be read.
[108] 1937, S.C.J. (N.S.) 331; 2, Ct.L.R. 113; P.P. 3.2.38.
[109] 1937, S.C.J. (N.S.) 82.
[110] Note 97 *supra.*
[111] 1937, S.C.J. (N.S.) 74 - *leave application.*
[112] 1937, S.C.J. (N.S.) 57; 1, Ct.L.R. (N.S.) 61.
[113] 1937, S.C.J. (N.S.) 83.
[114] 7, R. 57; P.P. 9.6.36.
[115] 1938, 1 S.C.J. 235.
[116] 1, P.L.R. 185; 1 R. 181 - *second ruling.*

face of the award must now be probably taken as obsolete as setting out to narrow a standard.

It is not necessary to set out a point of law on which leave is granted (C.A. 174/35)(117).

Appeal from Order of Remittal: In C.L.A. 16/31(118) leave to appeal from a judgment where part of the award was enforced and part remitted was refused, the Court holding that such remedy could not be granted:

> "By such remission the award as a whole is in suspense, and we are of opinion that no leave to appeal can be granted from a judgment of this nature. The judgment from which leave to appeal can be granted must embrace every matter originally referred to the arbitrators (*i. e.*, a judgment dealing with the whole subject of arbitration) and until the District Court has given a judgment embracing the second part, no question of appeal can arise. The amended award should and must embrace every matter originally referred to the arbitrators so that the part confirmed must be recopied and presented to the Court with the amended award. The District Court will then adjudicate on the part remitted, reiterate its previous judgment on the part it confirmed and then from this judgment appeal may lie by special leave."

This case was followed in C.A. 141/42(119). But when an award is remitted as a whole, the order is appealable (e. g., C.A. 25/37)(120) and it is not possible, in subsequent proceedings, such as in an application to remove the arbitrators, to allege misconduct committed prior to the remittal (C.A. 17/35)(121). See also notes to sec. 12 heading *Appeal from Order of Remittal.*

Ancillary Remedies. Powers of the Court: When seized with an application for leave to appeal, the Court may grant an injunction restraining the arbitrators from proceeding with the arbitration until the determination of the appeal (C.A. 42/39)(122).

The appellate Court appears to be invested with the wide powers set out in C.P.R. rr. 316, 324, 333, 341-6, 349, 350 and 361. C.A. 6/38(123) illustrates the exercise of the powers under r. 350 to pass any judgment which ought to have been passed by the trial Court: The Court of Appeal, in that case, after holding that the lower Court should not have set aside an award but should have refused to enforce it, amended the judgment accordingly.

In C.A.D.C., T.A. 88/40(124) the Court invoked the powers of C.P.R. 316 and 350 in giving judgment on a question of material jurisdiction which had not been taken in the lower Court but which was raised in the reply to the appeal. Compare cases and cross-reference in note *Lack of Jurisdiction*, following the definition of "Court" in the notes to sec. 2.

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(117) Note 114 *supra*
(118) 1, R. 191.
(119) 9, P.L.R. 547; 1942, S.C.J. 573; 12, Ct.L.R. 117.
(120) 1937, S.C.J. (N.S.) 95; 1, Ct.L.R. (N.S.) 88.
(121) 1937, S.C.J. (N.S.) 83.
(122) 1939, S.C.J. 412; P.P. 5.5.39 - *interlocutory order.*
(123) 5, P.L.R. 311; 1938, 1 S.C.J. 346; 3, Ct.L.R. 299 - *final judgment.*
(124) *Not reported.* (*In Hebrew*).

In C.A. 234/41(125), in an application under r. 333 for an extension of time, the Court held that misunderstanding of the law by the use of the word "judgment" for "order" was not a good cause for the extension within the meaning of the rule.

In C.D.C., T.A. 214/41(126) the time for filing an application for leave to appeal was extended under r. 361.

See also C.A. 235/43(127) as mentioned in the notes to sub-sec. (1), heading *Consolidation of Applications.*

Fees: See r. 5 of the Arbitration Rules and notes.

Costs: See sec. 18, and notes.

Appeals to the Privy Council: A further appeal is possible from a judgment of the Supreme Court sitting as a Court of Appeal, to the Privy Council. The ordinary rules in such appeals also apply in arbitration matters, and will be found in the *CIVIL PROCEDURE* title.

If no question of great or general importance is raised, the matter in dispute must not be less than L.P. 500.- and the costs of an arbitration are not considered part of the matter in dispute if it is not alleged, on the application for leave to appeal to the Privy Council, that the arbitrator made an unfair or erroneous exercise of his discretion in awarding costs (P.C.I.A from C.A. 13/37)(128).

Appeals in Land Court References: When a Land Court authenticates an award under the provisions of sec. 6 of the Land Courts Ordinance (as to which see notes to *Court* and *Submission,* in sec. 2), the award becomes a judgment of the Land Court and that judgment is subject to appeal under the Land Courts Ordinance, so that no leave to appeal is required, either from the Land Court or from the Court of Appeal (C.A. 243/37)(129). When the Land Court is constituted by a Magistrate, an appeal from a decision of the Magistrate under sec. 6 of the Land Courts Ordinance lies under sec. 11(4) of the Magistrates' Courts Jurisdiction Ordinance direct to the Court of Appeal and the Court of Appeal can only deal with the appeal if filed directly from the Magistrate (C.A. 295/42)(130). This decision is not compatible with L.A. 80/29 and C.A. 121/38 for which reference should be made to the notes *Land Court References* following sec. 14. The same provisions apply in appeals from Land Settlement Officers.

The question of local jurisdiction cannot be taken the first time on appeal (*vide* C.A. 98/42)(131).

Appeals in Land Settlement References: The same remarks apply *mutatis mutandis* in appeals from Land Settlement in decisions under sec. 27(5) of that Ordinance.

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(125) 8, P.L.R. 587; 1941, S.C.J. 545; 11, Ct.L.R. 59.
(126) 1941-2, T.A. 121. (*Order of the Registrar*).
(127) 1943, A.L.R. 814.
(128) 1937. S.C.J. (N.S.) 88; 3, Ct.L.R. 15. The point had been taken in the appeal from the District to the Supreme Court.
(129) 5, P.L.R. 43; 1938, 2 S.C.J. 237. (*interlocutory order*).
(130) 10, P.L.R. 71; 1943, A.L.R. 83.
(131) 1942, S.C.J. 655; 12, Ct.L.R. 118.

Appeals in Workmen's Compensation: When the appeal is connected with the arbitration proceedings, the Arbitration Ordinance applies, as in C.A. 1/34([132]), where an appeal was taken from a decision of the President District Court,([133]) on a case stated by the arbitrator, the latter being held to be still seized with the arbitration. A submission that the Supreme Court had no jurisdiction in such cases to entertain the appeal was overruled in C.A. 33/36([134]). Applications for rectification of the register of memoranda([135]) do not constitute arbitration proceedings and the Arbitration Ordinance does not apply to such proceedings, so that an appeal from the District Court lies without leave (C.A. 138/32)([136]).

Sub-sec. (4).

Former Law: This sub-section was formerly numbered 15(3). For the amendment and its effect see the same note under the present sub-sec.(3).

Production of signed copy of the Award: In C.A.D.C., Ha. 39/38([137]) the Court appears to have assumed that this sub-section also applies to actions on the award. *Sed quaere,* as an action on the award is not an action brought under the provisions of the Ordinance. See notes to sec. 14.

The signed copy of the award which is to be produced to the Court under this sub-section is not merely a document which purports to elucidate matters, or which imports some evidence on the case in dispute: "It is a document of primary importance which it is the duty of the applicant to produce to the Court..." (C.D.C., T.A. 137/39([138]). If a party neglects to obtain a signed copy from the arbitrator, he cannot, after filing an application to set aside the award, seek by order of the Court, to obtain the signed copy from the other side (*ibid.*).

If the defendant does not dispute the genuineness of the signature, the Court cannot refuse to admit a copy of the award which purports to be signed by the arbitrator (C.A.D.C., Ha. 39/38), (*supra*).

If a copy of the award is filed with an application to enforce, the Court has a discretion to allow an applicant praying for the award to be set aside, who failed to comply with the requirements of the sub-section, to remedy the defect (C.A. 32/43)([139]).

As to signature see note *Award not signed* in the notes to sec. 13.

Verbal Awards: By clause (*c*) of the Schedule arbitrators are called upon to make their awards in writing. But it is open to the parties to contract out of the provisions of the Schedule (sec. 4). A submission may therefore authorise the arbitrators to deliver a parol award. The Schedule contains no corresponding requirements for awards by umpires but it is suggested

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([132]) 2, P.L.R. 127; 5, R. 1882 at 1887; 9, R. 917; P.P. 6.7.34.

([133]) But in arbitration matters the President is not competent *supra* p. 164.

([134]) 9, R. at 934; P.P. 5.2.34. (*Interlocutory order*). On the remaining two submissions decided therein the interlocutory order is now obsolete. *Vide supra.*

([135]) See *ante,* p. 74.

([136]) 5, R. 1877; P.P. 13.8.33. (*Interlocutory order*).

([137]) N.L.R. 49.

([138]) 1940, T.A. 16. (*Order of the Registrar*).

([139]) 10, P.L.R. 181; 1943, A.L.R. 208.

in note *Writing*, following clause (*e*) of the Schedule, that these should also be in writing unless the requirements of the Schedule are excluded in the submission.

There are no local decisions on the enforcement of verbal awards.

Stamping the Award: An award may not be used for any purpose unless it is duly stamped in accordance with the provisions of the Stamp Duty Ordinance. (See notes to sec. 14, *Award not stamped*).

Under sec. 23(1) of the Stamp Duty Ordinance every award must be written out on material duly stamped with adhesive stamps and the arbitrators must cancel the stamps. A penalty of fifty pounds is provided by the subsection for the infringement of these provisions. Under sec. 23(2) of that Ordinance a penalty of twenty pounds is provided against any person who receives from any arbitrator an award which is not stamped in accordance with the provisions of the Ordinance.

The duty is *ad valorem*:

	LP.Mils
When no amount is awarded or the amount or value awarded does not exceed LP. 5	10
When the amount or value awarded - -	
exceeds LP. 5 and does not exceed LP. 10	20
exceeds LP. 10 and does not exceed LP. 20 . . .	50
exceeds LP. 20 and does not exceed LP. 30 . . .	100
exceeds LP. 30 and does not exceed LP. 40 . . .	150
exceeds LP. 40 and does not exceed LP. 50 . . .	200
exceeds LP. 50 and does not exceed LP. 100 . . .	250
exceeds LP. 100 and does not exceed LP. 200 . . .	500
exceeds LP. 200 and does not exceed LP. 500 . . .	750
exceeds LP. 500 and does not exceed LP. 1000 . . .	1.000
in any other case[140]	1.500

The above scale is taken from item 5 of the Schedule to the Stamp Duty Ordinance and applies to awards of arbitrators appointed otherwise than by order of Court. Awards of arbitrators appointed by the Court should consequently not be liable to stamp duty, but see, under sec. 2, heading *References by Order of Court.*

There are no local authorities on the question whether costs awarded by the arbitrator form part of the award for the purpose of ascertaining the stamp duty payable thereon, but it is suggested that the reasoning followed in P.C.L.A. in C.A. 13/37 (quoted in notes to sec. 15(3) ([141])) might be followed in this respect.

Reference should be made to the notes to sec. 14, *Award not stamped*, for a further discussion of this question.

By a 1941 amendment of the Stamp Duty Ordinance, Workmen's Compensation awards are exempted from Stamp Duty.

([140]) *Semble*: either where the amount awarded cannot be ascertained, or where it exceeds LP. 1000.

Notwithstanding the words "when no amount is awarded" in the first item, if the award is in respect of something which may be valued, the relevant item appears to be the last and not the first.

([141]) 1937, S.C.J. (N.S.) 88; 3, Ct.L.R. 15.

Workmen's Compensation cases: A certified copy of the award registered with the Chief Registrar must be filed in the Execution Office — see *Workmen's Compensation Cases* in heading *Statutory References*, following sec. 2.

On stamping awards, see previous note.

Rules concerning jurisdiction.

16. The Chief Justice may, with the approval of the High Commissioner, make rules defining the local jurisdiction of the Court in applications under this Ordinance.

The section authorises the Chief Justice, with the approval of the High Commissioner, to make rules defining the local jurisdiction of the Courts. For the material jurisdiction of the Courts provision is made in sec. 2 of the Ordinance, under the definition of "Court". Of the rules now in force, r. 2 of the Arbitration Rules deals with local jurisdiction. The remaining rules are made under the authority of sec. 20 of the Courts Ordinance and sec. 13 of the Magistrates' Courts Jurisdiction Ordinance (1935). See notes to the rules and cases cited in the notes to r. 3. The rule-making powers are dealt with under the following titles: *CIVIL PROCEDURE, INTERPRETATION, PALESTINE ORDER IN COUNCIL.*

See next section for authority to make rules of court prescribing fees.

Fees.

17. The Chief Justice may, with the approval of the High Commissioner, make rules of court prescribing the fees payable on any application or order made to or by the Court or a judge thereof under this Ordinance.

Former Law: The words "or a judge thereof" were inserted by the 1928 Amendment: Certain applications may be made to a Court or judge (see notes to sec. 15(2)). Before the amendment of the section there was no authority, under the Arbitration Ordinance, to provide for payment of fees on applications made to a judge. Note, however, that the Arbitration Rules are not enacted solely under the powers conferred by the Arbitration Ordinance: See notes to sec. 16 and to Arbitration Rules, *post*.

Rule 5 of the Arbitration Rules was enacted under the authority of this section.

The above amendment does not appear to have been pursued in the rules as the latter (r. 5) still refer to "applications to the Court" and not a Court or judge.

See notes to that rule.

Costs.

18. Any order made under this Ordinance may be made on such terms as to costs or otherwise as the authority making the order thinks just.

Source: This section is taken from sec. 20 of the Arbitration Act, 1889.

"The Authority making the Order": This refers to a Court or judge. The equivalent provision for arbitrators and umpires is contained in clause (*i*)

of the Schedule. Note that arbitrators or umpires normally make awards (or interim decisions) and not orders.

Certain powers are exercisable by the Court and others by the Court or judge. Reference should be made to sec. 15(2) and notes.

Costs: The power of the Courts in connection with costs is now fully set out in the rules of Civil Procedure applying in the relevant Courts. Under this section, the same powers as regards costs may be exercised by a judge as by a Court.

In C.D.C., T.A. 152/42(1) the Court, when seized with an application to enforce an award, reduced the costs awarded by the arbitrator.

As regards Government, when a party to the proceedings, the question of costs is dealt with under the following section.

Other Terms: As regards other terms which may be imposed by a Court or judge when making an order, see notes *Powers of the Court* and *Ancillary Remedies,* under the various sections in the Ordinance dealing with applications to a Court or judge.

Application of Ordinance to Government.

19. This Ordinance shall apply to an arbitration to which the Government of Palestine is a party, but nothing herein shall affect the law as to costs payable by the Government.

Position of Government: This section is adapted from sec. 23 of the Arbitration Act, 1889. The English section differs from sec. 19 in that it makes provision for references by orders of Court.

The Act was amended in 1933 by the Administration of Justice Act.

When Government submits to arbitration, the provisions of the Ordinance apply as they do to other persons. No *fiat* under the Crown Actions Ordinance appears to be necessary as a condition precedent to such proceedings. When the Government agrees to submit a claim against it to arbitration, the provisions of sec. 3 of the Crown Actions Ordinance are presumably impliedly waived.

For costs payable by Government, see sec. 8 of the Crown Actions Ordinance and annotations thereto.

For instances of costs awarded against Government, *vide* C.A. 234/41(1) and C.A. 218/42(2).

Staying of proceedings in respect of matters to be referred to arbitration under Protocol on Arbitration Clauses.

20. If any party to a submission made in pursuance of an agreement to which the International Protocol on Arbitration Clauses signed at Geneva on the 24th September, 1923, applies, or any person claiming through or under him commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance, and before delivering any pleadings or taking other

(1) 1941-2, T.A. 13.
Sec. 19.
(1) 8, P.L.R. 587; 1941, S.C.J. 545; 11, Ct.L.R. 59.
(2) 1942, S.C.J., 873.

steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, or that there is not, in fact, any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

Historical: On the 24th September, 1923, a Protocol on Arbitration Clauses in Commercial Agreements was signed at Geneva. The Protocol was ratified by Great Britain in 1924 but the adhesion on behalf of Palestine was effected only on the 12th March, 1926, the date of deposit of a formal document with the Secretariat of the League of Nations. A notice to that effect appeared in Official Gazette No. 165 of 16.6.26.

Immediately after the accession of Palestine to the Convention, on the 16th March, 1926, the Arbitration Ordinance was enacted, incorporating, in sec. 20 thereof, the dispositions necessary to carry into effect the provisions of the Protocol. The wording of sec. 20 followed that of sec. 1 of the Arbitration Clauses (Protocol) Act, 1924. Although the latter Act does not apply to Palestine, it was printed in the Revised Edition of the Laws (Drayton, Vol. III, p. 2449) and is therefore also set out in this title (*post*). The Protocol itself, which appears as a schedule to the Act, applies by reference in sec. 20.

In 1927 the MacKinnon Committee on the Law of Arbitration made recommendations against the restriction which the Act imposed on the discretion of the Court. Whilst sec. 4 of the Arbitration Act gave the Court a discretion to refuse a stay of proceedings in ordinary cases, it appeared to the Committee that sec. 1 of the Protocol Act allowed the Court no alternative, once the conditions imposed by the section were shown to apply, but to order a stay(1). The corresponding sections in the Ordinance are secs. 5 and 20.

In order to mitigate against this harshness an amendment was effected in sec. 1 of the Protocol Act by Part II of the Arbitration (Foreign Awards) Act, 1930 (*post*), which provided for the insertion of the words *or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred* after the words "has become inoperative or cannot proceed." The corresponding amendment was also made in sec. 20 of the Ordinance by sec. 8 of the Arbitration (Foreign Awards) Ord. (No. 17 of 1934) and by the Statute Law Revision Ord. (No. 30 of 1934).

Effect of Amendment: The Amendment to the section only served to remedy the anomaly pointed out by the Mac Kinnon Committee(1) and the difference in the exercise of discretion between sec. 5 and sec. 20 has remained otherwise unaffected. See note *Discretion, infra.*

"Any party to such legal proceedings": The legal proceedings contemplated are proceedings instituted by a party to the submission against another party to the submission (or, in both cases, persons claiming through them, etc.)

(1) A defendant could thus obtain a stay of proceedings under the Protocol Act even if no dispute was shown to have arisen (Report of the Committee, para 43).

The submission is one made in pursuance of an agreement to which the Protocol applies and art. 1 of the Protocol confines the provisions thereof to agreements between parties subject respectively to the jurisdiction of different Contracting States. Before the remedy of sec. 20 may be invoked, therefore, it must be shown that the party initiating the proceedings is subject to the jurisdiction of one of the Contracting States. A complete list of the Contracting States was not set out in Drayton and is given (*post*) following the Protocol on Arbitration Clauses (Schedule to the Arbitration Clauses (Protocol) Act).

The fact that a contract containing an arbitration clause was made in one of the contracting states is not sufficient to bring the contract under the provisions of this clause (*vide* Mis. Applic. D.C., T.A. 126/44) (2).

Submission: The section refers to "a submission made in pursuance of an agreement to which the (Protocol) applies". The Protocol (*post*) in art. 1 thereof, considers agreements to refer disputes to arbitration. A submission for the purpose of this section cannot, therefore, have the meaning defined by sec. 2, of an agreement to refer but must have the same meaning as attaches to that term when used in sec. 3. See notes to sec. 3(3).

Court: Any "Court" appears to mean a Court in Palestine. For the local jurisdiction of Courts see r. 2 of the Arbitration Rules, *post*. Reference should also be made to that heading in the notes to sec. 5.

Judge: This term is defined in sec. 2. Note that, as in the case of sec. 5, the Court or judge may order a stay.

Procedure: Applications under this section are made by notice of motion. See sec. 15(1) and commentaries .

Evidence: An affidavit should be filed in support of the application, verifying compliance with the requirements of the section. Oral evidence may also be led. See notes to sec. 15(1).

Fees: See r. 5 of the Arbitration rules (*post*) and notes.

Costs: See sec. 18 and notes.

Discretion: When all the requirements of the section are complied with, the Court has no discretion in the matter but must order ("shall make an order") a stay of proceedings. Although the authorities set out in the commentary to sec. 5 may also be applied in the case of proceedings under sec. 20, any authority decided in connection with sec. 5 on a question of discretion is therefore not relevant to proceedings under sec. 20.

Cross-References: See the commentaries to sec. 5 which apply *mutatis mutandis* to this section, except for questions of discretion. See that heading above.

Marginal Notes: The marginal note, which differs from that in the Act (*q. v. post*) is more correct than the latter as the section applies to all

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(2) 1944, S.C.D.C. 393.

(3) See Radio Publicity (Universal), Ltd. *v.* Compagnie Luxembourgeoise de Radiodiffusion &c. [1936] 2 All.E.R. 721, which confirms this view. The naming of arbitrators pursuant to an agreement to submit constitutes a submission within the meaning of this section (*ibid.*).

agreements and not necessarily to commercial agreements. (See second para of clause 1 of the Protocol, *post*).

Sec. 21. — (Omitted by authority of the Revised Edition of the Laws Ordinance, 1934. The text of the repealed section appears in the notes to sec. 1).

THE SCHEDULE.

(*Section* 4).

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

Source of the Schedule: All nine clauses of the Schedule ((*a*) to (*i*)) are taken nearly word for word from the Schedule to the English Act. For minor divergences see the notes to clauses (*e*) and (*i*). Additions and deletions were made to the English Schedule by the 1934 Act. These have no relevance. See note SOURCE, INTERPRETATION in notes to sec. 1.

Submission: The definition of this term in sec. 2 of the Ordinance should, in virtue of sec. 16(1) of the Interpretation Ordinance, apply to the Schedule as well. It is not always used, however, in the meaning defined, but often bears the same meaning as in sec. 3 of the Ordinance, as the context in which the word usually occurs in the Schedule contemplates the arbitrators having entered upon the reference. See notes to sec. 3.

Application of the Schedule: Sec. 4 makes the provisions of the Schedule *lex dispositiva* as they are applicable only in the absence of a contrary intention in the submission. See note *Implied Terms* in sec. 4.

Statutory References: See *Effect of Statutory References* in the notes to sec. 2, under the definition of "Submission", for how far the provisions of the Schedule apply in the case of statutory references.

Cross-References: The provisions of the Schedule should be read together with the notes to sec. 4 of the Ordinance where authorities are enumerated and references set out to the notes in other sections. See also the cross-references in the notes following the various clauses in the Schedule.

Reference to single Arbitrator:

(*a*) If no other mode of reference is provided, the reference shall be to a single arbitrator.

Thus, when the parties undertake to settle their disputes under the Arbitration Ordinance, without mentioning any further particulars, clause (*a*) applies and a single arbitrator should be appointed (C.D.C., T.A. 149/38) (1).

See commentary to the definition of "Submission", in sec. 2, for particulars relating to the signature, stamping and construction of submission.

Appointment of Umpire:

(*b*) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

Whether the reference is to two arbitrators and an umpire, or to three

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(1) 1938, T.A. 102.

arbitrators, depends upon the terms of the submission. See notes to sec. 2 under the heading *Submission*. See also C.L.A. 7/33(2); C.A. 164/37(3).

This clause is now at variance with the provisions of secs. 6 and 7, as the latter do not follow the English Act and contemplate more than two arbitrators being appointed. The clause, following the English model, refers to two arbitrators only. See note *"Additional Arbitrator"* in sec. 6.

By the 1934 amendment of the Act, when two arbitrators are appointed they must "appoint an umpire immediately after they are themselves appointed".

"May appoint": The arbitrators *must* make such appointment if called upon by a party to do so under the provisions of sec. 6(1)(c) of the Ordinance. Failing a compliance with the notice, the Court or a judge thereof may make the appointment.

Umpire, Additional Arbitrator: Clause (*b*), unlike sec. 6, makes no reference to the appointment of an additional arbitrator.

The difference between a third arbitrator and an umpire may be gathered from a perusal of clauses (*c*) - (*e*) and notes: Whilst a third arbitrator takes part in the proceedings and joins the remaining arbitrators in the delivery of the award, an umpire enters upon the reference only after the arbitrators have failed to agree. In England, the umpire is appointed immediately.

"At any time within the period...": The arbitrators may not make the appointment before entering on the reference (see C.D.C., T.A. 363/43)(4).

For the period within which an award may be made see the next clause.

Cross-References: See the following headings in sec. 4: *Qualifications, Authority* and *Time*.

Time for Award by Arbitrators:

(*c*) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

This clause was repealed in England by the 1934 Act.

Months: This means calendar months according to the Gregorian calendar. (Interpretation Ordinance, sec. 3C, *Definitions*).

Beginning of Period: The period of three months begins to run from the time the arbitrators have entered upon the reference. If the arbitrators neglect to enter upon the reference and are called upon by a party to do so, the period begins to run from the date of the notice. Compare clause (*e*).

"Within three months": See sec. 24 of the Interpretation Ordinance and notes thereto (*sub tit.* INTERPRETATION) for the manner of computing the period.

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(2) 2, P.L.R. 297; 1, R. 196; P.P. 9.5.34.
(3) 1937, S.C.J. (N.S.) 123; 2, Ct.L.R. 194.
(4) 1944, S.C.D.C. 192.

The period of three months applies in the absence of any provision to the contrary in the submission (Mo.D.C., Jm. 465/43, 479/43) ([5]).

Within that period the proceedings are pending even if the parties subsequently abandon them and no award is delivered (C.A. 60/37) ([6]).

Enlargement of Time: During the period of three months the arbitrators may enlarge the time for the delivery of the award. When they have done so the arbitrators may again, within the renewed period, further enlarge the time. And so on ("from time to time").

But once the original period of three months, or the period provided by the submission, or any extended period, has been allowed to expire, the arbitrators may no longer avail themselves of the provisions of this clause (*vide* C.A. 93/35([7]); C.A. 42/39([8]); C.D.C., T.A. 229/42, 235/42([9]). See also note *Award delivered out of Time* in sec. 13). *Cf.* clause (*d*), *infra*.

The submission may restrict the time within which the award is to be made ("unless a contrary intention is expressed", sec. 4). It may also limit the right of the arbitrators to enlarge the time (C.D.C., T.A. 122/38) ([10]). The following clause in a submission was held to be insufficient, in itself, to preclude the arbitrators from enlarging the time under this clause of the Schedule: "The time of the arbitration is in the following terms *viz.*: fixed for ten days from the date of this submission." (C.D.C., T.A. 241/38) ([11]). The submission cannot preclude the Court from enlarging the time under the provisions of sec. 10 of the Ordinance. See note *Discretion* to that section.

According to the strict legal position the arbitrators may not purport to extend the time, with retroactive effect, after it has expired (C.D.C., Ja. 133/43, 147/43) ([12]) but the parties may be estopped from raising this question in proceedings on the award: See note *Consent, Estoppel, infra*. As regards extension of the time fixed by the Court under sec. 10, see the next note.

Extension of Time by the Court: After the expiration of the time or extended time within which the arbitrators may make their award, application for extension may be made to the Court under the provisions of sec. 10 of the Ordinance (C.A. 60/37) ([13]). The fact that the Court has extended the time under sec. 10 for a definite period does not prevent the arbitrators from further extending the time under this clause of the Schedule as the extension by the Court does not constitute a "contrary intention" in the submission within the meaning of sec. 4. (C.D.C., Ja. 133/43, 147/43) (*supra*).

Consent, Estoppel: Where the parties continued to appear before the arbitrators after the expiration of the time, it was held that a prolongation

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([5]) 1944, S.C.D.C. 172.
([6]) 1937, S.C.J. (N.S.) 309; 2, Ct.L.R. 30.
([7]) 7, R. 48. And see Order of the District Court on the application for leave to appeal: C.D.C., Ja. 234/34, quoting Russell (*ibid.*).
([8]) 6, P.L.R. 229; 1939, S.C.J. 286; 5, Ct.L.R. 189.
([9]) 1941-2, T.A. 141. (*In Hebrew*).
([10]) 1938, T.A. 128. Leave to appeal refused: C.A. 12/39 (6, P.L.R. 119; 1939, S.C.J. 92; 5, Ct.L.R. 119; P.P. 11.5.39).
([11]) 1938, T.A. 133.
([12]) 1944, S.C.D.C. 309.
([13]) 1937, S.C.J. (N.S.) 309; 2, Ct.L.R. 30.

had been effected by consent of the parties (C.A. 93/35, following R. *v.* Hill [1819] 7 Price 636(14); C.D.C., T.A. 241/38(15)); indeed that it amounted to a new submission which enured for a period of three months (C.A. 93/35) (*supra*), distinguishing Burley *v.* Stephens [1836] 1 M. & W. 156; 5 L.J. Ex. 92, where the renewed appointment had been made up to a specific future date on which the award was, in fact, delivered.

It is submitted that the better view is to uphold awards given in such circumstances on the ground of estoppel, as clause (*c*) authorises only the arbitrators and not either party to extend the time. There can, therefore, be no prolongation by conduct of the parties. In the case of C.A. 93/35 (*supra*) the decision is perhaps open to criticism on the ground that although the parties may be estopped from pleading lapse of time or absence of submission, apart from the question of estoppel, there cannot be said to be a new submission by conduct as submissions should always be made in writing (definition of "submission" in sec. 2). This was the view adopted in C.D.C., Ja. 133/43, 147/43(16). In that case the arbitrators had purported to extend the time with retroactive effect after expiration. Three months later the parties appeared and agreed to a postponement of one month for the delivery of the award. The parties appeared again immediately before the award was delivered and made no objection to the first invalid extension. The Court held that the parties were estopped from seeking to upset the award on these grounds and quoted the following passage from Russell (13th ed., p. 388):

> "The Courts will not permit a party to lie by or act in an indecisive manner so as to obtain the benefit of the award if it is in his favour and endeavour to set it aside if it is not".

Compare the following notes: *Implied Submission, Estoppel* (sec. 2); *Acquiescence, Estoppel, Waiver* (sec. 13).

In C.D.C., T.A. 122/38(17) it was suggested by the Court that a party might be estopped, in proceedings on an award, from objecting to an enlargement of time to which the party's arbitrator had agreed. See note *Partiality* under the heading MISCONDUCT, in the notes to sec. 13.

Verbal Award: See this heading in the notes to sec. 15(4).

Signature: When arbitrators are entitled to make an award by majority, a majority of arbitrators may sign the extension (C.A. 42/39)(18). The extension may be orally agreed upon within the period of three months, and be signed subsequently (*ibid.*). See also *Award not signed* in notes to sec. 13. under the heading INHERENT JURISDICTION.

Single Arbitrator: By the effect of sec. 3C of the Interpretation Ordinance, words in the plural include the singular. A single arbitrator is therefore also included in the clause.

Umpire: See clause (*e*) for the corresponding powers of an umpire.

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(14) 7, R. 48.
(15) 1938, T.A. 133.
(16) 1944, S.C.D.C. 309.
(17) Note 10 *supra*.
(18) 6, P.L.R. 229; 1939, S.C.J. 286; 5, Ct.L.R. 189.

Umpire's Authority:

(*d*) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

This clause is amended in the Act by the 1934 amending Act, to give effect to the deletion of clause (*c*) in the former Act.

Umpire and Arbitrators: The umpire does not normally sit with the arbitrators as he enters upon the reference only after the latter have failed to agree. Compare the position of an additional arbitrator. See note *Umpire, Additional Arbitrator,* following clause (*b*).

See also notes to the following clause.

Time for Award by Umpire:

(*e*) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

This clause was deleted from the Act by the 1934 amending Act .

"... *has expired on or before*": These words are reproduced from Drayton's Edition of the Laws, which is authoritative. The text of the corresponding repealed provision in the English Act is, "...has expired, or on or before". The omission of the word "or" is probably due to a clerical error which occurred in the ordinance when first published.

Enlargement of Time: The power of the umpire to enlarge the time appears to be similar to that of arbitrators. But note the following difference: The time of the arbitrators begins to run from the day on which they have entered upon the reference or been called upon to act; whilst the time under this clause begins to run, whether or not the umpire has entered upon the reference, after the expiration of the arbitrators' authority.

Appointment of new Umpire: If the umpire refuses to act, or is incapable of acting, or dies, the provisions of sec. 6 of the Ordinance may be brought into play. See the notes to that section .

Writing: Note that this clause, unlike clause (*b*), does not call upon the umpire to make his award in writing. *Quaere* whether the fact that the enlargement of time should be made by the umpire in writing does not make the requirement of writing for the award follow *a fortiori*. A *Casus omissus?* See note *Verbal Awards,* in sec. 15(4).

Signature: See this note following clause (*c*), and cross - reference.

Evidence:

(*f*) The parties to the reference and all persons claiming through them respectively shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

(*g*) The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

Oath or Affirmation: These clauses should be read together with sec. 8(1)(a) of the Ordinance which authorises arbitrators or umpires to administer oaths to, or take the affirmation of, the parties and witnesses appearing. As regards the difference between oaths and affirmations, reference should be made to the titles CIVIL PROCEDURE and EVIDENCE.

Clause (*g*) empowers the arbitrators to take evidence either sworn or unsworn. The wording of the clause implies a discretion to hear unsworn testimony "provided that no actual misconduct or bias is shown in exercising that discretion." An abuse of the discretion may amount do misconduct". (C.D.C., T.A. 319/43) ([19]). See C.D.C., Ja. 133/43, 147/43([20]) as quoted in the note *Partiality* under the heading MISCONDUCT, in the notes to sec. 13 for an example of such bias amounting to misconduct.

False Evidence: See sec. 9(3) of the Ordinance and notes.

Hearing the Evidence: Reference should be made to this heading in the notes to sec. 13 of the Ordinance, as to the manner in which the arbitrators or umpire should hear the evidence of the parties and witnesses. Other headings in that section also detail certain rules for the conduct of the proceedings.

See also note *Submissions not within the scope of the Ordinance,* in sec. 2.

"Subject to any legal objection": These words were held to prevent, *inter alia,* arbitrators from calling and examining witnesses or parties against the wishes of the parties to the submission (C.D.C., T.A. 155/44)([21]).

"Do all other things which... the arbitrators may require.": These words in clause (*f*), were held to entitle arbitrators to require a party whose evidence has already been heard, to submit an affidavit (C.D.C., T.A. 319/43)([22])

Position of Government: See notes to sec .19.

([19]) 1944, S.C.D.C. 276.
([20]) *Ibid.* 309.
([21]) 1944, S.C.D.C. 321.
([22]) Note 19 *supra.*

The Award:

(*h*) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

"Shall be final and binding": The effect of these words is not to exclude the jurisdiction of the Court to set the award aside under sec. 13, as the parties to a submission cannot contract out of the provisions of the Ordinance (See note SOURCE, INTERPRETATION, in sec. 1). The word "final" is restricted, therefore, to the proceedings before the arbitrators or umpire, meaning that their decision is not subject to appeal. This limitation may also be excluded if a contrary intention appears in the submission (see note *Implied Terms* in sec. 4). Submissions to the Jewish Peace Court provide examples of such contrary intention. See p. 66.

Compare the terms of art. 61 of the Ottoman Code of Civil Procedure which enabled the parties to curtail the right of appeal. The article is no longer applicable. (See note *Reference by order of Court*, sec. 2).

Costs of the Reference:

(*i*) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof.

Divergence from English Text: The following words, which appear in the corresponding provision of the English Act and relate to taxation of costs as applying in England, were omitted from this clause: "and may award costs to be paid as between solicitor and client".

Discretion: The arbitrators and the umpire have a discretion in awarding the costs of the reference and the award.

The current practice in the case of most arbitrations in Palestine is that the arbitrators exact equal payment from the parties, usually in instalments, during the pendency of the proceedings. The award then settles the costs as between the parties. See the next heading.

"Tax or settle": The arbitrators or umpire may decide both the amount payable to them by the parties and the adjustment of the costs as between the parties.

Powers of the Court: The power of the Court to decide questions of costs (see sec. 18) overrides the power of the arbitrators and umpires under this clause. Thus, in C.D.C., T.A., 152/42([23]), when seized with an application to enforce an award, the Court reduced the costs awarded by the arbitrators.

See also last paragraph of heading *Improper Communications with a Party, ante* p. 128.

Cross-References: Reference should also be made to sec. 18 and notes. See also heading *Workmen's Compensation* under *Statutory References*, in the notes to sec. 2 and see notes at the beginning of the Schedule.

([23]) 1941-2, T.A. 13.

RULES.

RULES IN FORCE.

Arbitration Rules, 1937, of 28.9.37, P.G. 728 of 14.10.37; sup. 2, p. 951. Court Fees Rules, 1935 of 14.9.35, P.G. 540 of 26.9.35; sup. 2. p. 899 (items 7-11 of the Schedule, as amended).

(The Arbitration Rules were approved on 8.10.37).

REPEALED RULES: Arbitration Rules, 1928-30, Drayton Vol. III, p. 2323, repealed by the above two enactments.

AUTHORITY: Note that the Rules are made not only under the authority of secs. 16 and 17 of the Ordinance, but also sec. 20 of the Courts Ordinance and sec. 13 of the 1935 Magistrates' Courts Jurisdiction Ordinance. See notes to sec. 16 of the Ordinance and to rules 3 and 4 of these rules.

ARBITRATION RULES.

RULES MADE BY THE CHIEF JUSTICE WITH THE APPROVAL OF THE OFFICER ADMINISTERING THE GOVERNMENT, UNDER SECTIONS 16 AND 17 OF THE ARBITRATION ORDINANCE, SECTION 20 OF THE COURTS ORDINANCE AND SECTION 13 OF THE MAGISTRATES' COURTS JURISDICTION ORDINANCE, 1935.

Citation.

1. These rules may be cited as the Arbitration Rules, 1937.

Local jurisdiction of Court.

2. Subject to the provisions of section 2 of the Arbitration Ordinance, any matter under that Ordinance may be brought:—

(*a*) in the Court in the district of which all the parties concerned reside or carry on business; or

(*b*) if the parties concerned reside or carry on business in different districts:—

(i) in the Court in the district of which the party or one of the parties against whom relief is sought resides or carries on business, or

(ii) in the Court in the district of which the arbitration took place, or

(iii) in the Court in which all the parties may agree to submit any matter under the Arbitration Ordinance.

This rule made under the authority of sec. 16, provides for the local jurisdiction of the Courts in matters under the Ordinance, whilst sec. 2 thereof (definition of "Court") provides for the jurisdiction *ratione materiae*.

The rules of Court relating to civil procedure, though applicable to proceedings under the Ordinance (see r. 7), should not be applied in connection with local jurisdiction, as r. 2 makes specific provision therefor ("Unless otherwise provided for" in r. 7).

Clause (*b*) (*ii*): There are two District Courts in the Lydda District; Jaffa and Tel Aviv.

In C.A. 175/40(1), where the District Court of Tel Aviv had made an order under sec. 5 of the Ordinance, and application was subsequently made to the Jaffa Court under sec. 8(2) of the Ordinance, the Jaffa Court declined to entertain the matter, which was then filed again in Tel Aviv. The Supreme Court refused to interfere with the order of the District Court Jaffa rejecting the application, it being a matter of convenience and common sense that when proceedings in connection with an arbitration have been before one of these Courts, subsequent proceedings should be brought in the same Court (*ibid.*).

Time to object: An objection to the local jurisdiction of the Court must be taken early in the proceedings, and be supported by evidence if the matter is doubtful. If this is not done the point will not be taken on appeal. (C.A. 98/42)(2). Compare objections to jurisdiction *ratione materiae*, which may be taken at any stage: See note *Lack of Jurisdiction* under *Court* in sec. 2 of the Ordinance. See also next note.

Land Court References: See note above as regards time to object. In an application for the authentication of an award under sec. 6 of the Land Courts Ordinance, if the lack of jurisdiction does not appear on the face of the award, the onus is on the party opposing the enforcement to show that the lands are outside the District within which the Court has jurisdiction (C.A. 98/42) (*supra*).

Enforcement of award.

3. On the filing of an application for the enforcement of an award, a notice shall issue forthwith to the respondent calling upon him, within seven days from the date of service, to file his opposition thereto if he so desires and intimating that if he shall not file his opposition to the enforcement of the award within seven days of the service thereof, the award may be made a rule of court *ex parte* in chambers without hearing either of the parties.

It was held, in C.D.C., Ja. 187/37(1) and C.D.C., T.A. 285/38(2) that this and the following rules were *ultra vires* the Arbitration Ordinance, as secs. 16 and 17 thereof do not empower the Chief Justice to make rules limiting the period within which an opposition may be filed. It was further held, in the former case, that the period of opposition provided for by the procedure in civil actions(3), namely fifteen days, should apply. These decisions were, however, given *per incuriam* as the rules were made not only under the Arbitration Ordinance but also under the authority of sec. 20 of the Courts Ordinance, which provides for rules relating to the practice and procedure in the District Courts (C.D.C., T.A. 52/41)(4) and sec. 13 of the Magistrates' Courts Jurisdiction

(1) 7, P.L.R. 454; 1940, S.C.J. 305. 8, Ct.L.R. 114. The former proceedings, C.D.C., Ja. 105/40 are reported in P.P. 16.7.40.

(2) 1942, S.C.J. 655; 12, Ct.L.R. 118.

Rule 3.

(1) *Not reported.*

(2) 1940, T.A. 175 (*in Hebrew*), as quoted in C.D.C., T.A. 52/41 (*infra*).

(3) *I. e.*, the Ottoman Code, now inapplicable. The present rules of procedure do not provide for opposition. See note 34 in sec. 14.

(4) 1941-2, T.A. 10.

Ordinance, 1935. This decision and C.D.C., T.A. 147/39(5) held that the rules are not *ultra vires*.

This rule should be read together with the notes to sec. 14 of the Ordinance. There is an apparent conflict between this rule and sec. 15(1) of the Ordinance (C.A. 65/42(6) and see notes to sec. 15(1) and to r. 7): The rule refers to an application, whilst sec. 15(1) mentions a petition. The difference in wording is not, however, material (C.D.C., T.A. 52/41) (*supra*).

As regards the grounds of opposition see *ante* p. 148, note *Opposition to enforcement of Award.*

See the next rules and notes.

Confirmation of award.

4. At the expiry of the said period the Court, upon proof that the respondent has been served with a notice and that he has not entered opposition within the prescribed time, may confirm the award.

Note the use of the expression "confirm the award", when sec. 14 of the Ordinance and the previous rule refer to an *enforcement* of the award. See notes to sec. 14, *ante* pp. 147-8.

This rule is made under the authority of sec. 20 of the Courts Ordinance and sec. 13 of the Magistrates' Courts Jurisdiction Ordinance (1935), not under secs. 16 and 17 of the Arbitration Ordinance. C.D.C., Ja. 187/37(1) and C.D.C. T.A. 285/38(2), which decided that the rule was *ultra vires* the Ordinance, did not take this fact into account (C.D.C., T.A. 52/41)(3) and it is now settled that the rule is *intra vires* (C.D.C., T.A 147/39)(4); C.D.C., T.A. 52/41 (*supra*) but in C.A. 235/43(5) the question whether r. 4 above was *ultra vires* for inconsistency with the provision of sec. 14 of the Ordinance, was left open.

Extension of Time: The period of seven days provided in the rule cannot be extended under C.P.R. 361 (Order of the Registrar in C.D.C., T.A. 192/40)(6).

Fees payable.

5. The fees payable on applications to the Court under the Arbitration Ordinance shall be the fees payable from time to time under the Court Fees Rules, 1935, or any rules in substitution therefor.

Fees payable: The following items, which apply under the Ordinance, are taken from the Schedule to the Court Fees Rules, 1935, as amended in 1939, 1940 and 1944(1).

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(5) P.P. 20.11.39 (*Ruling*).
(6) 9, P.L.R. 392; 1942, S.C.J. 429.

Rule 4.
(1) *Not reported.*
(2) Note 2 to previous rule.
(3) *Ibid.* note 4.
(4) *Ibid.* note 5.
(5) 1943, A.L.R. 814.
(6) 1940, T.A. 100.

Rule 5.
(1) For particulars of amendments, see title *CIVIL PROCEDURE.*

Note that the 1940 and 1944 amendments impose an addition of 20% on all fees set out hereunder.

Arbitration.

	Magistrates' Courts LP.	District & Land Courts. LP.
7. On application to remit an award :-		
a) where the subject matter of the award is expressed in money and does not exceed LP. 50.-	1.500	
b) where the subject matter of the award is expressed in money and exceeds LP. 50.- but does not exceed LP. 250.-	2.000	
c) where the subject matter of the award exceeds LP. 250.-		3.000
d) where the subject matter of the award is not expressed in money	2.000	3.000

In assessing the fees payable on an application to remit (item 7 above) or enforce (item 9) or set aside (item 8) an award, regard must be had, under these rules, to the amount of the award and not to the amount of the submission as the award must, (sec. 15(4) of the Ordinance) but the submission need not be produced in Court. This and the following items of the Court Fees Rules require amendment as they do not contemplate an award being remitted, set aside or enforced by the District Court although the amount of the award may be short of LP. 250.-: It will be remembered (sec. 2) that the jurisdiction of the Court depends upon the amount of the submission and not upon the amount of the award.

	Magistrates' Courts LP.	District & Land Courts. LP.
8. On application to set aside an award	*	*
* Same fees as under Item 7.		
9. On application to enforce an award	*	*
* The same fees as payable under Items 1, 2, 3, 4, 5, and 6, the subject matter of the award being regarded as equivalent to the claim or counterclaim referred to in these items.		

See note to item 7.

The following are the items referred to:-

	Magistrates' Courts LP.	District & Land Courts. LP.
1. On a claim or counter-claim:-		
a) where the value of the subject matter does not exceed LP. 10.-	0.250	0.250
b) exceeds LP. 10 but does not exceed LP. 25.-	0.500	0.500
c) exceeds LP. 25 but does not exceed LP. 50.-	1.000	1.000
d) exceeds LP. 50 but does not exceed LP. 75.-	2.000	2.000
e) exceeds LP. 75 but does not exceed LP. 100.- . . .	3.000	3.000
f) exceeds LP. 100 but does not exceed LP. 200.- . . .	5.000	5.000
g) exceeds LP. 200 but does not exceed LP. 500.-	10.000	10.000
h) exceeds LP. 500 but does not exceed LP. 1000.- . . .	20.000	20.000
i) exceeds LP. 1000 but does not exceed LP 2000.- . . .	35.000	35.000
j) exceeds LP. 2000 but does not exceed LP. 3000 - . . .	50.000	50.000
k) exceeds LP. 3000 but does not exceed LP. 5000 . . .	75.000	75.000
l) exceeds LP. 5000.- . . .	100.000	100.000
2. On entering a civil action or matter where the value of the subject matter of the action or matter does not admit of being expressed in money, subject to the provisions of rule 9	2.000	4.000
3. (1) On a claim for eviction for non-payment of rent:-		
a) where the rent in arrear does not exceed LP. 10.- . .	0.250	
b) exceeds LP. 10 but does not exceed LP. 25.- . . .	0.500	
c) exceeds LP. 25 but does not exceed LP. 50.- . . .	1.000	
d) exceeds LP. 50 but does not exceed LP. 75.-	2.000	
e) exceeds LP. 75 but does not exceed LP. 100.- . . .	3.000	
f) exceeds LP. 100 but does not exceed LP. 200.- . . .	5.000	

	Magistrates' Courts LP.	District & Land Courts. LP.
g) exceeds LP. 200 but does not exceed LP. 500 . . .	10.000	
h) exceeds LP. 500 but does not exceed LP. 1000.- . . .	20.000	
i) exceeds LP. 1000 but does not exceed LP. 2000 . . .	35.000	
j) exceeds LP. 2000 . . .	50.000	
(2) On a claim for eviction for any purpose other than non-payment of rent:-		
a) where the rent for the term of the lease or tenancy does not exceed LP. 25.-	0.500	
b) exceeds LP. 25 but does not exceed LP. 50.- . . .	1.000	
c) exceeds LP. 50 but does not exceed LP. 100.- . . .	2.000	
d) exceeds LP. 100.- . . .	4.000	

See note to next item.

4. On a claim for the recovery of possession of immovable property:-		
a) where the value of the property does not exceed LP. 100.- .	2.000	
b) exceeds LP. 100.- . . .	4.000	

As regards the power of arbitrators to hear eviction cases, see *ante* p. 77. See also p. 58 *ante* (*Eviction*) and *quaere* whether those fees may be exacted in any circumstances, as they apply only in the Magistrate's Court whilst the District Court is competent.

5. On a claim for partition:-		
a) where the value of the property does not exceed LP. 100.-	2.000	
b) exceeds LP. 100.- . . .	4.000	

Cf. note to item 4.

6. On a claim for Muhaya:-		
a) where the value of the property does not exceed LP. 100.-	2.000	
b) exceeds LP. 100.- . . .	4.000	

Cf. note to item 4.

	Magistrates' Courts LP.	District & Land Courts. LP.
10. On opposition to an application to enforce an award . . .	0.050	0.100
11. On application for which no other fee is prescribed . .	0.250	1.000
Note: Where in the course of any proceeding the matter in dispute is referred to arbitration, fees Nos. 7, 8, 9, 10 and 11 shall not be levied.	-	-

An addition of 20% of these fees is payable by the 1944 amendment.

Certain steps in arbitration proceedings might not fall under any of these items and reference should be made (in title *CIVIL PROCEDURE*) to the items applying in the case of other civil proceedings. Thus, when proceedings under secs. 13 or 14 of the Ordinance are taken by way of action (see *ante*, p. 144) the fees payable in such actions for appearance, defence, issues etc, will be the same as in other actions. So also where a special remedy is sought (see *Remedies Available, ante*, p. 158), item No. 11 above might not always apply.

See C.A. 174/35(2) mentioned in note *Grounds of Appeal*, to sec. 15(3) (*ante*, p. 166).

Repeal.

6. The Arbitration Rules are hereby repealed.

See FORMER RULES, *supra*.

Procedure.

7. Unless specifically otherwise provided for, the Rules of Court for the time being in force relating to civil procedure and applicable to the Court concerned, shall apply *mutatis mutandis* to all proceedings in the Courts provided for under the Arbitration Ordinance.

This rule is made under the authority of sec. 20 of the Courts Ordinance and sec. 13 of the Magistrates' Courts Jurisdiction Ordinance, 1935. See notes to sec. 16 of the Ordinance, *ante*, and cross references therein.

For the jurisdiction of the Courts *ratione materiae*, see definition of *Court* in sec. 2 of the Ordinance, and notes; for *ratione loci*, see r. 2.

The principal rules of court applicable at present are the Civil Procedure Rules, 1938, in the District Courts and the Magistrates' Courts Procedure Rules, 1940, in the Magistrates' Courts. For other rules and enactments also applicable, see title *CIVIL PROCEDURE*.

There is an apparent conflict between this rule and the provisions of sec. 15(1) as applications by way of petition are contemplated under that subsection, whilst under the Civil Procedure Rules applied by r. 7 above, applications should be made by notice of motion (C.A. 65/42(1) and see notes to sec. 15(1) of the Ordinance, and to r. 3, *supra*).

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(2) 7, R. 57; P.P. 9.6.36.
Rule 7.
(1) 9, P.L.R. 392; 1942, S.C.J. 429.

"Unless specifically otherwise provided for": These words prevent the period of seven days provided in r. 3 from being extended by virtue of C.P.R. 361 (Order of the Registrar in C.D.C., T.A. 192/40) (2). But see r. 2 and notes.

ARBITRATION CLAUSES (PROTOCOL) ACT, 1924.
(14 and 15 Geo. 5, c. 39.)

AN ACT TO GIVE EFFECT TO A PROTOCOL ON ARBITRATION CLAUSES SIGNED ON BEHALF OF HIS MAJESTY AT A MEETING OF THE ASSEMBLY OF THE LEAGUE OF NATIONS HELD ON THE TWENTY FOURTH DAY OF SEPTEMBER, NINETEEN HUNDRED AND TWENTY THREE.

(7th August, 1924.)

This Act does not apply to Palestine: see notes to sec. 20 of the Arbitration Ordinance, *ante*, p. 173.

WHEREAS at a meeting of the Assembly of the League of Nations held on the twenty fourth day of September, nineteen hundred and twenty three, the protocol on arbitration clauses set forth in the Schedule to this Act was signed on behalf of His Majesty:

AND WHEREAS for the purpose of giving effect to the said protocol it is expedient that the provisions hereinafter contained shall have effect:

BE it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Staying of court proceedings in respect of matters to be referred to arbitration under commercial agreements. 52 & 53 Vict., c. 49.

1(1) Notwithstanding anything in the Arbitration Act, 1889, if any party to a submission made in pursuance of an agreement to which the said protocol applies, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, unless satisfied that the agreement or arbitration

(2) 1940, T.A. 100.

has become inoperative or cannot proceed, shall make an order staying the proceedings.

This sub-section has been amended by Part II of the Arbitration (Foreign Awards) Act, 1930, *post.*

(2) This section in its application to Scotland and Northern Ireland shall have effect as if the reference to the Arbitration Act, 1889, were omitted therefrom, and in the application of this section to Scotland references to staying proceedings shall be construed as references to sisting proceedings.

Short title.

2. This Act may be cited as the Arbitration Clauses (Protocol) Act, 1924.

SCHEDULE.

PROTOCOL ON ARBITRATION CLAUSES.

The Protocol appears as the second Schedule to the Arbitration (Foreign Awards) Ordinance, post.

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:—

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties, subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being

carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the signatory States.

6. The present Protocol shall come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all signatory States. They will take effect one month after the notification by the Secretary-General to all signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

Parties to the Protocol: The following countries have ratified or adhered to the Protocol:

Albania, Austria, Bahamas, Belgium, Brazil, British Guiana, Ceylon, Czechoslovakia, Denmark, Estonia, Falkland Islands, Finland, France, Gambia, Germany, Gibraltar, Gold Coast, Great Britain and Ireland, Greece, Grenada, Iraq, and Palestine (on 12.3.26), Italy, Jamaica, Japan including Chosen, Taiwan, Karafuto, the leased territory of Kwantung and territories under Japanese mandate; Kenya, Latvia, Leward Islands, Luxemburg, Malta, Mauritius, Monaco, Netherlands, including Netherlands Indies, Surinam and Curacao; Newfoundland, New Zealand, including western Samoa; Northern Rhodesia, Norway, Poland, Portugal, Roumania, St. Helena, St. Lucia, St. Vincent, Siam, Southern Rhodesia, Sweden, Switzerland, Tanganyika, Zanzibar.

ARBITRATION (FOREIGN AWARDS) ORDINANCE.

No. 17 of 1934.

AN ORDINANCE TO GIVE EFFECT TO A CERTAIN CONVENTION ON THE EXECUTION OF ARBITRAL AWARDS AND TO AMEND THE ARBITRATION ORDINANCE, 1926.

WHEREAS a Convention, set out in the first schedule to this Ordinance, on the Execution of Arbitral Awards was on the 26th day of September, nineteen hundred and twenty-seven signed at Geneva on behalf of his Majesty:

AND WHEREAS it is expedient that such provisions should be enacted as will enable the said Convention to become operative in Palestine:

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

Short title.

1. This Ordinance may be cited as the Arbitration (Foreign Awards) Ordinance, 1934.

PROMULGATION: En. 9.6.34. Pro. P.G. 446 of 14.6.34 (Notice p. 539, Ord., sup. 1, p. 165). Draft of 30.1.34, P.G. 425 of 8.3.34, p. 168. Notice of confirmation: 26.10.34, P.G. 474 of 1.11.34, p. 1085.

SOURCE: The Ordinance is taken from the Arbitration (Foreign Awards) Act, 1930, which appears in Drayton, Vol. III, pp. 2451 *seq.* The convention referred to in the Preamble to the Ordinance had already been applied to Palestine, before the enactment of the Ordinance, by the Arbitration (Foreign Awards) (No. 2) Order of 1931 (*post*) and the 1930 Act was consequently printed in Drayton. The Ordinance now precludes the application of the Act which is nevertheless set out below for comparison and completeness.

The Act on which the Ordinance is based and the Convention to which it refers were intended to supplement the provisions of the Protocol on Arbitration Clauses (see notes to sec. 20 of the Arbitration Ordinance, *ante*) which provided for stay of proceedings on foreign submissions. The enforcement of awards given on such submissions was a necessary corollary to the legislation based on the Protocol.

Application.

2. The provisions of this Ordinance apply to any award made after the twenty eighth day of July nineteen hundred and twenty four-

The date is that on which Great Britain acceded to the Protocol, and is the same as in the Arbitration (Foreign Awards) Act, 1930, *post*. The draft gave the date 16.3.26, presumably for 12.3.26, the date on which the formal document was deposited at the Secretariat of the League of Nations on behalf of Palestine.

(a) in pursuance of an agreement for arbitration to which the protocol set out in the second schedule to this Ordinance applies; and

See notes to sec. 20 of the Arbitration Ord., *ante*.

(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as His Majesty, being satisfied that reciprocal provisions have been made, may by Order-in-Council declare to be parties to the said Convention, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid; and

(c) in one of such territories as His Majesty, being satisfied that reciprocal provisions have been made, may by Order-in-Council declare to be territories to which the said Convention applies,

and an award to which the provisions of this Ordinance apply is in this Ordinance referred to as a "foreign award".

See note *Court* to sec. 3.

Effect of foreign award.

3.—(1) A foreign award shall, subject to the provisions of this Ordinance, be enforceable either by action or under the provisions of the Arbitration Ordinance, 1926.

(2) Any foreign award which would be enforceable under this Ordinance shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings, and any references in this Ordinance to enforcing a foreign award shall be construed as including references to relying on an award.

Enforceable Awards: Awards which may be enforced under this Ordinance as "foreign awards" (sec. 2) must be:-

(1) made in pursuance of an agreement for arbitration to which the Protocol on Arbitration Clauses applies (sec. 2(a)), as to which see notes to sec. 20 of the Arbitration Ordinance, *ante*. The Protocol appears as the second Schedule to this Ordinance. The countries to which the Protocol applies are set out at the end of Arbitration Clauses (Protocol) Act, 1924, *ante;*

(2) between persons all of whom are subject to the jurisdiction of a Power declared by Order in Council to be party to the Convention on the Execution of Arbitral Awards (sec. 2(b)). (The Convention appears as the first Schedule to this Ordinance). The coun-

tries(1) to which the Convention applies are set out in the note following the title of the Arbitration (Foreign Awards) (No. 2) Order, 1931, *post*.

(3) in a territory(1) to which the Convention has been applied by Order in Council (sec. 2(c)).

The award must also have been made after the 28th July, 1924 (sec. 2).

Manner of Enforcement: The following methods of enforcement are available under this section:

(1) By action on the award. This method of enforcement is discussed at length in the notes to sec. 14 of the Arbitration Ordinance (*ante*).

(2) Under the provisions of the Arbitration Ordinance, 1926. *I. e.*, by application for enforcement of the award under sec. 14 of the Arbitration Ordinance (*q. v.*).

(3) Awards may also be enforced indirectly under sub-sec. (2) by way of defence, set off, etc.

In addition to the methods enumerated in this section, a foreign award may also be enforced under the provisions of the Judgments (Reciprocal Enforcement) Ordinance and the Judgments (Reciprocal Enforcement - Egypt) Ordinance as these Ordinances include final and enforceable awards in the definition of judgments. Reference should be made to these titles for particulars of this remedy.

Finally an award may (*semble*) be enforced, in the ordinary meaning of this word by suing for the amount due thereon otherwise than in reliance on this Ordinance. See next note.

Court: Sec. 4(2) refers to the District Court but the Ordinance does not provide that only that Court should have jurisdiction. The legislator may have contemplated that only the District Court should have jurisdiction as the definition of "Court" in sec. 2 of the Arbitration Ordinance does not apply to this Ordinance and the District Court, being the Court with residuary jurisdiction(2) has competence in the case of special remedies. That an action for the enforcement of an award *under the Ordinance* is a special statutory remedy appears from sec. 5(1)(2) which provides special requirements and allows methods of proof which differ from the ordinary rules in the case of other foreign documents(3) and from the fact that no evidence is required of the effect of such an award under the relevant foreign law. These latter two conditions appear to be the only advantages of enforcing a foreign award by action under sec. 3 instead of suing for the amount due thereon.

The latter remedy, not being a statutory remedy, would fall within the

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(1) The parties must be subject to a Power and the award must have been made in a territory to which the Convention has been applied. Thus, in the case of an award made in the Belgian Congo between a British subject and a Belgian, the territory is the Belgian Congo; the Powers his Majesty the King of Great Britain and His Majesty the King of the Belgians. (Leaving aside the effect of the war on the status of the latter).

(2) See titles *CIVIL PROCEDURE* and *PALESTINE ORDER IN COUNCIL*.

(3) See title *EVIDENCE*.

competence of the Magistrates' or the District Court, depending upon the amount involved.

It could be argued that in applying for the enforcement of a foreign award under the provisions of the Arbitration Ordinance, as applied by this Ordinance, the definition of "Court", in sec. 2 of the Arbitration Ordinance, is introduced by reference in the case of this remedy, so that an application for enforcement of a foreign award could be brought in the Magistrate's Court if the amount involved in the submission did not exceed the equivalent of LP. 250. *Sed quaere.*

For the jurisdiction of the Courts *ratione loci* reference should be made to the ordinary rules of Civil Procedure.

Conditions for Enforcement: See secs. 4 and 5.

Conditions for enforcement of foreign awards.

4.—(1) In order that a foreign award may be enforceable under this Ordinance, it must have—

(a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;

(b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;

(c) been made in conformity with the law governing the arbitration procedure;

(d) become final in the country in which it was made;

(e) been in respect of a matter which may lawfully be referred to arbitration under the law of Palestine,

and the enforcement thereof must not be contrary to the public policy or the law of Palestine.

(2) Subject to the provisions of this sub-section, a foreign award shall not be enforceable under this Ordinance if the District Court is satisfied that—

"District Court": See note *Court* to sec. 3 above.

(a) the award has been annulled in the country in which it was made; or

(b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity, and was not properly represented; or

(c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:

Provided that, if the award does not deal with all the questions referred, the court may, if it thinks fit either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in paragraphs (a), (b) and (c) of sub-section (1) of this section, or the existence of the conditions specified in paragraphs (b) and (c) of sub-section (2) of this section, entitling him to contest the validity of the award, the court may, if it thinks fit either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

"District Court": See note *Court* to sec. 3.

Evidence.

5.—(1) The party seeking to enforce a foreign award must produce

(a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made; and

See note *Court* to sec. 3.

(b) evidence proving that the award has become final; and

(c) such evidence as may be necessary to prove that the award is a foreign award, and that the conditions mentioned in paragraphs (a), (b) and (c) of sub-section (1) of the last foregoing section are satisfied.

(2) In any case where any document required to be produced under sub-section (1) of this section is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as

correct in such other manner as may be sufficient according to the law of Palestine.

See note *Court* to sec. 3

(3) Subject to the provisions of this Ordinance the Chief Justice with the concurrence of the High Commissioner may make rules of court for the purpose of carrying this Ordinance into effect, and of prescribing the fees payable on any application or order made to or by a court under this Ordinance.

No rules have been made under this section. The Court fees payable in ordinary civil cases (See title *CIVIL PROCEDURE*) apply. In the case of enforcement under the provisions of the Arbitration Ordinance (sec. 3), the fees payable thereunder apply. See notes to r. 5 of the Arbitration Rules, *ante*.

Meaning of "final award".

6. For the purpose of this Ordinance, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

Saving.

7. Nothing in this Ordinance shall—

(a) prejudice any rights which any person would have had of enforcing in Palestine any award, or of availing himself in Palestine of any award if this Ordinance had not been enacted; or

(b) apply to any award made on an arbitration agreement governed by the law of Palestine.

Amendment of section 20 of No. 9 of 1926.

8. Section 20 of the Arbitration Ordinance, 1926 (which provides for the staying of legal proceedings in a court in respect of matters to be referred to arbitration under agreements to which the Protocol applies), shall have effect as though after the words "unless satisfied that the agreement or arbitration has become inoperative or cannot proceed" there were inserted therein the words "or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred."

FIRST SCHEDULE.

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS.

This Schedule sets out the provisions of the Convention on the execution of foreign awards, which also appears as the Schedule to the Arbitration (Foreign Awards) Act. 1930, *post*.

Article 1.

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary:—

(a) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(c) That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition *appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:—

(a) That the award has been annulled in the country in which it was made;

(b) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3.

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (a) and (c), and Article 2 (b) and (c) entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4.

The party relying upon an award or claiming its enforcement must supply in particular:—

(1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) Documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made;

(3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (a) and (c), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award

belongs or by a sworn translator of the country where the award is sought to be relied upon .

Article 5.

The provisions of the above Article shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.

The present convention applies only to arbitral awards made after the coming-into-force of the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923.

Article 7.

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8.

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present Convention.

Article 10.

The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

Article 11.

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

The Order which is set out below at p. 212 appears at p. 2457 of Drayton (Vol. III). This was the only Order printed in Drayton, as it was made specifically applicable to Palestine.

The following Orders, extending the Convention to other countries, either as parties to the Convention or after reciprocal provisions had been made by such countries, had appeared in the *Gazette* prior to the enactment of the Arbitration (Foreign Awards) Ord.:

1930 (*No.* 1) Order (*O.G.* 284 of 1.6.31). — The United Kingdom of Great Britain and Northern Ireland, the Dominion of New Zealand including the Mandated Territory of Western Samoa, Belgium, Denmark, Estonia, Spain and Sweden.

1930 (*No.* 2) Order (*ibid.*). — Austria, Belgian Congo and the Mandated Territory of Ruandi Urundi, Germany, Luxemburg and Switzerland.

1931 (*No.* 1) Order (*O.G.* 305 of 16.4.32). — Newfoundland, Italy and Portugal.

1931 (*No.* 3) Order (*ibid.*). — Northern Rhodesia, Mauritius, Roumania and Siam.

1931 (*No.* 4) Order (*ibid.*). — Czechoslovakia, Ireland and the Netherlands.

The Act has also been applied to the following countries:

Greece (1932); Leward Islands, Antigua, Dominica, Montserrat, St. Christopher, Nevis and Virgin Islands, Netherlands Indies, Surinam and Cu-

racao (1933); Malta and its dependencies (1935); India excluding the territories of any Prince or Chief under the suzerainty of His Majesty, Danzig (1938).

SECOND SCHEDULE.

PROTOCOL ON ARBITRATION CLAUSES.

This Schedule sets out the provisions of the Protocol on Arbitration Clauses which also appears as Schedule to the Arbitration Clauses (Protocol) Act, 1924, *ante*.

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:—

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties, subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration,, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Ar-

ticle 1 applies and including an arbitration agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

The word "or" in line 7 was misprinted "on" in the *Gazette*.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the signatory States.

6. The present Protocol shall come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the under-mentioned territories, that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all signatory States. They will take effect one month after the notification by the Secretary-General to all the signatory States.

The Contracting States may also denounce the Protocol seperately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

ARBITRATION (FOREIGN AWARDS) ACT, 1930.

(20 Geo. 5, c. 15.)

AN ACT TO GIVE EFFECT TO A CERTAIN CONVENTION ON THE EXECUTION OF ARBITRAL AWARDS AND TO AMEND SUBSECTION (1) OF SECTION ONE OF THE ARBITRATION CLAUSES (PROTOCOL) ACT, 1924.

(6th February, 1930.).

This Act does not apply to Palestine: see not SOURCE to sec. 1 of the Arbitration (Foreign Awards) Ord., *ante*.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I. — ENFORCEMENT OF FOREIGN ARBITRAL AWARDS.

Whereas a Convention, set out in the Schedule to this Act, on the Execution of Arbitral Awards was on the twenty sixth day of September, nineteen hundred and twenty seven, signed at Geneva on behalf of His Majesty:

And whereas it is expedient that such provisions should be enacted by Parliament as will enable the said Convention to become operative in the United Kingdom:

Now, therefore, be it enacted as follows:—

Application of Part I.

1.(1) This Part of this Act applies to any award made after the twenty eighth day of July, nineteen hundred and twenty-four—

(*a*) in pursuance of an agreement for arbitration to which the protocol set out in the Schedule to the Arbitration Clauses (Protocol) Act, 1924, applies; and

(*b*) between persons of whom one is subject to the jurisdiction of some one of such Powers as His Majesty, being satisfied that reciprocal provisions have been made, may by Order in Council declare to be parties to the said Convention, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid; and

(*c*) in one of such territories as His Majesty, being satisfied that reciprocal provisions have been made, may by Order

in Council declare to be territories to which the said Convention applies;

and an award to which this Part of this Act applies is in this Act referred to as "a foreign award."

(2) His Majesty may by a subsequent Order in Council vary or revoke any Order previously made under this section.

Effect of foreign awards.

2.(1) A foreign award shall, subject to the provisions of this Part of this Act, be enforceable in England either by action or under the provisions of section twelve of the Arbitration Act, 1889.

(2) Any foreign award which would be enforceable under this Part of this Act shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in England, and any references in this Part of this Act to enforcing a foreign award shall be construed as including references to relying on an award.

Conditions for enforcement at foreign awards.

3.(1) In order that a foreign award may be enforceable under this Part of this Act it must have—

(*a*) been made in pursuance of an agreement for arbitration which was valid under the law by which is was governed;

(*b*) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;

(*c*) been made in conformity with the law governing the arbitration procedure;

(*d*) become final in the country in which it was made;

(*e*) been in respect of a matter which may lawfully be referred to arbitration under the law of England;

and the enforcement thereof must not be contrary to the public policy or the law of England.

(2) Subject to the provisions of this subsection, a foreign award shall not be enforceable under this Part of this Act if the court dealing with the case is satisfied that—

(*a*) the award has been annulled in the country in which it was made; or

(*b*) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented; or

(*c*) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:

Provided that, if the award does not deal with all the questions referred, the court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in paragraphs (*a*), (*b*) and (*c*) of sub-section (1) of this section, or the existence of the conditions specified in paragraphs (*b*) and (*c*) of sub-section (2) of this section, entitling him to contest the validity of the award, the court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

Evidence.

4.(1) The party seeking to enforce a foreign award must produce—

(*a*) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made; and

(*b*) evidence proving that the award has become final; and

(*c*) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of the last foregoing section are satisfied.

(2) In any case where any document required to be produced under subsection (1) of this section is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce

a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of England.

(3) Subject to the provisions of this section, rules of court may be made under section ninety nine of the Supreme Court of Judicature (Consolidation) Act, 1925, with respect to the evidence which must be furnished by a party seeking to enforce an award under this Part of this Act.

Meaning of "final awards".

5. For the purposes of this Part of this Act, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

Saving.

6. Nothing in this Part of this Act shall—

(*a*) prejudice any rights which any person would have had of enforcing in England any award or of availing himself in England of any award if this Part of this Act had not been enacted; or

(*b*) apply to any award made on an arbitration agreement governed by the law of England.

Application to Scotland and Northern Ireland.

7.(1) In the application of this Part of this Act to Scotland, the following modifications shall be made:—

(*a*) For the references to England there shall be substituted references to Scotland:

(*b*) The following shall be substituted for subsection (1) of section two:—

"(1) A foreign award shall, subject to the provisions of this Part of this Act, be enforceable by action, or if the agreement for arbitration contains consent to the registration of the award in the Books of Council and Session for execution and the award is so registered, it shall, subject as aforesaid, be enforceable by summary diligence":

(*c*) The following shall be substituted for subsection (3) of section four:—

"(3) The Court of Session shall, subject to the provisions of this section, have power to make rules by Act of Sederunt with respect to the evidence which must be furnished by a party seeking to enforce in Scotland an award under this Part of this Act."

(2) In the application of this Part of this Act to Northern Ireland, the following modifications shall be made:—

(*a*) For the references to England there shall be substituted references to Northern Ireland:

(*b*) The following shall be substituted for subsection (1) of section two:—

"(1) A foreign award shall, subject to the provisions of this Part of this Act, be enforceable either by action or in the same manner as the award of an arbitrator under the provisions of the Common Law Procedure Amendment Act (Ireland), 1856":

(*c*) For the reference to section ninety nine of the Supreme Court of Judicature (Consolidation) Act, 1925, there shall be substituted a reference to section sixty one of the Supreme Court of Judicature (Ireland) Act, 1877, as amended by any subsequent enactment.

PART II. — AMENDMENT OF ARBITRATION CLAUSES (PROTOCOL) ACT, 1924, AND SHORT TITLE.

Amendment of s. 1 of 14 & 15 (Geo. 5. c. 39).

8. Section one of the Arbitration Clauses (Protocol) Act, 1924 (which provides for the staying of legal proceedings in a court in respect of matters to be referred to arbitration under agreements to which the Protocol applies), shall have effect as though in subsection (1) thereof after the words "unless satisfied that the agreement or arbitration has become inoperative or cannot proceed" there were inserted the words "or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred."

Short title.

9. This Act may be cited as the Arbitration (Foreign Awards) Act, 1930.

SCHEDULE.

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS.

This Schedule appears as the first Schedule to the Arbitration (Foreign Awards) Ord., ante.

ARTICLE I.

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary:—

(*a*) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(*b*) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(*c*) That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(*d*) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition, appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(*e*) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

ARTICLE 2.

Even if the conditions laid down in Article I hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:-

(*a*) That the award has been annulled in the country in which it was made;

(*b*) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(*c*) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

ARTICLE 3.

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (*a*) and (*c*), and Article 2 (*b*) and (*c*), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

ARTICLE 4.

The party relying upon an award or claiming its enforcement must supply, in particular:—

(1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) Documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (*d*), in the country in which it was made;

(3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1, and paragraph 2(*a*) and (*c*), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

ARTICLE 5.

The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

ARTICLE 6.

The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923.

ARTICLE 7.

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all signatories.

ARTICLE 8.

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

ARTICLE 9.

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto,* the denunciation of the present Convention.

ARTICLE 10.

The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

ARTICLE 11.

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

THE ARBITRATION (FOREIGN AWARDS) NO. 2 ORDER, 1931.

At the Court at Buckingham Palace, the 23rd day of July, 1931.

PRESENT,

The King's Most Excellent Majesty.

Lord President. Mr. Secretary Wedgwood Benn.

Earl of Athlone. Sir Maurice de Bunsen.

Whereas a Convention on the Execution of Arbitral Awards was, on the twenty sixth day of September, nineteen hundred and twenty seven, signed at Geneva on behalf of His Majesty:

And whereas by subsection (1) of section one of the Arbitration (Foreign Awards) Act, 1930,* it is provided that Part I of that Act applies to any award made after the twenty eight day of July, nineteen hundred and twenty four—

(*a*) in pursuance of an agreement for arbitration to which the protocol set out in the Schedule to the Arbitration Clauses (Protocol) Act, 1924,** applies; and

(*b*) between persons of whom one is subject to the jurisdiction of some one of such Powers as His Majesty, being satisfied that reciprocal provisions have been made, may by Order in Council declare to be parties to the said Convention, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid; and

(*c*) in one of such territories as His Majesty, being satisfied that reciprocal provisions have been made, may by Order in Council declare to be territories to which the said Convention applies;

And whereas His Majesty is satisfied that reciprocal provisions have been made as aforesaid by the Foreign Power set out in the first column of Part II of the Schedule to this Order and as respects the territories belonging to such Power set out in the second column of that Part:

Now, therefore, His Majesty, by and with the advice of His Privy Council, in pursuance of the powers conferred upon Him

*20-1 G. 5, c. 15. **14-5 G. 5, c. 39.

by the said Act and of all other powers enabling Him in that behalf, is pleased to declare, and it is hereby declared as follows:—

1. The Powers set out in the first column of the Schedule to this Order are parties to the said Convention.

2. The territories set out in the second column of the said Schedule are territories to which the said Convention applies.

3. This Order may be cited as the Arbitration (Foreign Awards) No. 2 Order, 1931, and shall come into force on the 13th day of August, 1931.

Colin Smith.

SCHEDULE.

First Column.	Second Column.
Powers parties to the Convention.	Territories to which the Convention applies.
Part I.	
His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India.	Bahamas. British Guiana. British Honduras. Falkland Islands. Gibraltar. Gold Coast: (*a*) Colony. (*b*) Ashanti. (*c*) Northern Territories. (d) Togoland under British Mandate. Jamaica (including Turks and Caicos Islands and Cayman Islands). Kenya. Palestine (excluding Transjordan). Tanganyika Territory. Uganda Protectorate. Windward Islands: Grenada. St. Lucia. St. Vincent. Zanzibar.
Part II.	
The President of the French Republic.	France.

For other countries to which the Act was applied by Order in Council, see p. 201 (supra).

ARCHIVES RULES

See Civil Procedure.

ARREST OF OFFENDERS and SEARCHES

See Criminal Procedure.

BANDEROLLES

INTRODUCTORY NOTE.

Excise is payable in Palestine on five articles namely, intoxicating liquors, matches, playing cards, salt and tobacco. Customs duty is also payable on these articles.

The Banderolle Ordinance provides for the payment of both customs duty and excise on items to be from time to time specified, by means of banderolles.

The Ordinance has been applied to playing cards and to matches, but the rules provide for banderolles to be affixed on imported playing cards only and on matches whether imported into, or manufactured in, Palestine.

Excise on tobacco and on playing cards is also levied by means of banderolles under the provisions of the Playing Cards Excise Ordinance and the Tobacco Ordinance.

On excise see the following titles so far as relating to the above items:

INTOXICATING LIQUORS,
MATCHES EXCISE,
PLAYING CARDS EXCISE,
SALT,
TOBACCO.

ENACTMENTS:

Banderolle Ordinance, Cap. 7.
Banderolle Rules.

BANDEROLLE ORDINANCE

AN ORDINANCE TO PROVIDE FOR THE INTRODUCTION OF BANDEROLLES IN CONNECTION WITH PLAYING CARDS, MATCHES AND OTHER ARTICLES.

(Drayton, Cap. 7)

1. This Ordinance may be cited as the Banderolle Ordinance. Short title.

PROMULGATION:

En. 16.11.26, pro. O. G. 175 of 16.11.26 as No. 38 of 1926. A draft dated 16.5.26, was published in O. G. No. 163 of 16.5.26. Notice of confirmation in O. G. No. 180 of 1.2.27, page 59.

AMENDMENTS:

Minor verbal amendments were introduced by the Statute Law Revision Ord. (No. 30 of 1934) and by the Revised Edition of the Laws Ordinance (No. 2) (No. 31 of 1934).

2. — (1) Articles included in the Schedule to this Ordinance shall be imported into Palestine in prescribed containers, or, if manufactured in Palestine, shall be enclosed in such containers. Power to apply banderolle system to articles mentioned in Schedule.

(2) Such articles shall not be removed from the customs house or from the factory unless the containers have in each case been surrounded by a banderolle which shall be issued on payment of the customs duty or on issue from the factory, and shall signify that the customs duty and the excise duty, if any, payable upon the articles has been paid.

(3) The High Commissioner in Council may, by order, make additions to or amendments of the Schedule.

(4) Where an order is made under the preceding sub-section, any person in possession of such articles for the purpose of sale shall, within the time prescribed by the order, obtain the necessary banderolles and affix them to such articles in the manner prescribed.

The Ordinance now applies only to matches and to playing cards but the Playing Cards Excise Ordinance and the Tobacco Ordinance make provision for payment of excise on articles of local manufacture by means of banderolles.

See those titles and see *MATCHES EXCISE ORDINANCE.*

It will be noted from the rules that banderolles for playing cards are provided only for imported cards. The Playing Cards Excise Ordinance makes provision for payment of excise on cards of local manufacture by means of banderolles.

Refund of excise duty in certain cases.

3. Where containers of articles surrounded by banderolles are returned to the factory, the refund of the excise duty represented by the banderolles, subject to a deduction of ten percent., may be authorised by the Director of the Department of Customs, Excise and Trade.

Articles not banderolled to be contraband.

4. — (1) Any article to which this Ordinance is applied shall be contraband if it is found not packed in containers surrounded by banderolles in the manner prescribed.

(2) Contraband articles, together with any articles packed with or used in concealing them, and any means of conveyance used in their transport shall be confiscated.

On the meaning of "shall be confiscated" in other laws, see e. g. CR.A. 138/43. 10, P.L.R. 592; 1943, A.L.R. 765.

(3) Any person who is found in possession of contraband articles shall be liable to a penalty of treble the value of the goods, including the duty of customs or excise, if any, payable thereon according as the article was imported into or manufactured in Palestine.

Offences.

5. Any person who—

(a) has in his possession, makes, uses or sells any labels purporting to be the banderolles prescribed, or being imitations of such banderolles, or has in his possession, uses or sells any banderolles which have already been used;

(b) has in his possession, sells or exposes for sale articles to which this Ordinance applies, otherwise than in containers or surrounded by banderolles of the character prescribed,

is guilty of an offence and is liable to imprisonment for three months or a fine of two hundred pounds:

Provided that no prosecution shall be instituted under paragraph (b) of this section against any person who has in his possession articles imported prior to the date of this Ordinance or of any order amending the Schedule to this Ordinance until one month after the date of the Ordinance or order.

Rules.

6. The High Commissioner may make rules as to—

(a) the colour, pattern and denomination of banderolles to

be used in respect of any article to which this Ordinance applies;

(b) the manner in which such banderolles are to be affixed and cancelled;

(c) the size, form and description of packets and containers of articles to which this Ordinance applies;

(d) the circumstances in which a retail dealer may open and dispose of the contents of a container duly banderolled.

See the Rules, *post*.

THE SCHEDULE.

(*Section 2*).

Matches.
Playing cards.

BANDEROLLE RULES

Banderolle Rules, 1926, 1930, consolidated in Drayton, Vol. III, p. 1654.

1. These rules may be cited as the Banderolle Rules. — Short title.

2. Banderolles shall be of the following descriptions— — Types of Banderolles.

(a) banderolles for imported playing cards — printed in white on red paper;

See notes to sec. 2 of the Ordinance.

(b) banderolles for imported matches — printed in white on green paper;

(c) banderolles for matches manufactured in Palestine — printed in white on yellow paper.

3. Matches imported into Palestine and matches manufactured in Palestine shall be enclosed in packets containing not more than twelve boxes or in packets containing either fifty or one hundred booklets. — Containers for matches. *Rules dated* — 8.2.30.

4. A retail dealer may open one container of matches at a time and may sell single boxes or booklets taken from such container. — Retail sale of matches. *Rules dated* — 8.2.30.

BANKING BUSINESS

INTRODUCTORY NOTE.

Banking and the law of banking have undergone a number of modifications in Palestine since the advent of the present Administration.

Under the Turkish regime the Ottoman Bank acted as the bank of the Imperial Turkish Government. In 1918 *the Anglo-Egyptian Bank opened branches in Jerusalem, Jaffa and Haifa, and was appointed banker to the Occupied Enemy Territory Administration and later to the Civil Administration. In* 1925 *the Anglo-Egyptian Bank was linked with the Barclays Bank, the Colonial Bank and the National Bank of South Africa, as "Barclays Bank (Dominion, Colonial & Overseas) Ltd.", and continues until now, under this new title, to act as bankers to the Government of Palestine.*

The first banking ordinance was enacted in 1921, *defining "bank" and "banking business", and entrusting the Registrar of Companies with the supervision of banks.*

In addition to the Ottoman Bank and the Barclays Bank (D. C. & O.) a small number of other foreign banks operate in Palestine. The Anglo-Palestine Bank Ltd., also a bank registered abroad, bears a semi official character as regards the Jewish element of the population. An Arab Bank has also been registered a number of years ago.

The boom years preceding 1935 *saw the growth of a considerable number of private banks and the financial situation in* 1935 *and* 1936 *showed that most of these banks had been established with inadequate capital. Government deemed it necessary to intervene in order to place banking on a sounder capital basis.*

The 1935 *and* 1936 *legislation provided for a more comprehensive system of Government control and for a limitation of the number of new banks. Restrictions as regards capital were first introduced in* 1937, *a period of two years being allowed for compliance with the capital requirement of the law* (1). *Provision was also made in* 1937

(1) *For the effect of this legislation on the number of banks, see Statistical Abstract of Palestine,* 1943 (7th ed.) *p.* 62.

for the appointment of an Advisory Committee to advise Government on banking matters.

The Banking Ordinance, 1941, now in force, consolidated, with minor amendments, all the previous banking legislation.

The Emergency Legislation mentioned in the notes to sec. 1 of the Ordinance provides for compulsory bank holidays and the winding-up of banks in an untenable position (2). It does not materially alter the substantive law.

Credit cooperative societies also provide their members with banking facilities, but are dealt with in a separate title. A number of cooperative credit societies have been converted into companies and now fall under the provisions of the Ordinance.

See also the following titles:

COOPERATIVE SOCIETIES,
CREDIT BANKS,
CROP LOANS,
INTEREST,
LOANS (RECOVERY OF INTEREST),
MORTGAGE LAW,
POST OFFICE.

ENACTMENTS:

Banking Ordinance, No. 26 of 1941.
Banking (Amendment) Ordinance, No. 29 of 1944.

BANKING ORDINANCE.

No. 26 of 1941.

AN ORDINANCE TO CONSOLIDATE AND AMEND THE LAW REGULATING THE BUSINESS OF BANKING.

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

1. This Ordinance may be cited as the Banking Ordinance, 1941. Short title.

SOURCE:

Banking Ordinance, Cap. 8, sec .1.

PROMULGATION:

En. 9.10.41; Pro. P.G. 1134 of 9.10.41, sup. 1, p. 85. Draft in P.G. 1118 of 31.7.41, p. 750. Notice of Confirmation: P.G. 1237 of 10.12.42, p. 1351.

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(2) *See C.A.* 86/40 (7, *P.L.R.* 280; 1940, *S.C.J.* 164; 7, *Ct.L.R.* 193).

AMENDMENTS:

Banking (Amendment) Ordinance, 1944, P.G. 1359 of 14.9.44, sup. 1, p. 89.
Notice of Confirmation: P.G. 1385 of 18.1.45, p. 51 .

PREVIOUS LEGISLATION:

1. Public Notice No. 33 by Military Governor (4.4.1918), repealed by:
2. The Banking Ordinance, Cap. 8 (incorporating previous legislation);
3. Banking (Amend.) Ord. (No. 34 of 1935), P.G. 531 of 17.8.1935, sup. 1, p. 151;
4. Banking (Amend. and Further Provisions) Ord. (No. 9 of 1936), P.G. 576 of 12.3.1936, sup. 1, p. 112;
5. Banking (Amend. and Further Provisions) Ord. (No. 27 of 1937), P.G. 724 of 1.10.1937, sup. 1, p. 271.

Nos. 2-5 repealed by sec. 16 of the 1941 Ord.

PREVIOUS OTTOMAN LEGISLATION:

Ottoman Commercial Code, Appendix, Cap. III, art. 28(5).

EMERGENCY LEGISLATION:

1. Banking Emergency Ord. (No. 33 of 1939), P.G. 913 of 26.8.1939, sup. 1, p. 81;
2. Banking Emergency (Amend.) Ord. (No. 38 of 1939), P. G. 938 of 22.9.39, sup. 1, p. 106;
3. Banking Emergency (Amend.) Ord. (No. 2), (No. 50 of 1939), P.G. 964 of 23.11.1939, sup. 1, p. 161.

Interpretation.

2. In this Ordinance, unless the context otherwise requires:-

"bank" means any company carrying on banking business or using the word 'bank' or any of its derivatives as part of the title under which it carries on business but shall not include a registered cooperative society;

"banking business" means the business of receiving from the public on current account money which is to be repayable on demand by cheque, and of making advances to customers;

"bank note" means any bill, draft or note issued by any bank for the payment of money to the bearer on demand or entitling or being intended to entitle the holder without indorsement or without any further indorsement than may exist thereon at the time of issue to the payment of any sum of money on demand, whether the same be so expressed or not;

"company" means a company registered under the Companies Ordinance.

Source: Banking Ordinance (Cap. 8), sec. 2, as amended in 1937. The definition in the former section differed from the present definition, as it was not confined to companies, but included "any person or body of persons". Sec. 3(1) of Cap. 8, however, provided that no banking business could be transacted in Palestine except by a company registered under the Companies Ordinance, or subject to certain conditions, by a cooperative society. This section was re-enacted in 1935 with retroactive effect and is reproduced with modifications as sec. 3(1) of this Ordinance. See annotations thereto.

See sec. 56(3) and (4) of the Cooperative Societies Ordinance for provisions relating to the use of the word "bank" or "banking" as part of the name of a cooperative society.

Cooperative Societies: See notes to sec. 3(1).

Banking Business: This definition is extremely narrow as compared with definitions applying under various English enactments, such as the Enemy Banking Business Rules (S.R.D. 1918, No. 1649. r. 1) under the 1918 Trading with the Enemy (Amendment) Act.

Collections, trusts, securities business and the various incidental services which are customarily rendered by banks, are not included in the definition. These services, although forming part of the activities of banks, are not a material test for the purpose of the definition.

The mere making of a loan does not fall under the definition of banking business (C.A.D.C., T.A. 152/37)(1).

Brokerage does not form part of banking business as defined: See *Incidental Services, infra.*

In C.D.C., Ha. 147/38 (confirmed on appeal in C. A. 240/38) (2) a company sought to alter the objects of its memorandum of association in order not to come under the terms of the Banking Ordinance. The alteration sought was to alter the object of doing banking business into that of running a loan fund the name of the company having previously been altered accordingly. The Court refused to sanction the alteration on the ground that it amounted to an abandonment of the main objects of the company and that it might serve as a cloak to evade the provisions of the Banking Ordinance. See title *COMPANIES.*

Bank Note: It was held in C.A. 101/37(3) that a draft of a well known

(1) 1937, T.A. 18.

(2) 6, P.L.R. 1; 1939, S.C.J. 18; 5, Ct.L.R. 41; P.P. 17.1.39. The report of the appeal sets out the judgment of the lower Court.

(3) 1937, S.C.J. (N.S.) 394; P.P. 23.7.37.

bank was equivalent to cash for the purpose of tender of payment under a contract.

Cheques: A cheque is defined in Section 73 of the Bills of Exchange Ordinance as a bill of exchange drawn on a banker, payable on demand. Under section 75 of the Bills of Exchange Ordinance, the duty and authority of a banker to pay a cheque drawn on him by his customer are determined by

(a) countermand of payment,

(b) notice of customer's death,

(c) notice of the customer having become bankrupt.

The Bills of Exchange Ordinance, and the Stamp Duty Ordinance where "a banker" is mentioned in clauses (1) and (2) of item 6 of the Schedule (applying to cases of exemptions from stamp duty on drafts, orders and instructions for payment between bankers in Palestine) and in clauses (10) and (11) of item 34, and the Banking Ordinance itself, do not define the word "banker". Sec. 2(1) of the Bills of Exchange Ordinance provides that "banker" includes a body of persons, whether incorporated or not, who carry on the business of banking. It would therefore appear to follow that a cooperative society can also act as a "banker" (*cf. infra*: *Making Advances to Customers — Cooperative Societies* and notes to sec. 3(1)). Until the enactment of the Banking (Amendment and further Provisions) Ordinance 1937, credit cooperative societies could lawfully transact banking business which includes the issue of cheques. In C.D.C., Ja. 313/34(4) an action based on an unstamped cheque drawn on a cooperative society was dismissed on the ground that the cheque was unstamped and not covered by the exemption set out in item 6(8) of the Schedule to the Stamp Duty Ordinance. This item is now amended. See *STAMP DUTY*.

Cheques continue, however, in practice to be drawn on cooperative societies and are accepted as such by other banks both for collection and for discount.

As a result of this practice credit cooperative societies may be said to be carrying on banking business in Palestine contrary to the prohibition of sec. 3(1). Their cheques cannot fall under this Ordinance, having regard to the above prohibition, but are nevertheless cheques for the purpose of the Bills of Exchange Ordinance and the Stamp Duty Ordinance.

In C.B.M., Jm. 36/33(5) which was an action by the drawee of a cheque against a bank which had paid the cheque to an unauthorised person, on a forged endorsement, it was held that the action should have been brought by the drawer and that the drawee had no cause of action.

A bank should exercise due diligence in the conduct of its affairs and

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(4) 7, R. 71.

(5) P.P. 26.1.34.

not take undue risks (C.A. 97/36)([6]) but if it makes advances to a customer, there is a presumption that the customer is solvent, for the purpose of ascertaining his means in the Execution Office (H.C. 70/36)([7]).

Current Account: The receipt of money on current account or on time deposit constitutes the banker a debtor of the depositor (according to English authorities). But whilst in the case of a current account the customer may draw by cheque, it is doubtful whether this may be done in the case of a deposit account, the latter being usually operated under conditions which differ from those applying in the case of current accounts. It will also depend on the conditions of the account whether execution by garnishee order may be made against such accounts.

Account: A bank is entitled to debit a client's account for moneys advanced to him or spent on his instructions. Other amounts, such as advocates costs incurred in enforcing a security against the client, although they may be due from the client by agreement or by process of law, may not be debited from the account without the client's consent (C.A.D.C., Ja. 21/44)([8]).

In C.A. 163/32([9]) the Supreme Court held that "when a customer has opened an account with a bank in a currency other than the legal currency of the country in which the bank is carrying on business, the inference is that the parties intend the account to be kept throughout in the currency in which it is opened, and the bank is not entitled to keep the account in any other currency."

A similar question was raised in L.A. 323/20([10]) in respect of a deposit account.

In C.A. 89/32([11]), decided before the enactment of the Civil Procedure Rules which make special provision for accounts, it was held that where a party to proceedings against a bank asked for the bank to furnish an account or to take the oath, the Court of trial should have ordered the bank to comply with the former and not with the alternative request.

C.A. 89/26([12]) deals with the evidence required to establish authority or consent for the transfer of moneys from one account to another.

M.A. 13/33([13]) may be referred to in order to determine who is entitled to the proceeds of a specified account kept in a Cooperative Credit Society.

([6]) 1937, 1 S.C.J. 193.
([7]) *Not reported.*
([8]) 1944, S.C.D.C. 230.
([9]) 2, P.L.R. 83; 3, R. 1049; P.P. 17.5.34.
([10]) 1, R. 223.
([11]) 1, R. 20; P.P. 28.9.33.
([12]) 1, R. 225.
([13]) 2, R. 577; P.P. 19.1.34.

In C.A. 92/29(14) it was held that when money is paid into a bank to the credit of a person's account the latter has no right to claim payment from the bank even though the bank may have sent him an account.

In C.A. 233/38(15) the Court made mention of the relations between the parties as being that of banker and customer, without dealing with the relationship at length.

Making advances to Customers: These advances may or may not be secured. In C.A. 80/29(16) mention is made of a pledge of merchandise made in favour of a bank to secure repayment of an overdraft on current account.

The following special legislation makes provision for the rights and duties of bankers in connection with advances:

a) *The Credit Banks Ordinance*: Companies described as credit, mortgage or agricultural banks and having as their principal object the lending of money on the security of immovable property; or companies authorised by the High Commissioner to carry on the business of a credit bank are regulated by that Ordinance which is set out in a separate title (*CREDIT BANKS*).

b) *The Mortgage Law (Amendment) Ordinance*: This ordinance gives certain advantages to banks acting as mortgagees. Some of the restrictions applying in the case of credit banks extend to such mortgagee banks. See title *MORTGAGE LAW*.

c) *Short Term Crop Loans (Security) Ordinance*: Banks and other approved companies under this Ordinance may grant loans on the security of crops or agricultural produce. Reference should also be made to the Citrus Crop Loans (Government Guarantee) Ordinances, 1941-4. See title *CROP LOANS*.

d) *Loans (Recovery of Interest) Ordinance*: This Ordinance exempts banks and other companies, which may from time to time be approved by the High Commissioner, from some of the restrictions of the Ottoman Law of Interest prohibiting *inter alia* the recovery of interest to an amount in excess of the capital.

See titles *INTEREST, LOANS*.

e) *Loans (Approved Companies) Ordinance*: Banks and other companies approved under the ordinance, whose business includes the grant of long term loans for agricultural development on the security of agricultural land, are specially provided for under this ordinance. See title *MORTGAGE LAW*.

f) *Palestine Post Office Savings Bank Ordinance*: This ordinance provides for the establishment, through post offices, of a branch of banking business run by the Government. See title *POST OFFICE*.

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(14) 1, R. 228.
(15) 5, P.L.R. 565; 1938, 2 S.C.J. 192; 5, Ct.L.R. 4.
(16) 1, P.L.R. 560; 1, R. 350.

Making Advances to Customers — Cooperative Societies:

Section 36 of the Cooperative Societies Ordinance, prohibits cooperative societies from granting loans to persons other than members. Loans to non-members may, however, be made if authorised by the Registrar of Cooperative Societies, out of funds provided for that specific purpose by any person or group of persons not being themselves the persons to whom such loans are to be made. With the general or special sanction of the Registrar of Cooperative Societies, a registered society may also make loans to another registered society.

The following privileges are also enjoyed by cooperative credit societies in connection with matters relating to banking:

A bill (except a cheque) drawn, or a promissory note made, by such a society or drawn by a member in favour or to the order of the society and certified on the face of it to have been so drawn or made is exempted from stamp duty (item 6(8) of the Schedule to the Stamp Duty Ordinance). The same applies to a bond or a receipt given by, or on account of, such a society or executed by a member in favour of the society (item 27(2), (4), and item 34(15) of the Schedule).

The income of a cooperative society, derived from dealings with members, is exempt from income tax, and if derived from dealings with non members may, in certain circumstances, also be so exempted (Income Tax Ordinance, sec. 8 (1) (c) and see the Income Tax Exemptions (Cooperative Societies) Order, 1942).

See also notes to sec. 3(1).

Incidental Services: In C.A. 105/24[17] it was held that a bank may not charge both interest and commission. But in C.A. 240/37[18] the majority of the Court decided that a bank was entitled to make an agreement with a customer providing for the payment by the customer for services in keeping the account. The customer had undertaken to pay 1% commission and the Court held that the bank was entitled to recover the amount of the commission in addition to 9% interest.

A bank may not charge brokerage fees for a transaction unless authorised by its memorandum of association to engage in the business of brokerage (C.A.D.C., Ha. 44/38[19]). Brokerage cannot be said to be included in the scope of banking business and is not covered by the general clauses in the second

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(17) *Not reported.* Not 105/26 as mentioned in the annotations to C.A. 240/37 at 1938, 1 S.C.J. 148.

(18) 5, P.L.R. 159; 1938, 1 S.C.J. 148; 3, Ct.L.R. 104; P.P. 13, 14.3.38. (Frumkin, J. *dissentiente*) Earlier proceedings: C.D.C., Ha. 105/37 were reported in P.P. 6.1.38.

(19) N.L.R. 52.

Schedule to the Companies Ordinance, the provisions whereof only apply to matters which are incidental to the objects of the company. (*Ibid.*).

As regards the liability of a bank for payments made to unauthorised persons on forged receipts, *vide* C.A. 233/38([20]).

See also, in the Bills of Exchange Ordinance, the following provisions applying to bankers: secs. 44(9), 80 and 82.

In C.A.D.C., T.A. 157/42([21]), where an application to a bank for a letter of credit was made by the customer on a printed form on which certain additions appeared in handwriting, it was held that the onus of proving the validity of the additions lay upon the bank.

A bank is liable to pay on a bill of lading only against tender of the complete set, unless the bank has waived this condition (C.A. 81/41, 85/41)([22]).

A variation in the markings on the consignment and in the bills of lading, if not material, does not entitle the consignee bank to refuse the consignment (C.A. 167, 168/44)([23]).

A bank cannot guarantee its own branch (P.C.L.A. 1/43)([24]).

In C.A.D.C., Ha. 142/38([25]), where damages were claimed from a bank for failure to dispatch money on time in accordance with instructions, the claim was dismissed for lack of notarial notice.

Making Advances to Customers — Interest: The legal rate of interest in Palestine is regulated by the Ottoman Law of Interest (9th *Rajab il Fard*, 1304, *22nd March* 1302). The Interest (Legal Rate) Ordinance (*q. v.*) provides that, notwithstanding the prohibition of the Ottoman Law against compound interest, a bank may charge a customer compound interest on any loan or overdraft at a rate (not exceeding the maximum of 9% provided by the Ottoman Law) and with such rests as may be agreed between the bank and the customer. See the case mentioned at the beginning of the preceding heading and C.A. 64/39([26]). Art. 5 of the Ottoman Law allowed banks to charge compound interest only to merchants([27]).

Evidence: Special provisions are made in the Evidence Ordinance (*q.v.*), sec. 14, as amended in 1940, regarding the admission in evidence of copies of

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([20]) Note 15, *supra*.
([21]) 1941-2, T.A. 149 (*in Hebrew*).
([22]) 8, P.L.R. 321; 1941, S.C.J. 413; 10, Ct.L.R. 117.
([23]) 1944, A.L.R. 719.
([24]) 10, P.L.R. 95; 1943, A.L.R. 16.
([25]) N.L.R. 129.
([26]) 1939, S.C.J. 465; 6, Ct.L.R. 154.
([27]) *Vide* C.A. 163/32 (note 3, *supra*). See also the Loans (Recovery of Interest) Ordinance which allows "approved companies" to recover interest in excess of the amount of capital, in specified cases.

entries from bankers' books (as defined in that Ordinance) as *prima facie* evidence of their contents. For further particulars of the conditions for the admission of these copies see title *EVIDENCE*.

Bank Note: Compare the definition of "bank note" in sec. 348 of the Criminal Code Ordinance. For offences in connection with bank notes and for impounding forged bank notes, see title *CRIMINAL LAW*.

Company: But note that a company under the Companies Ordinance means either a company registered under that Ordinance or an existing company registered prior to the enactment of that Ordinance. See Companies Ordinance, secs. 2(1) and 247. These companies are contemplated by sec. 3(1) *infra*. "Company" as the word occurs in the Ordinance[28] bears the meaning defined in the above sub-section, old companies as may be gathered from the context, not being contemplated .

Banking business to be transacted only by companies with prescribed minimum capital.

3. — (1) No banking business shall be transacted in Palestine except by a company registered under the provisions of: —

(a) the Registration of Companies and Partnerships Ordinance, 1919, published in the *Gazette* dated the first day of August, 1919, or

(b) the Companies Ordinance or any Ordinance substituted therefor.

(2) The incorporation of a company which has as its object or one of its objects the carrying on of banking business shall not be authorised unless its authorised capital is not less than fifty thousand pounds.

(3) The Registrar of Companies shall not certify that any company which has as its object or one of its objects the carrying on of banking business is entitled to commence to carry on business in accordance with the provisions of section 92 of the Companies Ordinance, unless —

(a) if its authorised capital is fifty thousand pounds the same has been subscribed and not less than twenty-five thousand pounds has been paid up thereon in cash, or

(b) if its authorised capital is more than fifty thousand pounds at least fifty thousand pounds has been subscribed

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[28] Excepting this section as the definition of "bank" includes companies existing before the enactment of the Companies Ordinance.

and not less than twenty-five thousand pounds has been paid up thereon in cash.

(4) No foreign company within the meaning of section 2 of the Companies Ordinance, which has as its object or one of its objects the carrying on of banking business shall be registered unless it is proved to the satisfaction of the High Commissioner that it has a paid-up capital of a sum which in his opinion is equivalent to an amount being not less than one hundred thousand pounds.

(4A) Notwithstanding the provisions of subsection (4) of this section a foreign company which has as its object or one of its objects the carrying on of banking business but does not intend to carry on banking business in Palestine may be registered upon the filing by the directors of such company with the Registrar of Companies of a declaration to the effect that the company if and when registered will not carry on banking business in Palestine.

(5) The High Commissioner may in his absolute discretion vary the requirements of subsections (2), (3) or (4) of this section in respect of any company when he considers it to be in the interests of the public so to do:

Provided that where the High Commissioner has reduced the requirements as to capital prescribed in subsections (2), (3) or (4) hereof, the company in favour of which such variation has been made shall not open a branch office except under special licence of the High Commissioner.

Source: For sub-sec. (1): Sec. 2 of the Banking (Amendment) Ordinance, 1935, with retroactive effect from the 1st September, 1921 (*sic.*), re-enacted as sec. 3(1) in sec. 2 of the Banking (Amendment and Further Provisions) Ordinance, 1937. For sub-sec. (2): sec. 3(2) as enacted in the 1937 Ordinance. For sub-sec. (3): sec. 3(3) as enacted in the 1937 Ordinance, with minor verbal divergences. For sub-secs. (4) and (5): secs. 3(4) and (5) as enacted in the 1937 Ordinance. Sub-sec. (4A) was enacted by sec. 2 of the 1944 Ordinance.

Sub-sec. (1): *Cooperative Societies*: The definition of "bank" in sec. 2 applies only to companies. The exclusion of cooperative societies from the definition which was first made in 1937, was not followed in the Cooperative Societies Ordinance and sec. 62(2) of that Ordinance now requires amending

as it continues to provide that Cooperative Societies undertaking the business of receiving deposits in current account from persons other than its members, are required to comply with the provisions of the Banking Ordinance. The present sub-section, however, prohibits cooperative societies from undertaking this type of business. See also *Making Advances to Customers — Cooperative Societies,* in sec. 2, following the definition of "banking business". C.D.C., T.A. 152/37(1), so far as it refers to the application of the Banking Ordinance to certain credit cooperative societies, is now obsolete.

Reference should be made to sec. 56 (3) and (4) of the Cooperative Societies Ordinance for provisions restricting the use of the word "bank" as part of the name of a cooperative society.

Four of the large credit cooperative societies have been converted into companies and are now doing banking business within the meaning of the Banking Ordinance.

Sub-secs. (2) (3) : See the *Introductory Note* at the beginning of this title.

Sub-sec. (4) : "Foreign Company" is defined by sec. 2 of the Companies Ordinance as any company incorporated outside Palestine and any association or partnership consisting of more than ten members registered or incorporated outside Palestine.

Sub-sec. (4A) : The *Objects and Reasons* annexed to the draft of the 1944 Ordinance, introducing this sub-section, stated that in certain circumstances the registration in Palestine of foreign companies should be made possible if these companies do not have the paid up capital required by sub-sec. (4), have provisions, in their memoranda of association, enabling them to carry on banking business, but do not, in fact, intend to carry on such business.

Restriction in use of title 'bank'.

4. — (1) No person or body of persons, whether incorporated or unincorporated, other than a company authorised to carry on banking business in accordance with the provisions of section 3 of this Ordinance shall, without the consent of the High Commissioner, use or continue to use the word "bank" or any of its derivatives in the name under which he is carrying on business.

(2) Any person or body of persons whether incorporated or unincorporated who acts in contravention of the provisions of this section shall be liable to a fine not exceeding ten pounds for every day during which the offence continues.

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(1) 1937, T.A. 18.

Source: Sec. 6(1) and (5) of the 1937 Ordinance. See sec. 8 for sanctions and for further restrictions. See also sec. 56(3) of the Cooperative Societies Ordinance.

Nomination and powers of Examiner of Banks.

5. — (1) The High Commissioner may nominate an Officer of the Government of Palestine to be Examiner of Banks, who shall exercise general supervision and control over the carrying on of banking business in Palestine and shall have power to call for any books, accounts or documents of any bank.

(2) Any officer or agent of a bank who refuses to produce any book, account or document lawfully called for under the provisions of this section shall be liable to a fine not exceeding fifty pounds in respect of each offence.

Source: For sub-sec. (1), sec. 3(1) of the 1936 Ordinance, which required the Examiner of Banks, when calling for books, accounts or documents of a bank, to have the authorisation of the Treasurer; For sub-sec. (2), sec. 3(2) of the same Ordinance.

Sub-sec. (1): The nomination of an officer of the Government as Examiner of Banks is not subject to any fixed rule or provision, and there is no office which entitles the holder to that position *ex officio*. The following persons have so far been nominated to the post: F. G. Horwill, G. D. Paton, A. L. Peters.

Constitution of Advisory Committee.

6. — (1) The High Commissioner may appoint an Advisory Committee consisting of such persons and appointed on such terms as he may think fit to advise him on matters relating to banking business and he may at any time determine any appointment so made.

(2) The High Commissioner may make rules providing for the procedure to be followed at any meeting held by the Committee to be constituted under this section.

Source: Sec. 7 of the 1937 Ordinance.

Advisory Committee: An Advisory Committee was appointed by the High Commissioner in 1937. It represents the various banking interests in Palestine and includes Government officers nominated to sit on the Committee. The appointments have not been gazetted.

Licences to commence banking business.

7. Notwithstanding anything in this or any other Ordinance contained, no company shall commence to carry on banking business without obtaining from the High Commissioner a licence to do so.

The High Commissioner may at his discretion and without assigning any reason therefor, refuse to grant such licence.

Source: Sec. 2 of the 1936 Ordinance, which prohibited the commencement of banking business without a licence after the 11th March, 1936.

Special powers of High Commissioner.

8. — (1) The High Commissioner may, after consulting with the Advisory Committee and the Examiner of Banks, and if he considers it to be in the public interest so to do, order any bank —

(a) to delete from the name under which it is carrying on business, within a period of twenty-eight days from the date of such order, the word 'bank' or any of its derivatives, or any other word or words forming part of its name;

(b) to refrain from receiving from the public money withdrawable by cheque or order:

Provided that before such order is made, the High Commissioner shall give such bank notice in writing of his intention so to do and shall afford it an opportunity of submitting to him a written statement of its case.

(2) Any bank failing to comply with an order made under this section shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

Source: Sub-sec. (1) is taken from sec. 5(1) of the 1937 Ordinance, with this variation that sec. 5(1) provided that a bank could be heard in opposition to an order of deletion whilst the present sub-section only provides for a written statement. Sub-sec. (2) is taken from sec. 5(2) of that Ordinance.

It will be noted that sec. 4(1) prohibits the use of the word "bank" by a company not authorised to carry on banking business, whilst sec. 8(1) (a) provides for the deletion of that word from the name of a company authorised to carry on such business. Once the order is made, the company must confine its business to transactions which are not covered by the definition of banking business (sec. 2).

Sec. 8 thus appears to provide a sanction which may be used to enforce compliance with instructions of the Examiner of Banks.

Returns to be submitted to the Financial Secretary.

9. — (1) Every bank shall furnish to the Financial Secretary:-

(a) not later than twenty-one days after the last day of each

month a statement in the form set out in the first schedule to this Ordinance showing the assets and liabilities of the bank at the close of business on the last day of the preceding month,

(b) not later than twenty-eight days after the last day of March and September a statement in the form set out in the second schedule to this Ordinance, giving an analysis of advances current and bills discounted as at the 31st March and the 30th September, respectively.

Provided that in the case of a bank which is a foreign company within the meaning of section 2 of the Companies Ordinance, the statements to which reference is made in paragraphs (a) and (b) hereof, shall comprise data only with respect to offices and/or branches of such foreign company which are situated in Palestine:

Provided that the High Commissioner may by order from time to time vary the form of the first and second schedules, and the dates as at which the information required in the second schedule shall be compiled and forwarded to the Financial Secretary.

(2). Any bank failing to comply with the requirements set out in paragraphs (a) and (b) of sub-section (1) hereof, shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Source: Sub-sec. (1) is taken from sec. 4(1) of the Banking (Amendment and Further Provisions) Ordinance, 1936, with the substitution of "Financial Secretary" for "Treasurer" and "bank" for "every company carrying on the business of banking". (See Public Officers (Change of Title) Ordinance and *cf.* notes to sec. 2, under "banking business"). Sub-sec. (2) is taken from sec. 4(2) of the same ordinance, with the substitution of the word "bank" for "company".

The (1921) Ordinance also made provision for a form of statement.

Furnishing the Statement: Sec. 4(1) (b) of the original Banking Ordinance (Cap. 8) required the statement to be submitted not later than the first day of March in every year to the Registrar of Companies. Sec. 16 of the Credit Banks Ordinance continues to refer to statements in that form and should be amended to correspond with the change in this section.

See also notes to the Schedules.

Foreign Companies: A foreign company is described in sec. 2(1) of the Companies Ordinance as any company incorporated outside Palestine and

any association or partnership consisting of more than ten members registered or incorporated outside Palestine.

Foreign branches of Palestinian Banks: When the Banking (Amendment and Further Provisions) Ordinance from which this section is taken, was enacted in 1936, no local bank had any branches outside Palestine and no provision was therefore enacted relating to the returns of activities of foreign branches. A number of local banks now have branches abroad and it is not clear whether the statements of these banks should include the figures representing the activities of the branches.

Exhibition and publication of balance sheet.

10. — (1) Every bank shall —

(a) exhibit throughout the year in a conspicuous position in every office and branch of the bank in Palestine a copy of its last audited balance sheet;

(b) on or about the date of the presentation of such balance sheet to the shareholders in general meeting, cause a copy thereof to be published in a daily newspaper circulating in Palestine.

(2) Any bank to which this section shall apply which fails to comply with the requirements thereof shall be liable on conviction to a fine not exceeding one hundred pounds.

Source: Sec. 4(1) (2) of the Banking Ordinance (Cap. 8), re-enacted in sec. 3 of the Banking (Amendment and Further Provisions) Ordinance, 1937. The word "bank" in sub-sec. (1) is in substitution for "every company carrying on banking business."

Audited Balance Sheet: Sec. 109 of the Companies Ordinance requires the auditors of every company to make a report on the accounts examined by them. Under sec. 110 of that ordinance, the balance sheet must be signed on behalf of the board by two directors (by at least one in the case of a private company) and the auditor's report must be attached to the balance sheet.

Foreign Companies: *I. e.*, companies incorporated outside Palestine and any association or partnership consisting of more than ten persons registered or incorporated outside Palestine (Companies Ord., sec. 2(1)) must file every year with the Registrar of Companies such a statement in the form of a balance sheet as would, if the company were formed under the Companies Ordinance, with a share capital, be required to be included in the annual summary (*ibid.*, sec. 250(1)(b)) which should be submitted yearly under sec. 36 of that ordinance. The summary must include a certified true copy of the last balance sheet audited by the company's auditors. If the last balance sheet does not comply with the requirements of the Companies Ordinance, additions and correc-

tions should be made in order to make it so comply (*ibid.*). *Quaere*, what is the position of such foreign banking companies operating in Palestine if their local law does not require their balance sheet to be audited.

Copy in a daily Newspaper: The newspaper should presumably be in the language in which the affairs of the company are transacted. Failure so to specify in the section makes it possible to defeat its provisions by making the publication, albeit in one of the official languages, in a newspaper appearing in a language other than that used by most customers of the bank.

Individuals not eligible to take part in management of banks.

11. — (1) Without prejudice to anything contained in section 73 of the Companies Ordinance, no person—

(a) who has been a director of, or directly or indirectly concerned in the management of, a bank which has been wound up by a Court, or

(b) who has been sentenced by a Court of Law to a term of imprisonment for an offence involving moral turpitude and has not received a full pardon for the offence for which he was sentenced,

shall, without the express authorisation of the High Commissioner, act or continue to act as a director of, or be directly or indirectly concerned in the management of, any bank.

(2) Any person acting in contravention of subsection (1) of this section shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds, or to both such penalties.

Source: Banking (Amendment and Further Provisions) Ordinance, 1937, sec. 8(1) (2).

There are no decided cases on this section but reference can be made, as regards "moral turpitude", to the similar provision in the Advocates Ordinance, sec. 20 (Vol. I, p. 182).

Annual fee payable by banks.

12. — (1) Every bank shall pay to the Government of Palestine an annual fee of one hundred pounds, which shall be payable upon the second day of each calendar year.

(2) Any bank which fails to pay the annual fee required under this section shall, in addition to any other prescribed penalty, be liable to a penalty not exceeding ten pounds for each day during which

such fee remains unpaid, and every director, manager, secretary or other officer of the bank who knowingly and wilfully authorises or permits such non-payment shall be liable to a like penalty.

(3) The Examiner of Banks shall publish annually in the *Gazette* the name of every bank which has paid the annual fee prescribed in this section.

Source: Sub-secs. (1) and (2): Sec. 9 of the Banking (Amendment and Further Provisions) Ordinance. Sub-sec. (3): Sec. 3 of the 1944 Ordinance.

At the time of going to press an action is pending in the Magistrate's Court, Tel-Aviv, where the Government is claiming the annual fee for 1944 from a company which decided, on the 31st December, 1943, by special resolution, to remove the word "bank" from its name and which claims not to have transacted any banking business for the past few years. The change of name was not approved before the second day of the 1944 calendar year.

The *Objects and Reasons* annexed to the draft stated the new sub-section to have been required for administrative convenience. See the notice in P.G. 1387 of the 25.1.45, p. 79, for a list of banks which paid the annual fee for 1945.

Buying-in by bank of land mortgaged to it.

13. — (1) Notwithstanding anything contained in the Mortgage Law (Amendment) Ordinance or in subsection (2) of section 10 of the Credit Banks Ordinance, any bank which makes the highest or only bid at any auction held for the sale of any immovable property mortgaged to such bank as security for a debt, shall be entitled to the rights specified in paragraphs (a), (b), and (c) of that subsection (subject always to the provisions of the proviso thereto), although the amount of such bid is less than the debt due to the bank including interest and costs.

(2) The making by a district court of an order vesting in any bank immovable property mortgaged to such bank as security for any debt shall not be deemed to discharge the mortgagor from all further liability in respect of such debt.

Source: Sub-sec. (1) had no counterpart in previous legislation. Sub-sec. (2) was taken from sec. 12 of the Banking (Amendment and Further Provisions) Ordinance, 1937.

Buying the Property: Sec. 3 of the Mortgage Law (Amendment) Ordinance, 1929, replacing Art. 2 of the Ottoman Provisional Law concerning the mortgage of immovable property (1st *Rabi'uth Thani* 1331, 25*th February*,

1328,) provides that immovable property may be mortgaged to a *waqf* or to a bank or company authorised to carry on business in Palestine and any such bank or company holding a mortgage may exercise the like right of buying the property mortgaged, and is subject to the like restrictions, as are applicable to a Credit Bank under Sec. 10 (2), (3) and (4) of the Credit Banks Ordinance, 1922. (See *CREDIT BANKS ORDINANCE*).

It has been held by the Supreme Court in L.A. 53/34(1) that until the enactment of that provision in 1929 no bank could lawfully acquire the ownership of immovable property mortgaged to it, and that the only procedure by which such ownership could be acquired was an order by the District Court vesting the ownership in the bank. Had the ownership been registered in the name of the bank as a result of any other procedure, e. g., on the strength of an order of the Execution Office, then the mortgagor would be entitled to bring an action for the re-registration of the property in his own name upon payment by him of the mortgage debt.

A credit bank under Section 10 (2) of the Credit Banks Ordinance, has certain privileges and is subject to certain restrictions in this connection. Thus, if land within a municipal area or within a town planning area has been mortgaged to a credit bank and is being sold by order of an Execution Officer and the highest bid offered at the auction is less than the debt due to the bank, then the bank may make a higher bid, not less than the debt, together with interest and costs and is thereafter entitled to have the property registered provisionally in its name as purchaser, to obtain an order for possession, and thereupon to lease the property for a period not exceeding one year (H.C. 18/40)(2). If the debtor, before the Court has ordered the transfer of the property to the highest bidder, pays the debt due to the bank, including interest and expenses, then the bank must retransfer the property into the debtor's name and vacate possession in favour of the mortgagor. The bank may also, after the lapse of six months from the date of the sale of the property, apply to the District Court for a vesting order and the Court must, if it is satisfied that the mortgagor is not able to retransfer the debt and interest, make such vesting order whereupon the bank is deemed to be the owner of the property as purchaser. As a result of Sec. 13(1) read together with the Mortgage Law (Amendment) Ordinance and Sec. 10(2) of the Credit Banks Ordinance, any bank under the Ordinance may, if it makes the highest bid or even the only bid in the auction of the immovable property mortgaged to it as a security for a debt, have the immovable property provisionally registered in its name, obtain possession thereof and then lease it for one year.

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(1) 2, P.L.R. 465; 9, R. 842; P.P. 24.2.35.
(2) 7, P.L.R. 175; 1940, S.C.J. 391; 7, Ct.L.R. 133.

Issue and circulation of bank notes.

14. — (1) The issue in Palestine of any bank notes by any bank carrying on business in Palestine is prohibited.

(2) No bank carrying on business in Palestine shall circulate or cause to be circulated in Palestine any bank notes issued by it in any country other than bank notes which have been made legal tender in Palestine.

Source: Sec. 5 of the Banking Ordinance, Cap. 8. The word "notes" in sub-sec. (2) of the original Ordinance is here substituted by "bank notes".

Cooperative Societies: *Quaere* as to the position of cooperative societies under this section, as the definition of bank (sec. 2, *supra*) does not include cooperative societies.

Legal tender: A currency note (*i. e.* a note issued by the Palestine Currency Board) is legal tender for the amount expressed therein (Currency Notes Ordinance, sec. 4, *q. v.*).

Penalties.

15. — (1) Any bank which —

(a) wilfully fails to comply with the provisions of this Ordinance, or

(b) issues bank notes in Palestine or circulates or causes to be circulated in Palestine any bank notes issued by it or any other bank notes the issue of which is not authorised by the Government of Palestine,

shall, upon the application of the Attorney-General made to the Registrar of Companies, be struck off the register of companies.

(2) Any person who, being a director or manager of a bank,

(a) fails to take all reasonable steps to secure compliance by the bank with the requirements of this Ordinance, or

(b) fails to take all reasonable steps to ensure the correctness of any statement submitted under the provisions of this Ordinance,

shall in respect of each offence be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding three hundred pounds or to both such penalties.

Source: Sec. 6(2) of the Banking Ordinance, Cap. 8, re-enacted as sec. 6 in sec. 11 of the 1937 Ordinance — for sub-sec. (1). Sec. 13 of the 1937 Ordinance for sub-sec. (2).

The word "bank" replaces the expression "company carrying on banking business in Palestine" of the former legislation, "bank notes" replaces "notes" and reference to the legislation applying in 1937 is substituted in this section by reference to the Ordinance.

Repeal.

16. The Banking Ordinance, the Banking (Amendment and Further Provisions) Ordinance, 1936, and the Banking (Amendment and Further Provisions) Ordinance, 1937, are hereby repealed.

For the notes relating to previous legislation reference should be made to the commentary following sec. 1 of the Ordinance.

SCHEDULES.

For the Schedules see p. 240.

First Schedule:

Source: This Schedule is taken from the second schedule to the 1936 Ordinance.

See sec. 9 (1) (a).

Reserve Fund: It is understood that in accordance with the instructions of the Examiner of Banks, this item should consist of amounts transferred to reserve and not allocated for any specific purpose, such as provision for bad and doubtful debts or depreciation of premises.

Bills payable: It is understood that in accordance with the instructions of the Examiner of Banks, the balance of this account should be comprised of items drawn on the bank by its correspondents and branches, and not yet presented for payment, but which have been debited by the bank to the account of the correspondents or branches. Accounts of bills for collection and bills (or any other collaterals) held as security for advances, should not be included in the statement at all.

Acceptances...: And item 7 on the assets side "Liabilities...". This means the total of bills not yet due and on which the bank is liable as drawee and acceptor.

"Other Correspondents": Any balances held with institutions or companies other than banks, such as cooperative societies, should appear under this head.

"Investments": The following, *inter alia*, should appear under this heading: Stocks, shares, bonds and debentures which belong solely to the bank, or, when the bank shares ownership with others the value of the bank's share in such holdings; land, buildings, machinery &c., taken in satisfaction, in whole or in part, of a debt due by a customer; land purchased by the bank (other

than as included in item "Bank premises"). Land or property held by the bank in the capacity of trustee or nominee is not to be included in the heading "Investments". Item No. 7, "Liabilities...". See item 8 in Liability side, *supra*.

Second Schedule:

Source: This Schedule is taken from the Third Schedule to the 1936 Ordinance. The reference to loans to Government in the first item of the Schedule to the former Ordinance, is not reproduced in the present Schedule; whilst items 21 and 25 are introduced in this Schedule for the first time.

See sec. 9 (1) (b).

FIRST

MONTHLY STATEMENT OF ASSETS AND

AS AT.....

LIABILITIES.

1. CAPITAL PAID UP ..... LP.

2. RESERVE FUND ..... LP.

3. DEBENTURES ..... LP.

4. BALANCES HELD FOR:
   (a) Other banks in Palestine ..... LP.
   (b) Other banks outside Palestine ..... LP.
   (c) Head-Office and/or branches of this bank *outside* Palestine..... LP. ——— LP.

5. (a) CURRENT AND DEPOSIT ACCOUNTS of customers repayable *on demand* ..... LP.
   (b) OTHER DEPOSITS:
   repayable, as from the date of this return,
   i. within 3 months ..... LP.
   ii. between 3 and 6 months ..... LP.
   iii. between 6 and 12 months ..... LP.
   iv. later than 12 months ..... LP. ——— LP.

6. BILLS PAYABLE ..... LP.

7. ADVANCES FROM:
   (a) Other banks in Palestine ..... LP.
   (b) Other banks outside Palestine ..... LP.
   (c) Other parties or institutions ..... LP.
   (Contingent liabilities on bills re-discounted LP. .....)
   Other contingent liabilities:—

8. ACCEPTANCES on account of customers ..... LP.

9. GUARANTEES, ENDORSEMENTS and OTHER OBLIGATIONS on account of customers ..... LP.

10. OTHER ACCOUNTS ..... LP. .....

LP. .....

We declare that the foregoing is made up from the books of the bank,

Date .....

The title *Banking* was prepared by Dr. E. Klimowsky, Advocate and revised by the Editors.

As on 22.2.45.

M. Shoham's Press, Tel-Aviv, Phone 2239.