In connection with the Secretary of State for the Colonies' statement in the House of Commons yesterday to the effect, that he is inquiring into the decision of the High Court of Palestine in the case of the Urtas villagers vs. Palestine Government, we are giving below the full text of the decision in question.

It follows:

This is an application made on behalf of landowners of the village of the Urtas for an Order against the District Governor of the District of Jerusalem and Jaffa and the President of the Water Supply Commission of Jerusalem to restrain them from interfering with the rights of the landowners to the use of the water of the spring of the village.

An Order to show cause was made on the 23rd May on evidence being given on oath that machinery had been set up for the purpose of carry-

ing the water of the spring to Solomon's Pools for the use of the Municipality of Jerusalem, and that notables of the village had been warned by a district official of the Government that the villagers were not allowed to interefere with the operations of the Water Supply Commission. It was also sworn that all the water of the spring was used as of right by the land owners for drinking purposes and for the watering of trees and gardens and that there was no surplus of water unappropriated.

The 29th of May was fixed for hearing Respondents and on that day Mr. Kermack, Government Advocate, appeared on behalf of the Attorney General and Mr. Mughannam on behalf of the Petitioners.

Mr. Kermack produced an Ordinance published and promulgated the same day, the 25th May, and called the "Urtas Springs Ordinance." That Ordinance provides in Section 2 that the High Commissioner may

by Order published in the Official Gazette authorise the Municipality of Jerusalem, or such other authority as undertakes the supply of water to Jerusalem, to take for a period not exceeding 12 months from the date of such Order the water arising from the spring in the village of Urtas. In the same Gazette appeared an Order by the High Commisioner authorising the Municipality of Jerusalem to take water from the Urtas Springs as provided by the Ordinance.

The right of taking water from the spring is limited in the Ordinance by a proviso that enough water shall be left for the daily needs of the inhabitants of the village and such other persons as have habitually used the water for drinking and lother domestic purposes and for their animals as well as for the irrigation of the lands belonging to the inhabitants which at th edate of the Order were irrigated and planted with trees or other permanent plantations. As regards the watering of vegetable gardens it is provided in Section 4 that the Board, which is a creation of the Municipality, shall compensate the owners of gardens having water rights who may suffer damage to vegetables or crops

or be prevented from planting their usual vegetables or crops by the withdrawal by the Board of water from the spring.

There is a Section No. 5, which is a special object of complaint. That Section requires all disputes between the Board and the inhabitants regarding the amount of water to be left available for the village under Section 2, or damages to vegetables or other crops claimed under Section 4, or compensation provided by Section 3 for interference with land, to be adjudicated by an arbitrator to be appointed by the High Commissioner whose award is to be final. That Section goes on to say in Sub-Section (2) that when there is a dispute as to the amount of water made available for any purpose provided for in Section 2 the arbitrator shall not award compensation but shall make an award determining the specific quantity of water which the Board is to make available for the use of

the inhabitants.

The first objection raised to this Ordinance was that the Order-in-Council of 1923, which gives to the High Commissioner power to publish and promulgate Ordinances, limits this power to certain purposes, peace order and good Government, and it was said that this Ordinance has not any of the three purposes in view, but is made for the purpose of taking away private rights for the benefit of a Municipality which sells water at a profit. We found no weight in this objection. It is known that a serious scarcity of water is expected during the present year and the evident intention of the Ordinance is to enable the Municipality to obtain water from the surplus supply of the village of Urtas, after its main wants have been provided, in order to relieve the vital necessity of the people of Jerusalem. To supply necessities of life is not a matter foreign to a good Government. It would moreover be difficult for a Court of Justice to find any Ordinance beyond the powers

of a legislative authority on the above ground. It is hardly possible to imagine any legislative enactment made except for the purpose of good government and it would not be for this Court to discuss the particular merits of Ordinance made for that purpose unless some other ground were shown.

But Mr. Moghannam went further than that. He referred us to an undertaking made in the Declaration of 2nd November, 1917, and confirmed by a passage in the preamble to the Order-in-Council 1922. We were informed that there was a passage in the Mandate to the same effect. Neither the Declaration nor the Mandate are documents of authority in the Court except so far as they are referred to and confirmed by the Order-in-Council, which is our instrument of government. But the Order-in-Council of 1922 in its preamble refers to the Declaration of 2nd November, 1917, and adopts it, so that we need not for the moment consider the Mandate.

The terms of the Declaration as they appear in the preamble to the

Order-in-Council are to be found in the second paragraph which, after referring to the establishment in Palestine of a national home for the Jews, goes on to say "It being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish Communities in Palestine or the rights and political status enjoyed by Jews in any other country". Mr. Moghannam argues that this is a promise by the King that nothing shall be done to prejudice the civil rights of existing non-Jewish communities in Palestine, that the landowners of Urtas are members of a non-Jewish Community in existence at the time when the declaration was made, and that the present Ordinance does prejudice their civil rights, because

it invades their right of property in the water of the springs without providing adequately for compensation to those whose rights are prejudiced. There is no compensation to be paid for damage caused by failure to supply sufficient water for the purposes mentioned in Section 2, and disputes arising from damage to land and cultivation as dealt with in Sections 3 and 4 are directed by the Ordinance, to be tried not by those Courts prescribed by the Order-in-Council 1922 and the Courts Ordinance 1924 but by a Special Court of one Judge of no specified qualification appointed for that purpose by the High Commissioner and from whose decision there will be no appeal. He is called an arbitrator but is not appointed by any agreement of parties and has nothing of an arbitrator except the

name.

What is meant by the passage in the Declaration referred to in the Order-in-Council, and which, it must be noted, speaks of non Jewish Communities only, is this—that whatever measures are taken in regard to the establishment of a National Home for the Jews, such measures are not to be of such a nature as to prejudice the civil rights of other inhabitants of Palestine. A general provision not to prejudice civil rights would not be made to non-Jewish Communities only, but to all Communities. The whole of the second paragraph of the preamble to the Order-in-Council has to do with the promise of a National Home to the Jews and the just limitation to be imposed on that promise, and it is not relevant to a discussion as to the validity or invalidity of the present Ordinance.

Before deciding the question raised by the Petitioners that the Ordinance is repugnant to and inconsistent with the Mandate, we have to be sure that we are obliged to adjudicate to all on such a question. If we are, it will be extremely inconvenient to the Government and to the Courts of Justice because of the manner in which the Mandate is drawn and the wide field of enquiry which it appears to open up to the Courts on the invitation of persons who are opposed to this or that Ordinance.

The Attorney General, who appeared on behalf of the Board at the second hearing, seemed to consider that we had no authority to question the validity of the Ordinance and he referred to us to 'the Colonial Laws Validity Act 1865 to show that, in order to find a Colonial Ordinance invalid, it was not sufficient to find a repugnancy to the Common Law of England, but that it must be shown to be repugnant to some Act of Parliament extending to the Colony. But Section 2 of the Act to which he refers goes on to say "or some order or regulation made under it, or "having in the Colony the force and effect of such Act." In the first place it does not appear that this Law has any authority in a Mandated territory, but if it has, the words quoted above would include an Order-inCouncil which has as much authority for us as an Act of Parliament would have in a British Colony.

We are satisfied that we are bound

by 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. In that connection we have two questions to consider: (1) the reference to the Mandate in Clause 18 of the Order-in Council 1922 and in Clause 3 (c) of the Order-in-Council 1923 and the effect of this reference to the Mandate on the validity of Ordinances in general and the Urtas Springs Ordinance in particular, and (2 the effect of Part V of the Order-in-Council 1922, which establishes Courts of Justice, on that part of the Ordinance which refers all disputes to a new Court composed of one Judge from whose decision there is to be no appeal.

The reference to the Mandate with which we are concerned first appeared in Clause 18 of the Order-in-Council 1922 as follows:— "No Ordinance shall be passed which

shall be in any way repugnant to or inconsistent with the provisions of the Mandate.'' It was repeated in Clause 3 of the later Order which repealed and amended lause 17 of the Principal Order, but the word ''promulgated'' was submitted for the word ''passed.''

The Attorney General argues that the intention of these words is not to render invalid an Ordinance which is repugnant to a provision of the Mandate, but that it is a direction to the local Legislature, an infringement of which would render the local Government liable to the interference of the Secretary of State and the League of Nations.

But this is a peremptory Order. In Clause 17 of the Prfincipal Order it appears in a separate paragraph at the end of the Clause after the main paragraph which confers on the Legislative Council the power to establish Ordinances. In Clause 17 as amended by Clause 3 of the later Order it comes in sub-Clause 1 (c). Sub-Clause 1 (a) confers legislative power on the High Commis-