

43, 1938

No. 31 of 1938.

## In the Privy Council.

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### ON APPEAL

FROM THE COURT OF APPEAL, MALTA.

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BETWEEN

EDGAR SAMMUT and HIS HONOUR SIR HARRY  
LUKE, C.M.G. (Defendants) - - - - *Appellants*

AND

10 THE HONOURABLE MABEL STRICKLAND as  
Attorney of The Right Honourable GERALD LORD  
STRICKLAND, G.C.M.G., LL.B. (Plaintiff) - - - *Respondent.*

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## Case for the Appellants.

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1. This is an appeal from a Judgment given on the 4th March 1938 by the Court of Appeal Malta reversing the Judgment given on the 11th October 1937 by the Civil Court of Malta, First Hall. The proceedings were brought by the Respondent as Attorney of Lord Strickland against a Collector of Customs and the Lieutenant Governor of Malta.

RECORD.

p. 68.

p. 19.

20 2. The Writ of Summons filed on the 19th April 1937 by the Respondent as Plaintiff against the Appellants took the form of a claim for the refund of the sum of two shillings and ninepence paid under protest in respect of customs duties on certain foreign articles imported into Malta. These customs duties were imposed under The Temporary Additional Duties Ordinance 1936 (No. XXVII of 1936) enacted by the Governor of Malta under powers conferred by the Malta Letters Patent of the 12th August 1936. The Respondent does not dispute that the Ordinance No. XXVII was within the powers conferred or purported to be conferred by the Letters Patent of 12th August 1936. She contends that there was no power in the Crown on that date to provide by Orders in Council and Letters Patent for the Government of Malta and to confer on the Governor 30 the power of making laws in the exercise of which Ordinance No. XXVII was made and promulgated by him.

APPELLANTS' CASE.

3. Two main contentions were put forward on the Respondent's behalf.

(A) It was contended that owing to the circumstances in which Malta became part of the British Empire, the Crown never had *ab initio* a right to legislate by Orders in Council or Letters Patent for Malta, although such power had consistently been exercised from the earliest period.

(B) Alternatively, that although the Crown had power to revoke, as it did on the 12th August 1936, the Letters Patent in force up to that date, it had, for reasons which are set out later, 10  
lost the power which it previously possessed to make provision by Orders in Council or Letters Patent for the Government of Malta.

4. On the first point it was contended that the Common Law prerogative of the Crown to legislate by Orders in Council or Letters Patent for the government of a Colony is restricted to Colonies acquired by conquest or cession, and that Malta was not acquired either by conquest or cession. The historical circumstances are dealt with at length in the Judgments and can, if necessary, be further examined. It is not thought necessary to deal with them here. The Court of First Instance following a decision of 20  
the Malta Court of Appeal in *Strickland v. Galea* held that the sovereignty over Malta passed to the British Sovereign by cession, and decided against the Respondent on this ground. The Court of Appeal do not appear to have expressly affirmed this finding but they decided against this contention on the following ground—namely, that as it had been held “from the very  
p. 24, l. 34 and on.  
p. 79, l. 43.  
p. 80, l. 27.  
p. 80, l. 40.  
“outset that His Majesty the King had the right in His Prerogative to  
“legislate by Orders in Council and Letters Patent . . .” this “uniformity  
“of usage had, as its natural and legal effect that of bestowing on His  
“Majesty, a right of legislating in the manner aforementioned . . .”  
“Consequently the contention that His Majesty the King never had the 30  
“right of legislating for Malta by Orders in Council and Letters Patent  
“prior to 1921 cannot be upheld.”

5. The Appellants do not admit that acquisition by conquest or cession is a necessary condition precedent in all cases to the acquisition of the Common Law prerogative power to legislate for a Colony. It is submitted that sovereignty over Malta was in law acquired by cession, either on the ground that it was ceded under the Treaty of Paris 1814 or on the ground taken herein by the Court of First Instance that it was a voluntary cession of the Maltese people. There is the further alternative ground taken by the Court of Appeal referred to in paragraph 4 hereof. The 40  
Appellants therefore submit that the Courts below were right in deciding against this contention.

6. The second contention is based on a principle that where the Crown has in pursuance of its prerogative powers granted to a Colony representative institutions without reserving a power of revocation, the grant is irrevocable. In other words, no power of revocation or amendment is impliedly reserved and subsequent Orders in Council or Letters Patent purporting expressly to give the Crown a power of revocation or purporting in effect to revoke the grant by abrogating or limiting or conferring elsewhere the legislative or other powers so conferred are *ultra vires*.

10 The case of *Campbell v. Hall* (1774) 1 Cowper's Reports, 204, is cited as an authority for this principle. That case dealt, it is submitted, with a somewhat different and narrower issue. The existence of the principle is not however contested. It follows, it is submitted, as a necessary corollary that if an express power of revocation is reserved and is exercised, the Crown has on revocation the same powers as were vested in it before the grant in question and can provide for the exercise of the legislative or other powers in whatever form or by whatever authority it may then determine.

20 7. At the time when the 1921 Letters Patent were issued Malta was governed under the Letters Patent of 1903 which contained an express and full power of revocation. The Letters Patent of 1921 contained a limited power of revocation and amendment in respect of certain sections and matters only, such power being contained in Section 68 thereof.

8. By the Malta Constitution Act 1932 a certain further power of amendment of the Letters Patent of 1921 in addition to those contained therein was conferred upon the Crown. The Act dealt with certain other matters but, it is submitted, that no question arises here with regard to that Act.

9. By Section 1 of The Malta Letters Patent Act of 1936 which received the Royal Assent on 14th July 1936, it was enacted as follows:—

30 “The Malta Constitution Letters Patent, 1921, shall notwithstanding any limitation imposed by Section sixty-eight thereof, have effect as if there were thereby reserved to His Majesty full power to revoke or amend by further Letters Patent all or any of the provisions of the Malta Constitution Letters Patent, 1921 as subsequently amended.”

10. By the Letters Patent of the 12th August 1936, the validity of which are in question in this appeal, His Majesty revoked the Letters Patent of 1921 and made provision for the government of Malta including the exercise of legislative power by the Governor under Section 15 thereof.

11. It is submitted that the effect of the Malta Letters Patent Act of 1936 was quite plainly to make the grant of representative institutions contained in the Letters Patent of 1921 revocable. It follows, it is submitted, necessarily that on revocation the Crown possessed the same powers as those in virtue of which it issued the Letters Patent of 1921.

As it is by virtue of the grant that the Crown limits its powers, that limitation continues only for the period of the grant. If the grant comes to an end by the exercise of a valid power of revocation or otherwise the limitation necessarily comes to an end also.

p. 25, l. 41. 12. The Court of First Instance decided in favour of the Appellants 10 on this point. It held that by the revocation of the Letters Patent of 1921 the position of the Crown reverted to what it was just before the promulgation of the Letters Patent and that it followed that the Letters Patent of August 12th 1936 whereby the Governor was empowered to make laws for the peace order and good government of Malta was a valid exercise of the Crown's powers.

p. 22, l. 7. It appears from the Judgment that both parties agreed in the Court of First Instance that the revocation of the Letters Patent of 1921 had the effect of placing the Crown in the same position as prevailed prior to the issue of the Letters Patent of 1921. 20

p. 83. 13. The Malta Court of Appeal decided against the Appellants on this point. It accepted that the Letters Patent 1921 must be read as if they had originally contained the power of revocation as set out in the Malta Letters Patent Act 1936. It held therefore that these Letters Patent could be validly revoked. The Court went on to point out however that where Letters Patent of this kind contain a power of revocation of the whole instrument there is frequently if not invariably reserved in addition a power to make laws for the Colony as if the Letters Patent had not been made. They held that the absence of any incorporation by the Malta Letters Patent Act of 1936 of this further reservation of power prevented the Crown 30 from having power to issue Letters Patent providing for the government of Malta on the revocation of those of 1921.

14. It may be convenient to set out in full the form in which these two reservations are framed in the Malta Letters Patent of 1903 :

We hereby reserve to Ourselves, Our heirs, and successors, Our undoubted right power and authority to make, by and with the advice of Our Privy Council all such laws for the peace order and good government of Malta, as to Us, Our heirs and successors may seem necessary, and all such laws shall be of the same force and effect in Malta as if these Letters Patent had not been made. 40

And we do hereby reserve to Ourselves Our heirs and successors full power and authority from time to time to revoke, alter or amend these Our Letters Patent as to Us or Them shall seem meet.

15. It is submitted with respect that the Court of Appeal misconstrued the reservation on the absence of which it relied, and that it failed to appreciate its purport.

When representative institutions are set up under Letters Patent two distinct questions arise for consideration :—

- 10 (A) Is the Crown to reserve power to revoke and amend ?  
If this power is reserved the Crown has not it is submitted parted with its right to limit or extend by amendment the legislative and other powers conferred under the instrument or to abrogate those powers completely by revocation and substitute others in their place.
- (B) Is the Crown during the period of the Letters Patent while the representative institutions are operating to reserve a concurrent right to legislate for the peace order and government of the Colony ?

16. It is this power of concurrent legislation while the Letters  
20 Patent are in force, and the form of government set up by them is operating, which is reserved by the first part of the words quoted in paragraph 14 hereof. The concluding words "as if these Letters Patent had not been made," show that it is a power exercisable during the currency of the Letters Patent. It does not purport to deal with the position when the instrument itself has been validly revoked under the power of revocation. Further, both from its wording and from its context it is not purporting to reserve power for altering or otherwise dealing with the constitutional powers conferred under the instrument on local representative institutions. That power is dealt with and reserved in the later words. The fallacy  
30 of the Court's reasoning can be put equally on a somewhat different and more general ground. If it is necessary to consider what powers a grantor has after the complete revocation of a grant, the extent of such powers cannot be based upon or found in a provision in the grant, which instrument has *ex hypothesi* been revoked and ceased to have effect.

17. It is therefore submitted with respect that the Court of Appeal were wrong in their decision on this part of the case and in the reasons on which they based it. It is, it is submitted, unnecessary for the Appellants to rely on an alternative argument that the express power of revocation and unlimited amendment, which is plainly conferred on the Crown, must  
40 be construed as carrying with it a right to make further and other provision for the government of the Colony concurrently with the Act of revocation.

p. 68.

p. 19.

18. It is humbly submitted that the Judgment of the Court of Appeal given on the 4th March, 1938, is erroneous and should be set aside, and that the Judgment of the Civil Court, First Hall given on the 11th October, 1937, should be restored for the following among other

### REASONS.

- (1) BECAUSE the Crown had on the 12th August, 1936, power by Orders in Council and Letters Patent to legislate for the government of the Island of Malta and its Dependencies, and the Letters Patent of the 12th August 1936, which revoked the Malta Constitution 10 Letters Patent of 1921 as amended and which also, by Article 15 thereof, empowered the Governor to make laws for the peace, order and good government of Malta was a valid exercise of such power, and the enactment by the Governor of the said Ordinance No. XXVII of 1936 was *intra vires* and was legally enforceable.
- (2) BECAUSE the Judgment of the Trial Court was right for the reasons therein given and for other good and sufficient reasons.

D. B. SOMERVELL. 20

KENELM PREEDY.

JOHN FOSTER.

No. 31 of 1938.

**In the Privy Council**

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**ON APPEAL**

*From the Court of Appeal, Malta.*

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**BETWEEN**

**SAMMUT and Another**

(Defendants) - - - *Appellants*

**AND**

**The Honourable MABEL**

**STRICKLAND** (Plaintiff) *Respondent.*

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**Case for the Appellants.**

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**BURCHELLS,**

5 The Sanctuary,

Westminster, S.W.1,

*Solicitors for the Appellants.*