general consent of such draft rules is unlikely. This is best illustrated by the Draft Convention concerning the admission and treatment of aliens, wherein it is proposed that a state be forbidden "without reasonable cause" to refuse the admission of aliens to its territory, but more particularly (Article X) "in all that relates to the admission of aliens, their treatment, expulsion, and any other matter provided in these rules, no state shall have the right to establish any discrimination either directly or indirectly on the sole ground that an alien is of a certain nationality or belongs to a certain race." The same situation confronts Article VI of the draft rules on nationality: "A state shall not make any discrimination between individuals on the ground of race, nationality or religion in the matter of naturalization or other mode of the acquisition of nationality."

Space does not permit a detailed examination of these projects, which deserve wide circulation and study. They are an additional indication of the thoughtful attention which the problem of codification is receiving in all parts of the world.

J. S. REEVES.

SOME RECENT CASES ON THE STATUS OF MANDATED AREAS

Recent decisions from Palestine serve to illustrate the legal distinction between territories under mandate and colonies.

The Urtas Springs case aroused considerable popular interest in Palestine in the fall of 1925 because the Palestine Supreme Court's decision[1] encouraged the Arabs to believe that the British courts were prepared to give them the full protection of the mandate against Zionist encroachments. This decision, though reversed with respect to the immediate subject matter, on appeal to the Judicial Committee of the Privy Council[2] was sustained with respect to the legal character of the mandate.

During the drought in May, 1925, the District Governor of Jerusalem diverted water from Urtas Springs, some distance out of Jerusalem, to Solomon's Pond, within the walls, in order to supply Jerusalem with necessary water, or, as the Arabs contended, to assist Zionist immigrants to build houses. This was done under authority of the Urtas Springs Ordinance, issued by the High Commissioner on May 25, in pursuance of the Palestine (Amendment) Order in Council of May, 1923. The ordinance authorized the taking of water from Urtas Springs, leaving enough for drinking and domestic purposes and for watering animals and irrigating permanent plantations. A procedure of arbitration was provided for determining the amount of water necessary for these purposes, but there was no provision for compensation in case this amount fell short, though compensation was

[1] Murra *v.* The District Governor of Jerusalem, June 25, 1925. Not reported, but opinion seen in manuscript.

[2] Jerusalem-Jaffa District Governor *v.* Murra, L. R. (1926), A. C. 321.

provided for losses to annual crops or for inability to plant them, because of the diversion authorized.

The inhabitants of Urtas sought to restrain the diversion on the ground that the ordinance was void because it violated Article 2 of the mandate, which made the mandatory responsible "for safeguarding the civil and religious rights of all the inhabitants of Palestine irrespective of race and religion." The Palestine Order in Council of 1922 and the amendment of 1923, to which the court and the administration immediately owed their authority, specifically required that "no ordinance should be promulgated which should be in any way repugnant to or inconsistent with the provisions of the mandate." Pursuant to this instruction and to "the general rule that the validity of laws made by a legislature which is not sovereign, but the creature of some instrument of government, may be questioned by the local courts on the ground that they are repugnant to some provision to be found in that instrument," the court brought the ordinance to the test of the mandate.

This reasoning, highly suggestive of Chief Justice Marshall's argument in Marbury *v.* Madison,[3] was reached with "great reluctance." "The mandate," said Corrie, J., "is an instrument of diplomacy in the language of diplomacy. It lays down for the guidance of the mandatory certain general principles of government expressed in part in Article 21 in the form of definite instructions; elsewhere, as in Article 3, in the form of broad and somewhat vague declarations of policy. That the courts should be required to determine whether any given legislative or executive act is or is not inconsistent with articles of this character is most unfortunate. Nevertheless, such I hold is the effect of the Order in Council." With this, Haycraft, C. J., agreed: "The mandate is a political and not a legal document and likely to contain expressions of good intention which are more easy to write than to read. We are, however, bound to read them and give them a practical value."

Comparing the ordinance with the provision of the mandate cited, the court found that it failed to "safeguard the civil rights of all the inhabitants because it is a recognized principle of sound legislation that when private property is taken for public purposes, the persons damaged by such taking should be adequately compensated," which was not done here in all cases.

On appeal, the Judicial Committee of the Privy Council agreed that by the terms of the Order in Council "it was the right and duty of the court to examine the terms of the mandate and to consider whether the ordinance was in any way repugnant to those terms," but on the issue of such repugnancy they differed. "Their Lordships agree that in such a case, and in the absence of exceptional circumstances, justice requires that fair provision shall be made for compensation, but this depends, not upon any civil right, but (as the Chief Justice said) upon principles of sound legislation; and it

[3] 1 Cranch, 137 (1803).

cannot be the duty of the Court to examine (at the instance of any litigant) the legislative and administrative acts of the Administration, and to consider in every case whether they are in accordance with the view held by the Court as to the requirements of natural justice."

This conclusion greatly narrows the conception of "civil rights" and leaves the interpretation of the mandate in most cases to the legislative and administrative authorities, thus rendering the principle of judicial cognizance of the mandate of little practical value. It is undoubtedly in accordance with the conception of judicial functions usual in British courts, though not in American courts. Although the latter do not often invalidate legislation on the ground that it is contrary to "natural justice," [4] they do not hesitate to bring it to the test of constitutional phrases like "due process of law" and "equal protection of the laws," which are as vague as the clause of the mandate here in question.

In another case decided by the Supreme Court of Palestine soon after the Urtas Springs case, the court adopted practically the view subsequently taken by the Judicial committee.[5] The word Palestine was printed on the postage stamps in three official languages, English, Arabic and Hebrew, but after the Hebrew text appeared the letters "E. I.," signifying "Eretz Israel" or the Land of Israel. This aroused intense feeling among the Arabs, who saw a veiled recognition of the most extreme Zionist aspirations, and an effort was made to enjoin the use of these initials on the ground of incompatibility with the mandate provision that any "statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew, and any statement or inscription in Hebrew shall be repeated in Arabic." The Supreme Court, however, refused to grant the injunction on the ground that the form of the word Palestine in each language was a matter of administrative discretion.

From these cases it appears that the Palestine Order in Council recognizes the mandate as a limitation enforceable by the courts upon the mandatory's legislative power, but that, in accord with British traditions, the courts will presume that the government in performing political and administrative acts has correctly interpreted the rather vague terms of that instrument. In other words, fulfillment of the mandate in most respects is entrusted to the political rather than the judicial arm of the mandatory. The present writer is inclined to believe that responsibility to the local judiciary as well as to the home political authorities and to the Council of the League of Na-

[4] American courts have sometimes intimated that natural law might be a ground for declaring statutes void: Terrett *v.* Taylor, 9 Cranch, 43; Downes *v.* Bidwell, 182 U. S. 244, 288; as indeed did English courts in some seventeenth century cases: Day *v.* Savadge, Hobart 85, 87; Dr. Bonham's Case, 8 Rep. 114 a, 4 Rep. 234; Thayer, Cases on Constitutional Law, Vol. I, p. 48, *et seq.*; Wright, The Enforcement of International Law through Municipal Law in the United States, p. 224.

[5] The writer has not seen the text of this opinion, but was informed of its substance while in Jerusalem.

tions would give better assurance of administration in the spirit of the mandates. That the mandates are intended to be documents susceptible of judicial interpretation is indicated by the provision found in all of them that "any dispute whatever arising between the mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice." This article in the Palestine mandate has already been applied in the Mavrommatis Palestine Concessions case,[6] and according to the principle of that case it would appear that, if any of the injured inhabitants of Urtas had been nationals of another member of the League, that state, failing to receive satisfaction by negotiation, could have required the Permanent Court of International Justice to interpret Article 2 of the mandate and decide whether the Urtas Springs Ordinance did or did not conform to it. It may be noted that the Judicial Committee appears to have had some doubt of the major grounds for its decision, because it thought it advisable to buttress it by an elaborate argument showing that the ordinance did in fact make all the provision for compensation that justice required.

Another case[7] before the Palestine Supreme Court applied the decision of the League of Nations Council that inhabitants of mandated territory are not to be regarded as nationals of the mandatory Power. Italy sought the extradition of certain ex-Ottoman subjects, resident in Palestine, under the Anglo-Italian treaty of 1873. The latter petitioned for a writ of *habeas corpus* on the ground, among others, that they were exempt from extradition under the treaty provision exempting "subjects of the United Kingdom," and that even if they could not come under this designation, the treaty, which by the terms of the mandate was extended to Palestine, must be construed to extend the exemption to "Palestinian nationals." The court refused the petition, with the assertion

> to hold that the petitioners are British subjects would involve holding that the crown, having accepted the responsibility of governing Palestine as a mandatory, has thereby acquired sovereignty, a view for which no authority has been cited. As regards the alternative plea; it may be doubted whether a "Palestinian citizen" has at present any existence.[8] But it is unnecessary to consider that question, as I hold that in applying the Anglo-Italian treaty to Palestine, Article 3 of the Treaty is to be taken to exempt from extradition only British subjects, which the petitioners are not.

Exception may be taken to the latter part of this opinion. The principle of trusteeship for "the well being and development" of the inhabitants of mandated territories announced in Article 22 of the Covenant indicates that

[6] Publications of the Permanent Court of International Justice, Series A, Nos. 2, 5.

[7] Re Ezra Goralshvih, 1925, not reported, but opinion seen in manuscript.

[8] An ordinance of Palestinian citizenship has since been promulgated.

the provisions of the mandates should be construed for the benefit of the inhabitants.[9] Thus it would appear that when Great Britain and Italy, as members of the League, approved Article 10 of the Palestine Mandate applying "extradition treaties in force between the mandatory and other foreign powers to Palestine," they intended to give the inhabitants of Palestine whatever benefits the treaty gave to British subjects. The contrary view taken by the court would seem to withhold from the inhabitants of mandated territories the benefits of trade, civil rights, or other treaties of the mandatory which might be extended to mandated territory. Thus the object aimed at by the Mandates Commission in urging extension of such treaties to mandated territory would be defeated.[10] The principle of trusteeship seems to require that, whenever a treaty is extended to mandated territory[11] the inhabitants of that territory be assimilated to nationals of the mandatory with respect to the benefits as well as the burdens of the treaty. The part of the court's decision denying the mandatory's sovereignty over the inhabitants and territory of all mandated areas reiterates the now established law on that subject.[12]

QUINCY WRIGHT.

[9] This was emphasized by the Chairman of the Mandates Commission, 3rd session, Minutes, pp. 203, 205, 207.

[10] Permanent Mandates Commission, 3rd session, Minutes, p. 310, 6th session, pp. 100, 116, 169, 172.

[11] The application of a treaty to mandated territory, or the making of a treaty in regard to such territory, is likely to place permanent burdens on the territory or its inhabitants, or to confer upon the other contracting party privileges in the mandated territory not enjoyed by members of the League of Nations generally. Such effects are in danger of violating the terms of the mandate assuring administration for the benefit of the inhabitants, and equal economic opportunity for members of the League. In view of the fact that subsequent discovery of such violations by the Mandates Commission or the League Council could not in the case of a treaty be remedied by action of the mandatory Power alone as it could in the case of legislation, it would seem desirable that the Council's consent be given before any treaty is made applicable to mandated territory, unless such application has been expressly provided for in the mandate itself. See references, *supra*, note 10, and Wright, Michigan Law Review, May, 1925, pp. 30–31.

[12] Wright, this JOURNAL, Vol. 17, p. 695, Vol. 18, p. 306.