43, 1938

In the Privy Council.

No. 31 of 1938.

ON APPEAL FROM THE COURT OF APPEAL, MALTA.

BETWEEN

EDGAR SAMMUT in his capacity as Collector of Customs and HIS HONOUR SIR HARRY LUKE, C.M.G., as the Legal Representative of the Government of Malta, and by a Note, filed on the 11th May 1937, the Honourable EDWARD R. MIFSUD, C.M.G., O.B.E., in his capacity as Secretary to the Government in lieu of Sir HARRY LUKE, C.M.G. absent from these Islands, and by a Note filed on the 2nd June 1937, His Honour Sir HARRY LUKE C.M.G., in his capacity as Lieutenant Governor having returned to the Island assumed the proceedings of the suit in the place of the Honourable EDWARD R. MIFSUD, O.B.E., C.M.G., and by a Note of the 4th March 1938, EUSTRACHIO PETROCOCHINO in his capacity as acting Collector of Customs took up the proceedings in lieu of EDGAR SAMMUT - - - - - - (*Defendants*) ***Appellants***

AND

THE HONOURABLE MABEL STRICKLAND as Attorney of the Right Honourable GERALD LORD STRICKLAND, G.C.M.G., LL.B., COUNT DELLA CATENA in virtue of a private writing filed in the Records of the case "*Hon. Mabel Strickland* v. *Anthony Bartolo*" pending before the Commercial Court; and by a Note filed on the 27th April 1937, the Honourable EDWIN VASSALLO, A. & C.E. in view of the absence from these Islands of the Plaintiff nomine, entered an appearance in the Suit on behalf of the Right Honourable GERALD LORD STRICKLAND, who is absent from these Islands as per Power of Attorney dated 2nd March 1937 filed in the Suit "*Hon. Mabel Strickland* v. *Anthony Bartolo*" pending before His Majesty's Commercial Court, and by a Note filed on the 16th October, 1937, the Honourable MABEL STRICKLAND, having returned to the Island took up the proceedings on behalf of the Plaintiff, Right Honourable LORD STRICKLAND, who is absent from these Islands, and by

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a Note dated the 3rd day of December, 1937, Plaintiff the Right Honourable GERALD LORD STRICKLAND, COUNT DELLA CATENA who having returned to the Island took up the proceedings - - - - - *(Plaintiff) Respondent.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

EXHIBITS.

LIST OF DOCUMENTS NOT PRINTED IN THE RECORD.

Description of Document.	Date.
List of Exhibits	—
Note filed by Plaintiff	17th May 1937
Note filed by Defendants	2nd June 1937
Note filed by Plaintiff	25th June 1937
Note filed by Defendants	31st July 1937
Note filed by Plaintiff	16th October 1937
Plaintiff's Surety Bond	29th October 1937
Note filed by Plaintiff	3rd December 1937
Note filed by Plaintiff	4th December 1937
Note filed by Plaintiff	14th December 1937
Note filed by Defendants	24th December 1937
Note filed by Plaintiff	10th January 1938
Note filed by Plaintiff	26th January 1938
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Certificates of Service	—
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In the Privy Council.

No. 31 of 1938.

ON APPEAL FROM THE COURT OF APPEAL, MALTA.

BETWEEN

EDGAR SAMMUT in his capacity as Collector of Customs and HIS HONOUR SIR HARRY LUKE, C.M.G., as the Legal Representative of the Government of Malta, and by a Note, filed on the 11th May 1937, the Honourable EDWARD R. MIFSUD, C.M.G., O.B.E., in his capacity as Secretary to the Government in lieu of Sir HARRY LUKE, C.M.G. absent from these Islands, and by a Note filed on the 2nd June 1937, His Honour Sir HARRY LUKE C.M.G., in his capacity as Lieutenant Governor having returned to the Island assumed the proceedings of the suit in the place of the Honourable EDWARD R. MIFSUD, O.B.E., C.M.G., and by a Note of the 4th March 1938, EUSTRACHIO PETROCOCHINO in his capacity as acting Collector of Customs took up the proceedings in lieu of EDGAR SAMMUT - - - - - - (*Defendants*) *Appellants*

AND

THE HONOURABLE MABEL STRICKLAND as Attorney of the Right Honourable GERALD LORD STRICKLAND, G.C.M.G., LL.B., COUNT DELLA CATENA in virtue of a private writing filed in the Records of the case "*Hon. Mabel Strickland* v. *Anthony Bartolo*" pending before the Commercial Court; and by a Note filed on the 27th April 1937, the Honourable EDWIN VASSALLO, A. & C.E. in view of the absence from these Islands of the Plaintiff nomine, entered an appearance in the Suit on behalf of the Right Honourable GERALD LORD STRICKLAND, who is absent from these Islands as per Power of Attorney dated 2nd March 1937 filed in the Suit "*Hon. Mabel Strickland* v. *Anthony Bartolo*" pending before His Majesty's Commercial Court, and by a Note filed on the 16th October, 1937, the Honourable MABEL STRICKLAND, having returned to the Island took up the proceedings on behalf of the Plaintiff, Right Honourable LORD STRICKLAND, who is absent from these Islands, and by

a Note dated the 3rd day of December, 1937, Plaintiff the Right Honourable GERALD LORD STRICKLAND, COUNT DELLA CATENA who having returned to the Island took up the proceedings - - - - - *(Plaintiff) Respondent.*

RECORD OF PROCEEDINGS.

His Majesty's Civil Court, First Hall, Malta.

No. 1. Writ of Summons, 19th April, 1937.

No. 1.

Writ of Summons.

(Translation)

HIS MAJESTY'S CIVIL COURT, FIRST HALL.

Citation No. 231.

Filed by Plaintiff with two exhibits.
This 19th day of April, 1937

(Signed) CARM. VELLA, Dep. Reg.

GEORGE VI.

By the Grace of God of Great Britain, Ireland, and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.

To the Marshal of Our Superior Courts.

BY OUR COMMAND, at the suit of the Honourable Mabel Strickland, in her capacity as Attorney of the Right Honourable Gerald Lord Strickland, G.C.M.G., LL.B., Count della Catena, appointed in virtue of an instrument under private signature filed in the Record of the suit " The Hon. Mabel Strickland vs. Anthony Bartolo ", which is pending before His Majesty's Commercial Court and which stands adjourned to the 3rd May, 1937; —You Shall Summon—Edgar Sammut, in his Capacity as Collector of Customs, and His Honour Sir Harry Luke, C.M.G., Lieutenant-Governor, as lawful representative of the Government of Malta, to appear before this Court at the Sitting to be held on the 17th May, 1937, at 9 a.m.

(Signed) GEORGE BORG, Advocate.
G. AMATO, Advocate.

And there,—the Right Honourable Gerald Lord Strickland having imported, or caused to be imported, articles suitable for use in connexion with the Coronation festivities, manufactured in Japan, of the value of three shillings and nine pence (3s./9d.); and the said Edgar Sammut *nomine* having exacted a higher duty on such articles than that chargeable, and this in terms of Ordinance XXVII of 1936, which is illegal, and null and void, so much so that, in order to withdraw the said goods, the Plaintiff was constrained to pay, under protest, the sum of two shillings and nine pence

(Exhibit "O") notwithstanding that the Right Honourable Gerald Lord Strickland, on the 1st March, 1937, had filed in the Registry of this Court a Protest against the Defendants, copy of the translation of which is annexed hereto (Exhibit A.1);—premising the declaration, if necessary, that the said Ordinance No. XXVII of 1936 is *ultra vires*, and therefore illegal and null and void, and any other expedient direction;—the Defendants to shew cause why they should not be ordered to refund to Plaintiff, out of the said sum of Two Shillings and Nine Pence, the amount paid in excess by Plaintiff under Ordinance XXVII of 1936, or under any other law invalidly and illegally enacted.

With interest and with costs.

The Defendants are hereby summoned to appear for the purpose of being examined on oath.

You shall further give the said Defendants notice that if they want to contest the claim they must not later than two working days previous to the day fixed for the hearing of the cause file their statement of defence according to law and that in default of such statement within the said period and of their appearance on the day, and at the hour and place aforesaid, the said Court will proceed to deliver judgment according to justice on the action of the said Plaintiff on the said day, or on any subsequent day, as the Court may direct.

And after service by delivery of a copy hereof to the said Defendants or their agents according to law, or upon your meeting with any obstacle in the said service, you shall forthwith report to this Our Court.

Given by Our aforesaid Civil Court, First Hall, Witness Our faithful and well beloved Dr. L. A. Camilleri, Doctor of Laws, Judge of Our said Court,

This 21st day of April, 1937.

(Signed) L. A. CAMILLERI.

A true copy.

EDG. STAINES,

Registrar.

His Majesty's Civil Court, First Hall, Malta.

No. 2. Declaration of Plaintiff, 19th April, 1937.

No. 2.

Declaration of Plaintiff.

IN HIS MAJESTY'S CIVIL COURT,
FIRST HALL.

THE HON. MABEL STRICKLAND, *nomine.*

vs.

EDGAR SAMMUT, *nomine*, and others

The declaration of Plaintiff *nomine.*

Respectfully sheweth :—

1. That she has received articles from the firm " Japan Traders Ltd.", on which the Defendant, Edgar Sammut, *nomine*, exacted a higher duty than usual, and this in terms of Ordinance XXVII of 1936, the said articles being suitable for use in connection with the Coronation festivities—which duty she was constrained to pay under protest;

2. The said Ordinance was promulgated " Ultra Vires " and it is therefore illegal and invalid, and this for the following reasons;

3. That on the 12th August, 1936, Letters Patent were issued under His Majesty the King's Sign Manual, Section 15 whereof empowered the Governor to make laws for the peace, order and good Government of Malta and Instructions were issued to the Governor on the same day, Section 14 whereof deals with the enactment of laws. The said Letters Patent and Instructions are null and void. In fact, in terms of the Act of the Imperial Parliament (Malta Letters Patent Act, 1936), power was reserved to His Majesty the King to amend or revoke the Letters Patent 1921 constituting Self-Government in these Islands, but no power was reserved to His Majesty to issue new Letters Patent. The Letters Patent of 1921 were revoked by the first section of the Letters Patent of the 12th August, 1936, and therefore the power reserved to His Majesty the King in virtue of the said Act of the Imperial Parliament has been exhausted;

4. There is no Act of the Imperial Parliament or law validly in force which empowers His Majesty the King to impose taxes on the people of Malta by Letters Patent or to convey such powers to the Governor. It is in virtue of a special law that His Majesty the King may acquire such power or the authority to convey same as part of the Royal Prerogative. This authority to legislate or to convey the power to legislate cannot be assumed over territory that has not been conquered from its inhabitants, and much less over Malta which forms part of the British Empire under International Law as a result of the conquest from the first French Republic, in which the Maltese were the principal co-belligerents;

5. Following the expulsion of the garrison of the First French Republic, the Maltese automatically acquired the absolute right to govern themselves.

6. The Act of the Imperial Parliament of 1801, George III, 41, Chap. 103, has been repealed with the exception of section 3 thereof. The Act known as " The Falkland Islands and Territories, in and adjacent to Africa " 6 and 7 Victoria, Chapter 13 (1843), has also been repealed and substituted by the British Settlements Act of 1887.

7. No Act of the Imperial Parliament empowers His Majesty the King to impose taxes or conveys to the Government of Malta the power to enact legislation in respect of taxation.

8. The abovementioned Acts apply to possessions which were annexed to the Crown at a time when they were uninhabited and outside the British Dominions, and which could be settled by migrants or adventurers from England. The definition in Section 6 of the said Act of 1887 lays down that the provisions of the said Act are not to apply to countries in which a Legislature had previously been established, as is the case in Malta or other possessions which were not " settlements ".

9. The British Settlements Act of 1887 cannot be applied to Malta except on the supposition that Malta forms part of Africa or that Malta is a Possession settled by adventurers from England who found the island bereft of a Legislature.

10. Wherefore Malta should be classified in the same category as the Channel Islands, Orkney Islands and Northern Ireland.

11. Magna Charta applies to the British Commonwealth beyond the seas, and therefore taxation without representation is irreconcilable with the rights of British Citizenship, and it is also irreconcilable with the Common Law as declared by the Judicial Committee of His Majesty's Privy Council.

(Signed) G. Borg, Advocate.
(Signed) G. Amato, Advocate.

List of witnesses.

Plaintiff and the Defendants to confirm the above declaration.

(Signed) G. Borg, Advocate
(Signed) G. Amato, Advocate.

A true copy.
Edg. Staines,
Registrar.

His Majesty's Civil Court, First Hall, Malta.

No. 3. Application of Plaintiff praying that proceedings be conducted in English language, 28th April, 1937.

No. 3.

Application of Plaintiff praying that proceedings be conducted in English language.

(Translation)

No. 231/1937.

The Application of the Hon. Edwin Vassallo *nomine.*

Respectfully sheweth :—

That the suit between the parties aforesaid concerns directly the British Government and it is therefore expedient that it be conducted in the English Language;

Wherefore Applicant humbly submits a request to that effect.

(Signed) G. BORG, Advocate.
(Signed) G. AMATO, Advocate.

The twentyseventh day of April, 1937.

Filed by Applicant without Exhibits.

(Signed) G. VELLA,
Assistant Registrar.

HIS MAJESTY'S CIVIL COURT—FIRST HALL.

Judge :—
Dr. L. A. CAMILLERI, LL.D.

The Court,

Having seen the Application;
Reserves giving directions thereanent at the Sitting.

This twentyeighth day of April, 1937.

(Signed) CARM. VELLA,
Deputy Registrar.

A true copy.
EDG. STAINES,
Registrar.

His Majesty's Civil Court, First Hall, Malta.

No. 4.

No. 4.

Notice of Appearance of the Hon. Edwin Vassallo as Attorney for Plaintiff nomine.

Note of the Honourable Edwin Vassallo, A. & C. E.

The said Honourable Edwin Vassallo, in view of the absence from these Islands of Plaintiff *nomine*, hereby enters an appearance in the present suit on behalf of the Rt. Hon. Gerald Lord Strickland, who is absent from these Islands, as per power of Attorney dated 2nd March, 1937, filed in the suit in re " The Hon. Mabel Strickland vs. Anthony Bartolo, pr. et." pending before His Majesty's Commercial Court.

(Signed) G. AMATO,
Advocate.

The twentyseventh day of April, 1937.

Filed by the said Hon. Edwin Vassallo, without Exhibits.

(Signed) G. VELLA,
Assistant Registrar.

A true copy.
EDG. STAINES,
Registrar.

No. 5.

No. 5.

Defence.

Defence, 11th May, 1937.

Statement of Defence of the said Edgar Sammut, *nomine*, and of the Honourable Edward Mifsud, C.M.G., O.B.E., in his capacity as Secretary to Government who is taking up the proceedings to represent the Government in the stead of His Honour Sir Harry C. Luke, C.M.G., Lieutenant-Governor, absent from these Islands, in terms of the authorization annexed hereto, Exhibit B.1.

Respectfully sheweth :—

1. That " The Malta Letters Patent Act, 1936," empowered His Majesty the King to amend or revoke the Letters Patent of 1921. Therefore, in virtue of the said Act of the Imperial Parliament, His Majesty the King re-acquired the power to revoke the Letters Patent of 1921, which were so revoked on the 12th August, 1936;

2. That the effect of the revocation of the said Letters Patent of 1921, was to place the Crown in the same position which it enjoyed previous to the issue of the said Letters Patent of 1921. This means that these Islands, by the Common Law prerogative of the Crown, were again made subject to legislation by Order in Council, that is to say, His Majesty the King re-acquired the power to legislate by Order in Council, and under such

His Majesty's Civil Court, First Hall, Malta.

No. 5. Defence, 11th May, 1937—*continued.*

Order in Council, He has the power to constitute the Office of Governor by Letters Patent, and to make provision, in accordance with such Letters Patent, or by instructions issued to the Governor, for the Government of these Islands.

3. That on the 12th August, 1936, Letters Patent were issued empowering the Governor to make Laws for the peace, order and good Government of these Islands (Section 15) and, on the same day, Instructions respecting the enactment of laws were issued to the Governor.

4. That Ordinance XXVII of 1936 was promulgated in virtue of the powers given to the Governor by the said Letters Patent of 1936, and in terms of the aforesaid Instructions.

Wherefore, this Ordinance is not " ultra vires ", but it is valid and legal; and, therefore, Plaintiff's claims should be disallowed with costs.

Without prejudice to all other pleas.

(Signed) J. H. REYNAUD,
Acting Attorney General.

(Signed) T. GOUDER,
Acting Senior Crown Counsel.

(Signed) GIUS. ELLUL, L.P.

This Eleventh (11th) day of May, 1937.

Filed by GIUS. ELLUL, L.P., with one Exhibit.

(Signed) O. CALLEJA MANGION,
Deputy Registrar.

A true copy.
EDG. STAINES,
Registrar.

No. 6. Declaration of Defendant, 11th May, 1937.

No. 6.

Declaration of Defendant.

(Translation)

The Declaration of the Defendants, *nomine.*

Respectfully sheweth :—

1. Malta is a colony acquired by cession (Anson, page 74—*Strickland* vs. *Galea*, determined by His Majesty's Court of Appeal on the 22nd June, 1935). By the Common Law prerogative of the Crown, a Colony acquired by cession, is subject to legislation by Order in Council (*Campbell* vs. *Hall*, 1774).*

*Vide page 118.

Under such Order in Council, His Majesty the King may constitute the office of Governor by Letters Patent and, in virtue of these Letters Patent, or Instructions to the Governor, he may provide for the Government of the colony (Anson *ibid.*). Malta was in this position before the Letters Patent of the 14th April, 1921, were issued.

2. This power to legislate by Order in Council or to amend or revoke the Letters Patent of 1921, however, is lost upon the grant of representative institutions to the colony if the right to legislate is not expressly reserved in whole or in part.

Hence this power—saving the matters in respect of which the right to legislate was reserved—was lost to the King when provision was made for the institution of a representative Government in Malta (Letters Patent of the 14th April, 1921).

3. None of the amendments to, or the revocation of, the Letters Patent of 1921, could have been made in virtue of Letters Patent or Order in Council. The Letters Patent of 1921 could have been amended or revoked only by an Act of the Imperial Parliament which, according to the English Law, is considered omnipotent and supreme in all matters upon which it is deemed fit to legislate.

4. No Court of Justice is entitled to question the right of Parliament to legislate on any matter or on any question, or to assert that an Act of the Imperial Parliament is *ultra vires* (Todd—Parliamentary Government in the British Dominions, page 192).

5. The Malta Letters Patent Act, 1936, empowered His Majesty the King to revoke or amend the Letters Patent of 1921. In virtue of that Act, His Majesty the King, therefore, re-acquired the power to revoke the Letters Patent of 1921, which were so revoked on the 12th August, 1936.

6. A Representative Government having then ceased to exist, His Majesty the King acquired the power to legislate by Order in Council, under which the office of Governor may be set up by Letters Patent, in terms of which Letters Patent, or in terms of Instructions issued to the Governor, provision may be made for the Government of the Colony. Therefore, no other Act of the Imperial Parliament was necessary in order that His Majesty the King might issue other Letters Patent, inasmuch as, once the Letters Patent of 1921 had been revoked, provision for the Government of the Colony could be made by Prerogative legislation.

7. In other words, the effect of the revocation of the Letters Patent of 1921, was to place the Crown in the same position which it enjoyed previous to the issue of the Letters Patent of 1921.

(Signed) J. H. REYNAUD,
Acting Attorney General.

(Signed) T. GOUDER,
Acting Senior Crown Counsel.

(Signed) GIUS. ELLUL, L.P.

A true copy,

EDG. STAINES,
Registrar.

His Majesty's Civil Court, First Hall, Malta.

No. 7.
Order that proceedings be conducted in English language, 17th May, 1937.

No. 7.

Order that proceedings be conducted in English language.

This Seventeenth day of May, 1937.

Dr. J. Reynaud, on behalf of Defendants *nomine*, Sammut and Mifsud, gives his consent for the case to be conducted in the English Language in accordance with the Application of Plaintiff *nomine* of the 27th April, 1937, (see page 6 of the Record).

The Court,

Having seen the Application of the Hon. Edwin Vassallo, *nomine*, filed on the 27th April, 1937, wherein he prayed that the Proceedings be conducted in the English Language;

Having seen the *Procès Verbal* recorded at to-day's Sitting wherefrom it appears that the Acting Attorney General on behalf of the Defendants *nomine* does not resist the demand;

Whereas it is common knowledge that Plaintiff the Hon. Mabel Strickland is an English speaking person within the meaning of the Law;

Having seen Art. 10 of the Laws of Organization and Civil Procedure;

Allows the demand and orders that the Proceedings be conducted in the English Language; and

Orders an English translation to be made of all the acts filed up to this day.

(Signed) O. CALLEJA MANGION,
Dep. Registrar.

A true copy.

EDG. STAINES,
Registrar.

No. 8.
Plaintiff's Note of Submissions, 25th June, 1937.

No. 8.

Plaintiff's Note of Submissions.

Note of Submissions of the Honourable Edwin Vassallo nomine.

Respectfully sheweth:

That the present lawsuit arises out of the duty leviable in virtue of Ordinance No. XXVII of 1936, which Plaintiff considers to have been enacted *ultra vires*.

In 1936, an Act of the Imperial Parliament was promulgated giving power to His Majesty the King to revoke or amend the Malta Constitution Letters Patent of 1921. New Letters Patent were issued, and in virtue of the powers vested in the Crown, the old Constitution establishing self-government in the Island of Malta and its Dependencies was totally

revoked. Plaintiff submits that once the Crown exercised the right to revoke the said Letters Patent, and did not avail itself of the power to amend such Letters Patent, the powers vested in the Crown in virtue of the said Act of the Imperial Parliament of 1936 were exhausted, and consequently, the Crown could not either legislate by Orders in Council and Letters Patent with regard to Malta, or delegate such power to the Governor. Hence, the prerogative of the Crown *vis-à-vis* the constitutional position of the Island reverted to the *status quo ante* the grant of self-government. The main point which is submitted for the consideration of the Court is that the Island cannot, from a constitutional point of view, be considered either as a conquered or as a ceded colony, and that, therefore the circumstances under which this colony came within the orbit of the British Empire must be minutely examined.

Had the Crown exercised the right to amend the 1921 Constitution, such right would not be exercised beyond the rule of the *ejusdem generis*. While a complete repeal of the Letters Patent of 1921 under the Act of 1936 might exhaust the Malta Letters Patent Act of 1936, it cannot exhaust the Malta Constitution Act of 1932, which has never been amended *expressis verbis*. If an amendment of the Letters Patent of 1921 had been attempted, it had to be an amendment of a responsible Government Constitution, with additions or definitions of reserved matters, and with alterations of the Supplementary Letters Patent of 1921, but without creating anything substantially different and repugnant to what had been " amended ".

The power of the Crown to govern by Orders in Council and Letters Patent is denied by Plaintiff in so far as the colony cannot be considered as ceded to Great Britain in the sense explained by constitutional writers such as Halsbury, Bridges, Kerr, Lawson, Anson, and others. In the first place, it is pointed out that, according to the other *ultra vires* judgment in re *Lord Strickland* v. *Galea* given by His Majesty's Malta Court of Appeal on the 22nd June, 1935, (see Exhibit B.2.), the Maltese were the principal co-belligerents at the time when, having taken up arms against the armies of the first French Republic, they placed their interests in the honour and good faith of Great Britain, and that, therefore, the condition of the Island must be considered as unique in British Constitutional annals. Such being the case, there were express promises made by General Graham, Lord Bathurst, Sir Thomas Maitland, Lord Glenely, and Earl Grey, that all rights and privileges of the Maltese would be safeguarded, and the inhabitants of these Islands would benefit from the British Protectorate, and would be subject to British Laws. Sir George Cornwall Lewis, who, with John Austen, formed the Royal Commission of Inquiry into the affairs of Malta in 1836, declared that the case of Malta was one of really voluntary cession. In addition to the above authorities, reference is made to the speeches delivered by the 7th Earl De La Warr and Lord Strickland in the House of Lords. There is something more than a gentlemen's agreement, as the Court of Appeal has held, in the pact entered into between Great Britain and Malta,

His Majesty's Civil Court, First Hall, Malta.

No. 8. Plaintiff's Note of Submissions, 25th June, 1937 —*continued.*

namely, the interpretation which International Law gives to the facts that accompanied the conquest from the French. The conditions then created gave a complete title that was in no way subject to change by negotiations by Lord Nelson, Sir William Hamilton, or by Ambassadors at Vienna and Paris, or by the views of the Ministers to-day at Downing Street. The understanding or agreement " acquiesced to by Great Britain," as the Court of Appeal has held, was naturally on the well-known constitutional principle *uti possidentis possidetis*. When Great Britain took possession of the Island, there was a full fledged national assembly, with powers to legislate which the Maltese had acquired after expelling the French from their country. Before 1921, the Crown would, under English law, (see Calvin's case, *Campbell* v. *Hall*, and the case of the Lord Bishop of Natal), only legislate for Malta by Letters Patent and Orders in Council, as far as the Crown could thus legislate for England. The grant of the Constitution prior to the Malta Constitution Act (1932) carried an acknowledgment and confirmation of the previously asserted rights of the Maltese to representative institutions. The same acknowledgment is implied by the Act of 1801, and the Acts of 1843, 1860 and 1887, affecting possessions overseas not conquered, or ceded by diplomatic pressure against the will of the inhabitants. The Imperial Act of 1936 amended, but did not revoke, the Malta Constitution Act of 1932. Parts of the Act of 1932 are still the law, and the principle established in the Preamble and elsewhere, and the right to representative government are established and recognised thereby and this recognition prevents any going back to the defendant's interpretation of the *status quo* before 1921. In making this assertion, Defendant's Counsel ignores the Act of 1932.

Counsel for Defendant holds that in the case of Malta, any fraction of the prerogative applicable to Malta was surrendered by the ratification of the Letters Patent of 1921. The Act of 1936 gave power " to amend or repeal the Letters Patent of 1921 ", which is only a part of the Act of 1932, but did not give power to withdraw the acknowledgment of the rights of the Maltese to have representative institutions, confirmed by the Act of 1932, which rights date back to the time of the conquest from the French in 1798, and to the pacts confirmed by the oath of the Grand Master de L'Isle Adam, as the first of the Sovereign Order of St. John, and by King Roger the Norman. King Roger granted a constitution similar to that of the Channel Islands when the Normans ruled Sicily.

A cession voluntarily made to the Crown by the inhabitants of Malta implies a partition of the rights of sovereignty between the conquerors from the French Republic, subject to the condition of the ratification of the privileges granted by Roger the Norman and re-established by the elected assembly that carried on the war against the French. The Council of the People established by the Normans was reconstituted prior to the proclamation of the annexation, and therefore, when this was effected, the Council of the People had already been an established fact. The *uti possidetis* is recognised in a proclamation of Sir Thomas Maitland, and

uti possidetis implied expressly the possession of an autonomous representative body. The prerogative since the beginning of British rule existed and was exercised by England in Malta only so far as it has been and is exercised in England, Australia, and other countries settled by contingents of British subjects enjoying the liberties of Magna Charta. While these liberties carried with them equality of citizenship with unconquered inhabitants, in the case of Malta an express promise was made that the Maltese would enjoy the benefits of British legislation. The main spring of this legislation is unquestionably Magna Charta, wherein the principle is enunciated that there should be no taxation without representation, and this being so, the Sovereign can neither impose nor delegate his representative to do so by means of ordinances such as that which is being impugned in the Writ-of-Summons. The case of the Orkney Islands is that of a Norwegian Dowry of the Queen of Scotland, and offers some parallel.

The English law is quite clear on the point that an Act giving to the King power to exercise the prerogative does not extend to the creation of a power to delegate any part of the prerogative to a governor, unless such power to delegate is specifically authorised by an Act of the Imperial Parliament. The Crown acts as a trustee, and *delegatus non potest delegare.* This point is made clear by the debates of the British Settlements Act of 1860 and 1887. There was no uncertainty at International Law as to the position of Malta between 1799 and 1815, as suggested on behalf of the Defendant. The position of Malta was one of right dependent on fact, and evidenced by history and speeches in Parliament. What was an uncertain concurrent feature was whether England was willing and able to protect that position and the undertakings in reference thereto of the King of England. The Treaty of Paris was *res inter alios acta,* and, in conformity with the contention held in the other *ultra vires* case " *Strickland* vs. *Galea* " that principle simply " confirmat," conjointly with the *Melitensium Amor*—the position of Malta within the orbit of the British Empire, so much so that the Act of 1801, was deemed indispensable also in such matters as trade and commerce. That Act does not merely lay down that Malta is part of Europe (as suggested by the Defendant). It is evident that the King cannot delegate, or assert in reference to Malta, the prerogative to legislate by Order in Council and Letters Patent. The repeal of the Act of 1801 cannot repeal the above principle of the Common Law, as generally and continuously subsistent throughout the Empire, and the implied acknowledgment that the principle has applied to Malta since 1799.

As to Malta being considered hypothetically a Protectorate, and as regards the Maltese being foreigners under such a hypothesis, the word *foreigners* may have several meanings, and it is necessary to define the word *foreigners* without implying citizenship under a different King. The inhabitants of the Isle of Man are in no sense foreigners any more than the Maltese, notwithstanding racial disparity with the Anglo-Saxons.

It has never been Plaintiff's intention to impugn the omnipotence of the Imperial Parliament, but the right to have a correct interpretation

His Majesty's Civil Court, First Hall, Malta.

No. 8. Plaintiff's Note of Submissions, 25th June, 1937 —*continued.*

through the Law Courts of any Parliamentary pronouncement is strictly insisted upon. During the early hearing, Plaintiff's Counsel quoted several extracts from Constitutional authors to the effect that the right to interpret Acts of the Imperial Parliament cannot be denied to the Law Courts. Defendant's contention, in this respect therefore, would not hold good, as cannot hold good his other contention that the acceptance of Plaintiff's argument would annul all legislative matters passed prior to the grant of self-government. Plaintiff has been very careful in submitting the present lawsuit within the one year from the date on which the Ordinance imposing taxes on goods of foreign origin was promulgated, because he knows that after the lapse of one year no law can be impugned, this being in conformity with the principle of the Justinian Digest that *omnes populares actiones neque in haeredes neque supra annum extenduntur.* Moreover, according to Section 5 of the Malta Constitution Act of 1932 (22 & 23 GEO. 5, Ch. 43) the validity of any law or provision thereof shall not be questioned in any legal proceedings whatever, after the expiration of one year from the date on which the law comes into operation.

(Signed) GEORGE BORG, Advocate
(Signed) G. AMATO, Advocate.

A true copy.
EDG. STAINES,
Registrar.

No. 9. Defendants' Note of Submissions, 31st July, 1937.

No. 9.

Defendants' Note of Submissions.

Written submissions of the Defendants.

1. The Act of the Imperial Parliament of 1936 gave power to His Majesty the King to revoke or amend the Malta Constitution Letters Patent of 1921.

2. In virtue of this Act His Majesty the King issued the Letters Patent of the 12th August, 1936, by which the said Letters Patent of 1921 were revoked.

3. The revocation of these Letters Patent of 1921 had the effect of placing the Crown in the same position as prevailed prior to the issue of the aforesaid Letters Patent of 1921.

4. Before 1921 His Majesty the King had the power to legislate for Malta by Order-in-Council. Under such Order in Council His Majesty the King may constitute the Office of Governor by Letters Patent and in virtue of these Letters Patent or Instructions to the Governor he may provide for the government of the Colony.

5. His Majesty therefore had full power to issue the Letters Patent of the 12th August, 1936, by which he empowered the Governor of Malta to

make laws for the peace, order and good government of these Islands, and to issue instructions to the Governor respecting the making of such laws.

6. Ordinance No. XXVII of 1936 was promulgated in virtue of these powers given to the Governor by the said Letters Patent of the 12th August, 1936, and in terms of the aforesaid Instructions.

7. This Ordinance is therefore valid and legal.

8. Plaintiff *nomine* agreed, during the hearing of the case, that the revocation of the Letters Patent of 1921 placed the Crown in the same position which it had enjoyed before those Letters Patent were issued, but denied that before 1921 the Royal Prerogative to legislate by Order-in-Council existed as regards Malta. Defendants submit that before 1921 the Royal Prerogative was exercisable as regards Malta because Malta is a Colony acquired by cession and Colonies acquired by conquest or cession are by the Common Law Prerogative of the Crown subject to legislation by Order-in-Council.

9. Plaintiff agrees that a ceded Colony is subject to legislation by Order-in-Council, but denies that Malta may be considered as a ceded Colony.

10. The main point, therefore, which is to be established in this case is whether Malta is a ceded Colony or not.

11. The position of Malta within the orbit of the British Empire is undoubtedly that of a Colony because according to the Interpretation Act of 1889 and to the Statute of Westminster, 1931, " Colony " is any part of His Majesty's Dominions exclusive of the British Islands and of British India and of the self-governing Dominions.

12. According to constitutional writers a colony may originate in three different manners : by settlement, by conquest or by cession.

Malta is not a settlement because it was not added to the Empire by the migration hither of British subjects who found it unoccupied or not subject to any civilized legal system.

It was neither added by conquest because, as the Right Honourable Joseph Chamberlain pointed out in a speech delivered in the House of Commons in January, 1902, the terms which the Maltese made with Great Britain were not terms of surrender : the English were fighting side by side with the Maltese and never against them.

If Malta is not a settlement and neither a conquered territory it must have been added to the Empire in the only other manner in which a Colony may originate, namely by cession.

13. Apart from the above considerations, there can be no doubt that the true and real nature of the title of British Sovereignty over Malta is " cession " because Malta became part of the British Empire by the act and authority of the Maltese people who voluntarily assented to the protection of Great Britain when the French surrendered to the united powers of Great Britain and of the Maltese after the blockade of Valletta. That act constituted a voluntary cession, and Malta was therefore added to the British Empire by the voluntary cession of its inhabitants.

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No. 9. Defendants' Note of Submissions, 31st July, 1937—*continued.*

14. The point regarding the position which Malta holds in the British Empire was raised and discussed in *Strickland* vs. *Galea* which was decided by His Majesty's Court of Appeal, Malta, on the 22nd June, 1935. That Court, basing itself on official documents—which it is unnecessary to quote here because they have all been quoted in the Court's decision—an extract of which is inserted at page 102 of the record of these proceedings—concluded that the sovereignty over these Islands passed to the British Sovereign by virtue of the cession of the Maltese people and that therefore the Royal Prerogative with its inherent right to legislate was likewise acquired by the Crown.

Plaintiff has submitted that the Court of Appeal was correct in holding that the case of Malta was one of voluntary cession, but he disagrees with the final conclusion that voluntary cession should be regarded as a cession. He quoted the words of Mr. Joseph Chamberlain : " Malta is in a unique position," and states that the cession of Malta by its inhabitants was voluntary, the Island was placed in a unique position in British constitutional annals so that it cannot be considered as a Colony acquired either by cession or by conquest or by settlement. The distinction between " voluntary cession " and " cession " is, however, an arbitrary one. Malta's position is unique owing to the circumstances attending its cession, as there is perhaps no other instance of a colony acquired by really voluntary cession. The fact that the cession was voluntary does not change—as the Court of Appeal has rightly held—the title of the acquisition.

15. Anson (" Law and Custom of the Constitution ", Vol. II, the Crown, Part II) dealing ' ex professo ' about Malta states that Malta was acquired by cession (page 74) and in another part of the same volume (page 64) while dealing with the right of the Crown to legislate by Order-in-Council for colonies acquired by conquest or by cession, places Malta among such colonies. In Halsbury's " Laws of England " (Vol. XI, page 11) it is stated that Malta " must be regarded as a cession ".

16. When the sovereignty over these Islands passed, as it has been shown that it did, to the British Sovereign by virtue of the cession aforesaid, His Majesty became vested with the right to legislate by Order-in-Council. It is unthinkable that promises made by statesmen, such as General Graham, Lord Bathurst, Sir Thomas Maitland, Lord Glenely and Earl Grey, quoted by the plaintiff nomine in his Note of Submission, could have had the effect of depriving the British Sovereign of that right which is vested in him by the Common Law, namely of the right to legislate by Order-in-Council for ceded colonies.

17. With a view to showing that the prerogative did not exist before 1921 plaintiff nomine has quoted the Act of the Imperial Parliament of 1801. This Act empowered His Majesty to regulate the Trade and Commerce to and from the Island of Malta. The fact that an Act of Parliament was passed shows, according to the plaintiff's view, that the Law Officers of the Crown were of opinion 130 years ago that they had no power to legislate by Order-in-Council.

18. This Act, however, was passed long before Malta was ceded to Great Britain and its quotation cannot therefore have any bearing. At that time the Royal Prerogative could not have existed because, as afore-explained, such prerogative was acquired by the Sovereign in virtue of the cession which took place about 12 years after the passing of that Act. As a matter of fact in 1801 Malta was yet under the protection of Great Britain and it remained a British Protectorate until the 4th of October 1813. It became a British Colony exactly on that date when Sir Thomas Maitland took over the government of Malta from Sir Hildebrand Oakes with the title of Governor and Commander-in-Chief of the Island of Malta and its Dependencies. Moreover, and independently of this, the power of the Crown to legislate by Order-in-Council does not deprive Parliament of the power of legislating by Act of Parliament with respect to a colony.

19. Likewise no argument in favour of the plaintiff's contention may be drawn from the provision of the Act known as " The Falkland Islands and Territories in and adjacent to Africa " (6 & 7 Vict. Chapter XIII, 1843) amended by the Act of 1860 and later on substituted by the British Settlements Act, 1888.

20. These Acts have nothing to do with Malta because all these Acts affect settlements and Malta is not a settlement but a ceded colony. It cannot be said—as plaintiff would have it—that as the Settlements Act empowered the Sovereign to legislate by Order-in-Council only within British Settlements, such power does not exist as regards Malta. The power to legislate for Malta by Order-in-Council was acquired by virtue of the Common Law Prerogative of the Crown as soon as the Island was ceded and no Act of Parliament was necessary to give such powers to the Sovereign, as was the case with regard to settlements for which the Sovereign is not empowered to legislate by Order-in-Council unless such power is granted to him by Act of Parliament.

21. Plaintiff also quotes the Colonial Laws Validity Act, 1865, with a view to showing that, as according to this Act " any provision of an Act of Parliament may be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of an Act of Parliament ", the provision of the British Settlements Act that the Crown may legislate by Order-in-Council cannot be extended to Malta because that Act is not applicable to the Island by the express words or necessary intendment of the same Act.

It has been shown, however, that no Act of the Imperial Parliament is necessary to authorise the Sovereign to legislate for Malta by Order-in-Council because such power is vested in him by the Common Law Prerogative of the Crown in virtue of the cession. The quotation of this Act is therefore of no consequence.

22. The extract from cases in constitutional law (D. L. Keir and F. H. Lawson) and *Campbell* vs. *Hall* (pages 117 and 118 of the record of these proceedings), support the Defendants' contention that a ceded colony is

His Majesty's Civil Court, First Hall, Malta.

No. 9. Defendants' Note of Submissions, 31st July, 1937— *continued.*

subject to legislation by Order-in-Council. Grenada is a Colony acquired by cession and it was held in *Campbell* vs. *Hall* that the Crown had no power to legislate by Order-in-Council for that Colony because when the Constitution was established there was no reservation of a Legislature to be exercised by the King. That goes to show that the Court recognised the existence of the prerogative before the establishment of the Constitution.

23. In his Note of Submissions plaintiff nomine has also submitted that the Act of 1936 gave power " to amend or repeal the Letters Patent of 1921 " and that therefore the Act of 1932 which recognizes the right to responsible government is still the law. According to Plaintiff this prevents any going back to the *status quo* before 1921.

24. This contention is obviously untenable. The Act of 1932 amended the Letters Patent of 1921, and removed doubts as to the validity of the Malta Constitution Letters Patent of 1928, 1930 and 1932 (Amendments Nos. 1 and 2); of the Malta (Temporary Government) Order-in-Council, 1930, and of certain other Local Enactments. That part of the Act which amends the Letters Patent of 1921 (and which therefore reformed the Constitution of Representative Government in Malta) must be read as if it had originally formed part of the Letters Patent of 1921. As a matter of fact Section 6, sub-section 2, of the Imperial Act, 1932, provides as follows : " Every enactment and word which is directed by the amending Letters Patent or by this Section to be substituted for or added to any portion of the principal Letters Patent assigned to it by the Amending Letters Patent or the Second Schedule to this Act as the case may be : and after the commencement of this Act the principal Letters Patent shall be construed as if the said enactment or word has been included in the Principal Letters Patent in the place so assigned and where it is substituted for another enactment or word had been so included in lieu of that enactment or word ". Therefore, when the Sovereign by the Letters Patent of the 12th August 1936, revoked the Letters Patent of 1921 Representative Government completely ceased to be in existence and the Crown was placed in the same position as prevailed prior to 1921.

(Signed) PH. PULLICINO,
Attorney-General.

(Signed) T. GOUDER,
Crown Counsel.

(Signed) J. P. BUSUTTIL, L.P.

A true copy.

EDG. STAINES,
Registrar.

No. 10.

Judgment.

His Majesty's Civil Court, First Hall, Malta.

No. 10. Judgment, 11th October, 1937.

HIS MAJESTY'S CIVIL COURT—FIRST HALL

Judge :—

DR. L. A. CAMILLERI.

Sitting of Monday, eleventh October, 1937.

No. 1.

Writ of Summons No. 231 of 1937.

The Honourable MABEL STRICKLAND in her capacity as Attorney of the Right Honourable GERALD LORD STRICKLAND, G.C.M.G., LL.B., COUNT DELLA CATENA, appointed in virtue of an instrument under private signature filed in the record of the suit " *The Honourable Mabel Strickland* vs. *Anthony Bartolo* ", which is pending before His Majesty's Commercial Court; and by a nota filed on the 27th April, 1937, the Honourable EDWIN VASSALLO, A.C.E., in view of the absence from these Islands of Plaintiff nomine, entered an appearance in the present suit on behalf of the Right Honourable GERALD LORD STRICKLAND, who is absent from these Islands, as per power of attorney dated 2nd March, 1937, filed in the suit in re " *The Honourable Mabel Strickland* vs. *Anthony Bartolo, pr.et* " pending before His Majesty's Commercial Court.

versus

EDGAR SAMMUT in his capacity as Collector of Customs, and His Honour Sir HARRY LUKE, C.M.G., Lieutenant-Governor, as lawful representative of the Government of Malta, and by a nota filed on the 11th May, 1937, the Honourable EDWARD R. MIFSUD, C.M.G., O.B.E., in his capacity of Secretary to Government, assumed the proceedings to represent the Government in the stead of His Honour Sir HARRY C. LUKE, C.M.G., absent from these Islands; and by a nota filed on the 2nd June, 1937, His Honour Sir HARRY C. LUKE, C.M.G., in his capacity as Lieutenant-Governor, having returned to the Island, assumed the proceedings of the case in the place of the Honourable EDWARD R. MIFSUD, C.M.G., O.B.E.

THE COURT,

Upon seeing the writ-of-summons, whereby Plaintiff nomine, premising that he imported, or caused to be imported, articles suitable for use in connection with the Coronation Festivities, manufactured in Japan, of the value of three shillings and nine pence; and that Defendant Edgar Sammut nomine exacted on such articles a duty higher than that chargeable, and this in terms of Ordinance No. XXVII of 1936, which is illegal and null and void, so much so that, in order to withdraw the said goods, the Plaintiff

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No. 10. Judgment, 11th October, 1937—*continued.*

was constrained to pay, under protest, the sum of two shillings and nine pence, notwithstanding that the Plaintiff on the 1st March, 1937, had filed in the Registry of this Court a protest against the Defendants—premising the declaration, if necessary, that the said Ordinance No. XXVII of 1936 is *ultra vires*, and, therefore, illegal and null and void—prayed that the Defendants be ordered to refund to him, out of the said sum of two shillings and nine pence, the amount paid in excess by Plaintiff under Ordinance No. XXVII of 1936, or under any other law invalidly and illegally enacted. With interest and with costs against the Defendants, who were called upon to appear to give evidence under oath;

Upon seeing the declaration filed by Plaintiff, in terms of article 175 of the Laws of Procedure;

Upon seeing the statement of defence of Defendant Edgar Sammut nomine, and of the Honourable Edward R. Mifsud, C.M.G., O.B.E., as Secretary to Government, who assumed the proceedings on behalf of the Government instead of His Honour Sir Harry Luke, C.M.G., Lieutenant-Governor, who was absent from these Islands, wherein they state :—

(1) That the "Malta Letters Patent Act, 1936" empowered His Majesty the King to amend or revoke the Letters Patent of 1921. Therefore in virtue of the said Act of the Imperial Parliament, His Majesty the King re-acquired the power to revoke the Letters Patent of 1921, which were so revoked on the 12th August, 1936;

(2) That the effect of the revocation of the said Letters Patent of 1921 was to place the Crown in the same position which it enjoyed previous to the issue of the said Letters Patent of 1921; that is, these Islands, in virtue of the Common Law prerogative of the Crown, were again made subject to legislation by Order in Council, which means that the King acquired again the power to legislate by Order in Council, and, in virtue of such order, he has the power of constituting the office of Governor by means of Letters Patent, and also the power of providing for the Government of these Islands in accordance with such Letters Patent or with the Instructions given to the Governor;

(3) That on the 12th August, 1936, Letters Patent were emanated, which empowered the Governor to make laws for the peace, order and good government of these Islands (section 15), and on the same day Instructions were issued to the Governor laying down the manner in which legislation is to be carried out;

(4) That Ordinance No. XXVII of 1936 was promulgated in virtue of the powers given to the Governor by means of the said Letters Patent of 1936, and in accordance with the Instructions aforementioned. Wherefore the said Ordinance is not *ultra vires*, but is a valid and legal one, and, consequently, Plaintiff's claims are to be disallowed with costs;

Upon seeing the declaration of the Defendants nomine, in terms of article 179 of the Laws of Procedure;

Upon seeing the note filed by Plaintiff nomine, who challenged the capacity of the Honourable Edward R. Mifsud, C.M.G., O.B.E., to appear as the lawful representative of the Government of Malta in the present suit ;

Upon seeing the order made by the Court at the sitting of the 17th May, 1937, to the effect that the Proceedings be conducted in the English Language, and that a translation into English be made of all the acts filed up to that date;

Upon seeing the note filed on the 2nd June, 1937, by His Honour Sir Harry C. Luke, C.M.G., in his capacity as Lieutenant-Governor, who, having returned to the Islands, assumed the proceedings of the case in the place of the Honourable Edward R. Mifsud, C.M.G., O.B.E.;

Upon seeing the notes of submissions contained in the record, and the various exhibits filed by the Plaintiff;

Upon hearing the arguments submitted by Counsel for the Plaintiff and by Counsel for the Defendants;

Upon considering,

That the present lawsuit has arisen out of the duty leviable in virtue of Ordinance No. XXVII of 1936, which Plaintiff considers to have been enacted *ultra vires* on the ground that His Majesty had no power to issue the Letters Patent of 1936, in virtue of which His Excellency the Governor enacted the law in question. Put in a nutshell, Plaintiff's contentions are the following :—

(1) That the Crown had no power to issue fresh Letters Patent for the constitution of the office of Governor with full legislative and executive powers, as this would not be in accordance with the provisions of the Act of the Imperial Parliament (" The Malta Constitution Act ") of the 12th August, 1936, which only empowered His Majesty to amend or revoke the Constitution granted by the Letters Patent of 1921;

(2) That Malta cannot be regarded as a conquered or a ceded colony, and, therefore, is not subject to legislation by Order in Council in virtue of the Royal Prerogative.

Upon considering,

That the Act of the Imperial Parliament of the 12th August, 1936, gave power to His Majesty the King to revoke or amend the Malta Constitution Letters Patent of 1921. In virtue of said Act, His Majesty the King on the same date issued Letters Patent, whereby the said Letters Patent of 1921 were revoked, and whereby he empowered the Governor of Malta to make laws for the peace, order and good government of these Islands, and issued Instructions to the Governor respecting the making of such laws. Ordinance No. XXVII of 1936, was promulgated on the 20th November, 1936, in virtue of the powers given to the Governor by the said Letters Patent of the 12th August, 1936, and in terms of the aforesaid Instructions;

Upon considering,

That, in virtue of the powers granted to him by the Act of Parliamen of the 12th August, 1936, His Majesty the King revoked the Malta Constitution Letters Patent of 1921, and as regards the validity of such

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No. 10. Judgment, 11th October, 1937—*continued.*

revocation, no doubt can be entertained. Plaintiff's contention is to the effect that once His Majesty, availing himself of the power granted to him by the Act of the Imperial Parliament of the 12th August, 1936, revoked the Letters Patent of 1921, by so doing his power was exhausted and could not go any further. Plaintiff does not question the power of the Imperial Parliament to pass legislation involving the revocation of a Constitution granted to a colony; and both parties to the suit agree 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 aforesaid Letters Patent of 1921. Plaintiff, however, denies that before 1921 the Royal Prerogative to legislate existed as regards Malta. He agrees that a ceded colony is subject to legislation by Order in Council, but denies that Malta may be considered as a ceded colony; and, therefore, the main point to be established in this case is whether Malta is a ceded Colony or not;

That, as regards the position of Malta in the British Empire, the Court of Appeal in re *Strickland* vs. *Galea*, determined on the 22nd June, 1935, held as follows :—

" This is not the first time that this point is being raised before a Court of Law on such an issue; and to quote a notable instance, in the Marriages Case, which was specially referred to the Judicial Committee of His Majesty's Privy Council in 1892, one of the main pleas of the Malta Government was that the Island was not a conquered territory and could not therefore, be so regarded for the purpose of the exercise on the part of Great Britain of the powers of legislation in regard to the Island. There can be no doubt or question as to the true and real nature of the title of British Sovereignty over Malta, and that is the very reverse of a right of conquest, whether that term be taken in its broader sense, as including its legal aspects and bearing, or in its restricted meaning of an acquisition by force of arms. This is made perfectly clear by reference to official documents, several of which were contemporary with the events with which they dealt, and to authoritative declarations of several British statesmen who successively held the office of Colonial Secretary. The first of these is also the most important, inasmuch as it was made by the Minister who was in charge of the Colonial Office at the time Malta became British, and indeed in the very same dispatch in which he conveyed the decision of His Majesty's Government definitely to recognize the Island as forming part of the British Empire. In fact, in his instructions to Sir Thomas Maitland of the 28th July, 1813, Lord Bathurst, Secretary of State for War and Colonies, stated *inter alia* :— " The Maltese people have (with an inconsiderable exception) attached themselves enthusiastically to the British connection and offer to His Majesty a wealthy and concentrated population of 100,000 persons, whose active industry is most satisfactorily attested." Lord Glenely, who belonged to the generation which had lived through the events referred to, declared in the House of Lords on the 30th April, 1839, when the question of granting liberty of the press to Malta was being debated :—" Look at the peculiar tenure under which Malta was held by the British Crown. Malta was not a possession the result of a conquest. Malta, when it belonged to the French,

resisted French usurpation, and appealed to this country for aid. Great Britain furnished auxiliaries and with the Maltese had blocked Valletta, and to those united powers the French surrendered, and then the Maltese people, by their own act and authority, voluntarily assented to the protection of Great Britain. In that light the rights and privileges of Malta had ever since been regarded, and it was peculiarly the duty of Great Britain to take care that the principle of British freedom and the full benefit of British legislation should be brought into operation in that, even above all other dependencies of the British Crown." Seven years later, Lord Grey, in a despatch to the Governor of Malta, proclaimed that " Her Majesty was deeply sensible of the noble confidence reposed by the Maltese people in the honour and good faith of Great Britain, at the period when, having nearly achieved their independence by their own gallant efforts, they placed their dearest rights almost unconditionally at the disposal of Her Majesty's Royal Predecessor." More explicitly Mr. Joseph Chamberlain declared in 1900 at the Valletta Palace :—" Malta is in a *unique* position. It has not come to us in the ordinary way in which the possessions of the Crown have been acquired. She is not ours by right of the first discoverer, nor she is ours by right of conquest. Her independence, which was threatened by the great Napoleon, was maintained largely by the action of the Maltese themselves; and it is due, I think, to their clear perception of their position in the world that they were led, of their own accord, to offer their patrimony to the British Government and came under the protection of the British Empire." An identical statement was made by Mr. Chamberlain in the House of Commons in January, 1902, quoted in the judgment under appeal. All important is also the testimony of Sir George Cornewall Lewis, who, with John Austin, formed the Royal Commission of Enquiry into the affairs of Malta in 1836, and who, in his " Essay on the Government of Dependencies," dealing with " Acquisition by Conquest or Voluntary Cession," remarked in a foot-note :—" No instance is given in this section of *really voluntary cession*, as, for instance, *in the case of Malta*." It is consequently, in this restricted sense only that the statement of the First Court that Malta may be regarded as a colony acquired by cession is to be accepted. It was not quite precise to state, as Lord Grey put it, that the people of Malta who fought for their freedom at the close of the 18th century " placed their dearest rights almost unconditionally at the disposal of his Britannic Majesty." It was a " compact," that they called the " Declaration of Rights of the inhabitants of Malta and Gozo " of the 15th June, 1802, and if the clauses thereof—which included the establishment of representative government—were not exactly conditions or terms as they were called by Mr. Chamberlain, they certainly expressed the general wishes and aspirations of the declarants. That the main principles underlying that and other declarations were agreeable and agreed to by the British Government at the time is made clear beyond doubt from official proclamations and addresses, as well as by an eloquent fact which has not received the notice it deserves.

As early as the 5th October, 1813, Sir Thomas Maitland was appointed to and assumed the administration of the Islands not as Civil Commissioner

(like his predecessor from 1800) but as Governor and Commander-in-Chief in and over the Island of Malta and its Dependencies, and in the well known minute of that date, which repeated *verbatim* the Instructions of Lord Bathurst, he proclaimed the " gracious determination " of the Prince Regent, acting in the name and on behalf of His Majesty, " *henceforth* to recognize the people of Malta and Gozo *as subjects of the British Crown* and as entitled to its fullest protection etc. etc." This was nearly a year before the Treaty of Paris (1814) was signed, and two years before its ratification by the Congress of Vienna (1815), which shows that the inscription over the Main Guard, that records the event, is chronologically true (" Melitensium Amor " prior to " Europae Vox "), and that whatever treaties were necessary or expedient in order to affirm her position vis-a-vis the other European Powers, England recognized the " Melitensium Amor " as the first and immediate source of her sovereign rights over these Islands. It may be evinced, therefore, that although no instrument was signed between the people of these Islands and Great Britain, and no terms were fixed, what occurred was perhaps the first instance of the exercise of what is now known as the " right of self determination ", and constituted, as between the parties directly concerned, a " gentlemen's agreement ". Such compact, while losing none of its moral value or effect by the lapse of time, cannot, however, without undue straining, be construed, as appellants seem to suggest, as constituting a formal treaty by the terms of which the relations between Malta and Great Britain must be governed. On the other hand, if the Maltese people may not claim such treaty rights, it is safe to maintain that they are, more perhaps than the people of any other part of His Majesty's possessions, entitled to representative institutions. This, however, does not mean or imply, as appellants seem to suggest, that the Royal Prerogative with the inherent right to legislate was never vested in regard to Malta, in the British Crown. If the sovereignty over these Islands passed, as it cannot be doubted that it did, to the British Sovereign by virtue of the cession, however unique and really voluntary of the Maltese people, the Prerogative was likewise acquired by the Crown ".

The arguments set forth by His Majesty's Court of Appeal in the judgment above referred to, and the conclusion it reached as regards the position of Malta in the British Empire are to be adhered to. Consequently, Malta must be regarded as a colony acquired by cession.

Upon considering,

That it is common knowledge, and even Plaintiff agrees, that a ceded colony is subject to legislation by Order in Council. In fact, Anson in his Treatise " The Law and Custom of the Constitution " (The Crown, Part II, Vol. II, page 61) states that " a colony acquired by conquest or cession is by common law prerogative of the Crown and subject to legislation by Order in Council. Under such an order the King can constitute the Office of Governor by Letters Patent, and by the terms of these Letters can provide for the Government of the Colony. But this power does not

exist in the case of colonies acquired by settlement: and is lost when once the representative institutions have been granted to a Colony". In Halsbury's "Laws of England" (Vol. IX, page 569, 1909 Edition) we find that "the Royal Prerogative extends to the whole of His Majesty's Dominions, and, consequently, the King has jurisdiction to legislate for all colonies by Order in Council, until His Majesty grants, or even promises, a separate legislature, on which the jurisdiction ceases, except as far as there is a reservation in the promise or grant". Also in Halsbury (Vol. II, pages 13 and 14) it is stated that the power of the Crown to legislate under the Royal Prerogative is lost by the grant of a representative legislature to a Colony, unless it is expressly retained in whole or in part; and, if not so retained, power to legislate as to the Constitution or generally can be recovered in the authority of an Act of Parliament;

Upon considering,

That, after it has been established that Malta's position in the British Empire is that of a ceded colony, and 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 such Letters Patent, the next point to examine and determine is whether at that time the Royal Prerogative to legislate existed as regards Malta. As stated above the power of the Crown to legislate under the Royal Prerogative is lost by the grant of a representative legislature to a Colony, unless it is expressly retained in whole or in part, or unless it is recovered by an Act of Parliament. Prior to the Malta Constitution Letters Patent of 1921, representative government in Malta was introduced by Letters Patent of 1849, followed by others in 1887 and in 1903. At the time of the promulgation of the Letters Patent of 1921 Malta was governed in terms of the Letters Patent of 1903, which under sections 58 and 59 contained the following reservations:—"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. 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". Similar reservations are to be found in the Letters Patent of 1849 and 1887, and, in view of same, it cannot be held that the Royal Prerogative was surrendered because it was expressly reserved when representative government was granted to Malta by the Letters Patent of 1849, 1887 and 1903. Consequently, before the promulgation of the Letters Patent of 1921 the Royal Prerogative had not been surrendered either in whole or in part, and the Crown had power to legislate as regard Malta. This power still pertains to the Crown as by the revocation of the Letters Patent of 1921 her position reverted to what it was just before the promulgation of such Letters Patent;

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No. 10. Judgment, 11th October, 1937—*continued.*

Upon considering,

That Plaintiff has quoted the Act of the Imperial Parliament of 1801, whereby His Majesty was empowered to regulate the trade and commerce to and from the Island of Malta, to show that the Royal Prerogative did not exist before 1921, and that at that time the Law Officers of the Crown were of opinion that they had no power to legislate by Order in Council. As rightly submitted by Defendants, the Act of 1801 above referred to was passed long before Malta came to form part of the British Empire, and the quotation of same cannot, therefore, have any bearing in this case. As a matter of fact, in 1801 Malta was not yet a British Colony, and it became such on the 5th October, 1813, when Sir Thomas Maitland was appointed to and assumed the administration of these Islands not as Civil Commissioner (as his predecessors) but as Governor and Commander-in-Chief, and proclaimed " the gracious determination of the Prince Regent, acting in the name and on behalf of His Majesty, *henceforth* to recognize the people of Malta and Gozo as subjects of the British Crown." Plaintiff has also submitted that the Act of Parliament of the 12th August, 1936, gave power to His Majesty to amend or repeal the Letters Patent of 1921, and that, therefore, the Act of 1932, which recognizes the right to responsible government, still holds good. By the Act of 1932 the Letters Patent of 1921 were amended and doubts were removed as to the validity of the Malta Constitution Letters Patent of 1928, 1930 and 1932, of the Malta (Temporary Government) Order in Council, 1930, and of certain other local enactments. According to section 6, sub-section 2, of that Act " every enactment and word which is directed by the amending Letters Patent or by this Section to be substituted for or added to any portion of the principal Letters Patent assigned to it by the Amending Letters Patent or the second schedule to this Act, as the case may be : and, after the commencement of this Act, the principal Letters Patent shall be construed as if the said enactment or word has been included in the Principal Letters Patent in the place so assigned, and where it is substituted for another enactment or word, had been so included in lieu of that enactment or word ". In virtue of this provision, that part of the Act of 1932 which amended the Letters Patent of 1921 must be read as if it had originally formed part of said Letters Patent; and, consequently, by the Letters Patent of the 12th August 1936, were revoked the Letters Patent of 1921 as subsequently amended by the Act of 1932, which, therefore, as regards the clauses relative to representative government in Malta, ceased to be in existence;

Upon considering,

That, once by the Act of Parliament of the 12th August, 1936, the Royal Prerogative was fully restored, as prevailed prior to the promulgation of the Letters Patent of 1921, His Majesty had power to issue the Letters Patent of the 12th August, 1936, whereby he empowered the Governor of Malta to make laws for the peace, order and good government of these Islands, and issued instructions to the Governor respecting the making of such laws. Ordinance No. XXVII of 1936, having been promulgated in

virtue of the powers given to the Governor by the said Letters Patent of the 12th August, 1936, and according to the instructions aforementioned, is valid and legal; and, therefore, Plaintiff's contention as to the nullity of same cannot be entertained, and the claim brought forward in the writ-of-summons must be rejected;

His Majesty's Civil Court, First Hall, Malta.

No. 10. Judgment, 11th October, 1937—*continued.*

Upon considering,

That the question raised by Plaintiff as to the competence of the Honourable Edward R. Mifsud, C.M.G., O.B.E. to represent the Government in lieu of His Honour the Lieutenant-Governor has lapsed, the latter having, in the meantime, reassumed the proceedings of the case;

For the aforegoing reasons,

Adjudges and Declares that Ordinance No. XXVII of 1936 has been validly and legally enacted; and, consequently, rejects Plaintiff's claim.

Costs to be borne by Plaintiff.

(Signed) O. CALLEJA MANGION,
Deputy Registrar.

A true copy.
EDG. STAINES,
Registrar.

No. 11.

Plaintiff's Notice of Appeal.

No. 11. Plaintiff's Notice of Appeal, 16th October, 1937.

The Note of Appeal of the said Hon. Mabel Strickland, nomine.

Who, feeling herself aggrieved by the judgment delivered by this Court on the 11th day of October, 1937, hereby enters an appeal therefrom to the Court of Appeal of His Majesty.

(Signed) G. AMATO, Advocate
(Signed) ALF. C. ZAMMIT, L.P.

The sixteenth day of October, 1937.

Filed by Alf. C. Zammit L.P. without exhibits.

(Signed) J. DINGLI, Dep. Registrar.

His Majesty's Court of Appeal.

The records of this case have been introduced in His Majesty's Court of Appeal on the petition filed by the Hon. Mabel Strickland nomine for the petitioner.

This 29th day, of October, 1937.

(Signed) J. DINGLI, Dep. Registrar.

A true copy.
EDG. STAINES,
Registrar.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 12. Plaintiff's Petition to the Court of Appeal, 29th October, 1937.

No. 12.

Plaintiff's Petition to the Court of Appeal.

IN HIS MAJESTY'S COURT OF APPEAL,

CIVIL BRANCH.

Writ-of-Summons No. 231/1937

The Hon. MABEL STRICKLAND as attorney of the Rt. Hon. GERALD LORD STRICKLAND, G.C.M.G., LL.B., COUNT DELLA CATENA in virtue of a private writing filed in the records of the case *Hon. Mabel Strickland* vs. *Anthony Bartolo* pending before the Commercial Court; and by a Note, filed on the 27th April, 1937, the Hon. EDWIN VASSALLO, A. &.C.E., in view of the absence from these Islands of the Plaintiff nomine, entered an appearance in the suit on behalf of the Rt. Hon. GERALD LORD STRICKLAND, who is absent from these Islands as per power of Attorney dated 2nd March, 1937, filed in the suit *Hon. Mabel Strickland* vs. *Anthony Bartolo* pending before His Majesty's Commercial Court, and by a Note filed on the 16th October, 1937, the Hon. MABEL STRICKLAND, having returned to the Island, took up the proceedings on behalf of the Plaintiff, Rt. Hon. LORD STRICKLAND, who is absent from these Islands; and by a Note dated the 3rd day of December, 1937, Plaintiff the RIGHT HONOURABLE GERALD LORD STRICKLAND, COUNT DELLA CATENA, who having returned to the Island took up the proceedings.

versus

EDGAR SAMMUT in his capacity as Collector of Customs and His Honour SIR HARRY LUKE, C.M.G., as the Legal Representative of the Government of Malta and by a Note, filed on the 11th May, 1937, the Hon. EDWARD R. MIFSUD, C.M.G., O.B.E., in his capacity as Secretary to the Government in lieu of SIR HARRY LUKE, C.M.G., absent from these Islands, and by a Note filed on the 2nd June, 1937, His Honour SIR HARRY LUKE, C.M.G., in his capacity as Lieut. Governor, having returned to the Island assumed the proceedings of the suit in the place of the Hon. EDWARD R. MIFSUD, O.B.E., C.M.G., and by a Note of the 4th March, 1938, EUSTRACHIO PETROCOCHINO in his capacity as acting Collector of Customs took up the proceedings in lieu of EDGAR SAMMUT. The Petition of Appeal of the said Hon. Mabel Strickland in her aforementioned capacity.

Respectfully sheweth :

1. That by Writ-of-Summons No. 231 of 1937 filed in His Majesty's Civil Court, First Hall, Plaintiff nomine, premising that she imported or caused to be imported, articles suitable for use in connection with the Coronation Festivities, manufactured in Japan of the value of three shillings and nine pence (3s./9d.), and that Defendant Edgar Sammut nomine, exacted on such articles a duty higher than that chargeable, and this in terms of Ordinance No. XXVII of 1936, which is illegal and null and void, so much so that, in order to withdraw the same goods Plaintiff was con-

strained to pay under protest the sum of two shillings and nine pence, notwithstanding that the Plaintiff on the 1st March, 1937, had filed in the Registry of this Court, a protest against the Defendants,—that premising the declaration, if necessary, that the said Ordinance No. XXVII of 1936 is *ultra vires*, and therefore illegal and null and void—prayed that the Defendants be ordered to refund to him out of the said sum of 2s./9d., the amount paid in excess by Plaintiff under Ordinance No. XXVII of 1936 or under any other law invalidly and illegally enacted.

2. That His Majesty's Civil Court, First Hall, delivered judgment in the above action on the 11th of October, 1937, whereby it was held that Ordinance No. XXVII of 1936 had been validly and legally enacted and consequently Plaintiff's claim was rejected with costs.

3. That Petitioner feeling herself aggrieved by the aforesaid judgment, entered an appeal therefrom by a Note filed on the 16th day of October, 1937.

4. That the grievance is manifest; in fact the Act of the Imperial Parliament of the 12th August, 1936, gave power to His Majesty the King to revoke or amend the Malta Constitution Letters Patent of 1921; it did not, however, give power to His Majesty to issue new Letters Patent. Once the Crown chose to revoke the Letters Patent of 1921, as the Crown did, its powers were exhausted and consequently the constitutional position of Malta reverted to that prevailing prior to the grant of Self-Government. Plaintiff cannot accept the contention that Malta was till 1921 considered as a conquered colony and therefore subject to legislation by Letters Patent and Orders in Council. The argument that the Island is a *ceded Colony*, is likewise unacceptable in the light of the facts set down in this Court's judgment of the 22nd June, 1935, in re *Strickland* vs. *Galea*. This Court then held: (a) that British Sovereignty over Malta is the very reverse of a right of conquest; (b) that Lord Bathurst, the Secretary of State for War and Colonies, declared in 1813, that the Maltese attached themselves enthusiastically to the British connection; (c) that Lord Glenely declared in the House of Lords on the 30th April, 1839, that Malta was held under a *peculiar* tenure by the British Crown, having resisted French usurpation and having appealed to England for aid; (d) that Lord Grey declared that Her Majesty was deeply sensible of the noble confidence reposed by the Maltese people in the honour and good faith of Great Britain; (e) that Mr. Joseph Chamberlain declared in 1900 that Malta is in a *unique position*; (f) that Sir George Cornewall Lewis declared that the case of Malta was one of " really voluntary cession "; (g) that there was a " *compact* " between Great Britain and Malta; (h) that England recognized the " Melitensium Amor " as the first and immediate source of her Sovereignty over these Islands; (i) that although no instrument was signed between the people of these Islands and Great Britain and no terms were fixed, at the time when the Island came within the orbit of the British Empire, what occurred was perhaps the first instance of the exercise of what is now known as the right of " *self-determination*," and constituted as between the parties concerned a " *gentlemen's agreement* "; (j) that the Maltese are entitled to Representative institutions.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 12. Plaintiff's Petition to the Court of Appeal, 29th October, 1937—*continued.*

5. It is illogical to hold that because writers on Constitutional Law have classified certain of His Majesty's Colonies into conquered or ceded colonies, it must therefore follow that Malta must fall either under the first or under the second category. It is evident even from the wording of this Court's judgment above referred to, " that Malta's position is *unique* and, since the unique character of Malta's entry into the orbit of the British Empire is admitted, this unique position must be considered. It is universally held by the most authoritative writers on Constitutional Law that there need be no concession of representative institutions to bind the Crown to keep such institutions, but the simple promise to make such a grant is in itself binding. The " compact," the " gentlemen's agreement " the expression of self determination referred to by this Court in its above-quoted judgment and the declaration " that Malta more than any other Colony is entitled to Representative institutions," are more than the admission of a promise and as the Ordinance, which is being impugned, was enacted by the Governor without the assistance of any representative body, such ordinance is for all legal intents and purposes, null and void. However the question respectfully submitted for the consideration of this Court must be taken into account from a much wider aspect. We have it officially—and uncontroverted historical facts support the contention—that the main belligerents against the First French Republic were the Maltese, Great Britain only sending " auxiliaries " ; that the Maltese having prior to the arrival of the British Auxiliaries freed the whole archipelago, except Valletta, from the French Army set up a National Assembly which *ipso jure* acquired Sovereign rights. It is these rights that Great Britain promised to respect.

6. There is in Constitutional Law no such thing as " a colony acquired by cession in a restricted sense ", as it was held in the case *Strickland* v. *Galea*. The Island must be considered either as a conquered or a ceded Colony in one way or as an unconquered or unceded Colony in another way. It is submitted that the juridical position of a conquered and a ceded colony are one and the same, namely that each Colony is the ' prerogative ' of the Crown which has the right to legislate by Orders in Council in either case. The admission of this Court that the Island is entitled to representative institutions, is inconsistent with the contention that Malta is a ceded colony even in a restricted sense. If there exists only one condition under which the Island is to be governed, that condition changes the very character of a " ceded Colony ". In fact one cannot conceive a conquered or ceded Colony placed on a parity with a Colony ceded under unique conditions. If Malta has been classified with ceded Colonies that is due to the paucity of Constitutional Law terms. Nor does it appear that sufficient attention has been paid to the case of Malta by writers on Constitution Law, the views and opinions of whom, under the circumstances, are not sufficiently reliable. The existence of one condition and more especially the admission that Malta has the right to enjoy representative institutions alters the very character of the nature of the acquisition and removes the Island from the odious category of conquered or ceded colonies.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 12. Plaintiff's Petition to the Court of Appeal, 29th October, 1937—*continued.*

7. That the Crown had no right to legislate by Orders in Council at the beginning of the British Occupation is evident from the fact that even in so small a matter as Trade and Commerce the British Parliament was called upon to legislate. The First Court has held that the Act of 1801 was passed long before Malta came to form part of the British Empire and the quotation of same cannot therefore have any bearing in this case. The Treaty of Paris in 1814 did not change the juridical status of Malta. The nations assembled at the Congress of Paris could not cede the Island in so far as it was not in their power to do so; they merely confirmed what the Maltese themselves had done, and as the Court very justly held in the judgment *Strickland* v. *Galea* the inscription over the Main Guard, that records the event is chronologically true (Melitensium Amor " prior to " Europae Vox ").

8. That in reply to Defendants' Note of Submissions it is respectfully pointed out that the reasoning to the effect that according to Constitutional writers a Colony may only originate in three different manners, namely, by settlement, by conquest, or by cession, and that Malta, not having been acquired by conquest or by settlement, must have been acquired by cession, is fallacious in so far as this classification is not complete and does comprehend the peculiar case of this Island. If Defendants' reasoning that a conquered and a ceded colony are to be placed in the same position, is correct, it follows that the promises made by British representatives at the time of the annexation are of no legal effect in so far as the Crown has the right to deal with a conquered and a ceded Colony in the same manner, namely to legislate by Orders in Council and to ignore all conditions willingly or unwillingly imposed and accepted.

9. Defendants admit in their Note that Malta became part of the British Empire by the act and authority of the Maltese people who voluntarily assented to the protection of Great Britain. Such being the case the nomenclature " voluntary cession " is a misnomer and is due rather to restricted legal terminology than to a correct expression of the real facts; much more so when the declaration made by this Court in the judgment above quoted is taken into consideration, videlicet :—" that the main principle underlying official declarations were agreeable and agreed to by the British Government at the time, is made clear beyond doubt from official declarations and addresses as well as by an eloquent fact which has not yet received the notice it deserves ". This presupposes certain conditions and agreements which are absolutely inconsistent with the conception that Malta is to be placed in the position of a conquered Colony—conquered and ceded colonies being according to Constitutional Law writers placed in the same category.

10. The Court cannot fail to take into consideration the statement made by the Defendants at page 16 of the record : in their Note of Submissions they hold that the distinction between voluntary cession and cession is an arbitrary one and that Malta's position is unique owing to the circumstances attending its annexation, as there is perhaps no other instance of a colony acquired by really voluntary cession. If that is so

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 12. Plaintiff's Petition to the Court of Appeal, 29th October, 1937—*continued.*

it is preposterous, and in opposition to all sound logic, that Malta should be placed on the same level as a conquered colony—and the fact that the cession—or to be more correct the spontaneous entry of Malta into the British Empire—was voluntary, radically changes the title of acquisition and places the Island in the position of a Colony held *in trust* by Great Britain under certain conditions which the Crown's prestige is bound to observe and which entitles the Island to enjoy that form of Government obtaining at the time of the Annexation and to Representative Institutions as this Court has held. Whatever may be Anson's and Lord Halsbury's opinion about the entry of Malta into the British Empire, neither of the said writers has dealt with the peculiar circumstances admitted by the Defendants relative to such entry, consequently their views can have little bearing on the point at issue before this Court.

11. The Defendants contend that it is unthinkable that promises made by statesmen can have the effect of depriving the British Sovereign of a right vested in him by Common Law. English Common Law does not give the Crown the right to legislate by Order in Council in the case of Northern Ireland, the Channel and the Orkney Islands, and as the Maltese were victorious principal belligerents with auxiliary British troops in the conquest from the French Republic under Bonaparte, they are to be placed in the position as the inhabitants of these territories. The contention made by Defendants is in opposition to the judgment *Strickland* v. *Galea* in so far as this Court then upheld the principle that the Maltese are entitled to Representative institutions.

12. Plaintiff cannot accept Defendants' argument to the effect that the cession of these Islands took place on the 4th of October 1813. As has been submitted above the proclamation issued by Sir Thomas Maitland did not alter the " status " of the Island as it did not effect any change in the conditions under which Malta was annexed to Great Britain. Such proclamation could not annul the *compact* admitted by this Court in the above quoted judgment. The Island's legal standing was established at the time when the Army of the First French Republic was made to surrender. Again if Defendants' contention holds good the Act of Parliament of 1801 might have been revoked or amended by Order in Council since Defendants hold that the Crown, in consequence of Maitland's Proclamation became *ipso jure* entitled to the prerogative to legislate in that manner. Nevertheless the Law Officers of the Crown thought otherwise and amended the Act of 1801 by Act of Parliament, to wit 35 and 36 Vict. Chap. 63.

13. The Act known as the " Falkland Islands and Territories in and adjacent to Africa " (6 & 7 Vict. Chap. 13 (1843)) was repealed by the British Settlements Act of 1887 and both by this Act and by the unrepealed portion of the Act of 1801 as well as by the Malta Constitution Act of 1932, Malta cannot be considered as part of Africa and therefore it is not subject to legislation by Order in Council. Contrary to what Defendants allege the leading case " *Campbell* vs. *Hall* " as well as the case of the Lord Bishop of Natal support Plaintiff's contention because whether a Legislature without reservation is established in a Colony or a promise is made to grant

or to respect the existence of a Legislature—as is the special case of Malta—the Crown has no power to legislate by Order in Council. Defendants have not brought forward any proofs to show that a National Assembly did not exist at the time of the revolt against the French nor do they prove that the Grand Masters had not repeatedly solemnly sworn to observe all the rights and privileges of the Maltese in conformity with the Bull of Concession made by Charles V to the Order of Saint John of Jerusalem in 1530. The Popular Council established by Count Roger of Normandy had subsisted during the long Sovereignty of the Order of Saint John, consequently Great Britain cannot deny to the Maltese the right of having representative Institutions, much more so when it is considered that when the Island was handed over to the Order of St. John Charles the V could not hand it over unconditionally owing to the fact that the Maltese had previously redeemed their country from the rule of Monroi when it was a fief in the latter's hands.

14. The last contention made by Defendants in their Note of Submissions is misleading in so far as the Act of Parliament of 1932 did not and could not substantially amend the Letters Patent of 1921 except in so far as Reserved Matters were concerned. Nor was it the intention of Parliament at the time to pass any legislative enactment radically vitiating the principle of Self-Government embodied in the Letters Patent of 1921, no express statement to this effect having been made therein. The last clause of the said Letters Patent has been interpreted by this Court in previous judgments to the effect that by the grant of Self-Government the right of the Crown to legislate was irretrievably lost except in so far as it had been expressly reserved with regard to Reserved Matters and not otherwise.

Petitioner, therefore,—while producing the undermentioned surety to meet the costs of this appeal, while making reference to the records of the case and to the evidence produced and while reserving the right to produce such evidence as may be admissible according to law, including that of Defendants, to give which they are hereby subpoenaed,—humbly prays that the judgment delivered by the Civil Court, First Hall on the 11th of October 1937, in the suit "*Honourable Mabel Strickland nomine* vs. *Edgar Sammut noe.*" may be revoked with costs and that claims brought forward by Plaintiff in the Writ of Summons aforementioned be acceded to with the costs of the first and second instance against Defendants and petitioner prays that justice be administered according to law.

(Signed) GEORGE BORG, Advocate.
(Signed) G. AMATO, Advocate.

This twenty-ninth day of October, 1937.
Filed by the Hon. Mabel Strickland without exhibits.

(Signed) V. GRECH, Dep. Registrar.

A true copy.

EDG. STAINES,
Registrar.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 13.

Defendants' Answer.

No. 13. Defendants' Answer, 12th November, 1937.

Answer of His Honour Sir Harry C. Luke, C.M.G., Lieutenant-Governor, in his capacity as the Legal Representative of the Government of Malta, and of Edgar Sammut in his capacity as Collector of Customs.

Respectfully sheweth :—

That the defendants beg to refer to their submissions to the Court of first instance and to the reasonings on which the decision of the said Court has been based, and they respectfully pray that, for those reasons, the judgment of the first Court be confirmed with costs.

(Signed) PH. PULLICINO,
Attorney General.
(Signed) T. GOUDER,
Crown Counsel.
(Signed) J. P. BUSUTTIL, L.P.

The 12th of November, 1937.

Filed by L. P. J. P. Busuttil without exhibits.

(Signed) J. N. CAMILLERI,
Deputy Registrar.

A true copy.
EDG. STAINES,
Registrar.

No. 14. Defendants' Note of Submissions, 24th December, 1937.

No. 14.

Defendants' Note of Submissions.

Note of Submissions on behalf of Defendants.

1. Plaintiff in his written submissions contends that Malta became part of the British Empire in virtue of a Compact, i.e., by a written treaty or agreement between the inhabitants of these Islands and the British Crown.

2. This does not correspond to historical data.

3. Malta became a British possession with the goodwill and authority of the Maltese themselves, and, as the Right Honourable Joseph Chamberlain said in a speech delivered in the House of Commons, in January, 1902, the terms under which the Maltese voluntarily entered the British Empire were those of a cession by the representative authorities of the Maltese.

4. This is also the view which has been held by this Court in the judgment in re : *Strickland* v. *Galea* of the 22nd of June, 1935.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 14.
Defendants' Note of Submissions, 24th December, 1937—*continued.*

5. The Court then held that no instrument was signed between the People of these Islands and Great Britain and no terms were fixed, and consequently there was no form of treaty by the terms of which the relations between Malta and Great Britain must be governed. In a few words there are no treaty rights.

6. The suggestion made by Plaintiff that England acquired Malta by a compact on an occasion when Sir Hildebrand Oakes acted as a foreign power independent of England and ceded a possession belonging to a sovereignty that was admittedly not English as having been one of the submissions of defendants is not fair and is contrary to what actually has been stated.

7. The submission made by Defendants on this point when commenting on the import of the Act of the Imperial Parliament of 1801, was that Malta in that year was still a British Protectorate and remained so until the 4th of October, 1813, when Sir Thomas Maitland was appointed first Governor of Malta, and this corresponds to what actually happened in that year (Vide: Debono—" Storia della Legislazione di Malta "—page 279, Chap. XVII).

8. On the 13th of May, 1814, the Island of Malta and its Dependencies were declared by the Treaty of Paris to belong *in full sovereignty* to His Britannic Majesty and the wish of the inhabitants was thus realized.

9. From the above it may be safely held that Malta became part of the British Empire in virtue of the voluntary cession of its inhabitants and if promises to respect the rights and liberties of the inhabitants were made this does not mean that a promise of representative institutions was made. Moreover, prior to Malta becoming a British possession its inhabitants had no representative institutions, i.e., they had no Deliberative and Legislative Assembly. The only Deliberative Institution then in existence was the " Consiglio Popolare " which was not a Legislative Assembly (Judge Debono : " Storia della Legislazione di Malta," page 156) but was merely a local municipal institution which was much less authorized to exercise powers of legislation than a county or a vestry in modern times. (Vide reply of the Crown Advocate, page 7, in the Privy Council Case, 1891, in the matter of validity of certain mixed and unmixed marriages in Malta.)

10. When the sovereignty over these Islands passed to the British Sovereign by virtue of the voluntary cession aforesaid His Majesty became vested in virtue of the Royal Prerogative with the right to legislate in Malta by Order-in-Council, and this corresponds to what was held by this Court in the judgment referred to above in re : *Strickland* vs. *Galea* of the 22nd of June, 1935.

11. The right to legislate by Order-in-Council is derived from the Royal Prerogative. As regards the definition of the term " Royal Prerogative " Defendants refer to the judgment given in this Court above quoted and to Anson : " The Law and Custom of the institution, vol. II, Part II,

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 14. Defendants' Note of Submissions, 24th December, 1937—*continued.*

page 3, A. V. Dicey, Halsbury's Laws of England, Hailsham Edition, Vol. VI, page 443."

12. The Royal Prerogative " means everything which the King or his servants can do without the authority of an Act of Parliament." The Royal Prerogative extends to the Colonies, that is, according to the definition of " Colony " contained in the Interpretation Act of 1889 (52–53 Vict. Chap. 63), to any part of His Majesty's Dominions exclusive of the British Islands (viz., the United Kingdom, the Channel Islands and the Isle of Man) and of British India.

13. A Colony acquired by cession is subject to legislation by Order-in-Council in virtue of the Royal Prerogative. This power is lost by the grant of representative institutions unless it is expressly reserved in whole or in part.

14. Representative institutions were granted to Malta by Letters Patent of 1849, 1887 and 1903, and in these Letters Patent the right was reserved to revoke, alter or amend such Letters Patent. Consequently the Royal Prerogative was not surrendered.

15. In 1921, Self-Government was granted to these Islands and no reservation made; consequently, His Majesty, in virtue of the Royal Prerogative, could not revoke those Letters Patent and the revocation of such Letters Patent was not possible unless by an express Act of the Imperial Parliament.

16. On the 12th of August, 1936, an Act of the Imperial Parliament gave the power to His Majesty to revoke or amend the Letters Patent of 1921. His Majesty on that date revoked *in toto* the said Letters Patent of 1921.

17. The effect of the revocation of the said Letters Patent was to restore the Royal Prerogative to the same position in which it was prior to 1921.

18. It is to be noted that the right of the Crown to legislate by Order-in-Council as regards Malta and other colonies acquired by cession is not derived from an Act of the Imperial Parliament as is the case of Colonies acquired by settlement.

19. In the latter case the power to legislate by Order-in-Council does not exist unless granted by an Act of Parliament (vide " The Falkland Islands and territory in and adjacent to Africa " [6 & 7 Vict. Chap. 13, 1843] amended by the Act of 1860 and later on by the British Settlements Act, 1863, and the Colonial Laws Validity Act).

20. In the case of colonies acquired by cession the said right to legislate by Order-in-Council is derived from the Common Law Prerogative and consequently it is absolutely independent and above any Act of Parliament.

21. Once the Act of the 12th of August, 1936, gave power to His Majesty to revoke the Constitution there was no necessity for a further Act of Parliament to give power to His Majesty to legislate by Order-in-Council for Malta, as His Majesty had this power in virtue of the Royal Prerogative.

22. This is the view and this corresponds to the statement made by the Parliamentary Under-Secretary of State for the Colonies in speaking of the Malta Letters Patent Bill, 1936, in the sitting of the House of Lords of Tuesday, the 5th of May, 1936, to the effect that " when it (the Bill) becomes " law and the limitation is removed, the Crown will be restored to the " position which it held prior to 1921 and will have a full and undoubted " right to legislate for Malta by virtue of the Prerogative." (Vide Parliamentary Debates, Vol. 100, No. 46, col. 747—exhibited with this Note—Doc. Q.)

(Signed) J. H. REYNAUD,
Senior Crown Counsel.

(Signed) J. P. BUSUTTIL, L.P.

A true copy.

EDG. STAINES,
Registrar.

No. 15.

Plaintiff's Note of Submissions.

Note of Submissions on Behalf of the Plaintiff Gerald Lord Strickland.

The appearer respectfully sheweth that he obtained permission from His Majesty's Court of Appeal to file these submissions in place of exercising the right of counter reply at the last stage of the hearing before the Court.

The appearer finds it difficult to be brief in view of the extraordinary importance of the case and the duty of leaving nothing undone on behalf of the land of his birth.

For facility of reference the appearer annexes to his submissions printed matter already submitted to the Court reproducing views recorded by Sir John Stoddart, when Chief Justice of Malta.

THE FIRST " ULTRA VIRES CASE "

A point that may have to be considered is the bearing of the case *Strickland* v. *Galea* on this Appeal.

This Court in reference to the above gave permission to appeal to His Majesty in Council: the Record has been transmitted to London, and both sides entered " an appearance " at the Registry of the Judicial Committee of the Privy Council.

On the passing of the " Malta-Letters Patent Act 1936 " the Appellant was advised that hopes of success on the main issue in the first " Ultra Vires case " were remote.

These hopes were made more remote by the action of the Imperial Government in offering the costs, which were refused. Moreover the

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 15. Plaintiff's Note of Submissions, 26th January, 1938—*continued.*

Government of Malta which had allowed the continuation of the advertisement on the Barracca Lift " Pendente lite " made an offer, which was accepted, to allow advertisements to remain permanently.

In these circumstances Lord Strickland sought the best legal advice obtainable in London from a former Law Officer, and in the circumstances took steps to restart the " Ultra Vires " issue on a matter involving taxation and the privileges of English subjects under " Magna Charta " and other provisions of the Common Law.

The Appellant has challenged the Imperial Authorities to move for a " striking off the List " of the above case on account of delay; but no action has been taken, and on enquiry at the Privy Council Office it has been ascertained that the case is still on the list and likely to remain there until further action.

In these circumstances it is submitted that the decision in *Strickland* v. *Galea* has not yet become *Res Judicata.*

THE " MALTA MARRIAGES " CASE

The decision of the Judicial Committee of the Privy Council in the " Malta Marriages " case has an important bearing, inasmuch as it evades any pronouncement on the question whether Malta came under the British Crown by " conquest ", by " cession " or by " compact ".

" Conquest " was the main basis of the contention against the Government of Malta in that suit. The Government of Malta in pleading that case submitted to the Lords of the Privy Council the three Reports of Sir John Stoddart who had been alive at the date of the acquisition and was Chief Justice of Malta when memories were fresh; he was an eminent constitutional lawyer. Printed extracts from his reports are now available for facility of reference.

KING'S TAXING POWER

Extract from D. L. Keir, M.A., and F. H. Lawson, M.A. Page 229.

" But a Treaty, like a contract, is made to be performed. Can the Crown bind the nation to perform any and every treaty which it makes? In general it seems that the Crown makes treaties as the authorized representative of the nation. There are, however, two limits to its capacity: it cannot legislate and it cannot tax without the concurrence of Parliament. The effect of the former limitation was shown in *The Parlement Belge*, (1879) 4 P.D. 429, where a public vessel belonging to the king of the Belgians became involved in a collision and proceedings were taken against her in the Court of the Admiralty. Sir R. Phillimore, after holding that no immunity from arrest attached at international law to public vessels other than warships, decided that such an immunity could not be effectually granted by a treaty concluded by the Crown without the assent of Parliament, for the change of law involved in depriving the subject of his remedy was beyond the capacity of the Crown acting alone."

Conquest Cession and Compact

Sir John Stoddart diminishes the confusion arising from equivocation as to the meaning of the word " cession " by dividing the subject into " conquest " and " compact," and sub-dividing acquisition by force into " conquest " and " cession."

The word " cession " has primarily at law the technical meaning discussed by Sir John Stoddart; nevertheless it is often used instead of contract.

A copy of the pleadings in the Malta Marriages case is in the Public Library, and a copy presented to Lord Strickland by the solicitors of the other side may, if desired, be placed at the disposal of the Court.

Apprehensions of Secretary of State

Repeating an apprehension expressed in this Court when otherwise constituted Mr. Secretary Ormsby-Gore suggested in the House of Commons that chaos would have been created had the appeal of the " Ultra Vires " case to be differently decided before the Judicial Committee of the Privy Council, because all the legislation previously enacted in Malta since the suspension of the Constitution by Sir Philip Cunliffe Lister might have become void. That however has not been the contention; the contention has been that no law can be contested in Malta under the Digest Lib. 47, tit. 23, " De Popularibus Actionibus," otherwise than within a year of the arising of the cause of action. Such actions will obviously only be attempted in a test case to uphold on the part of the Maltese born equality of " status " and opportunity with other subjects of the King Emperor and to hasten the establishment of Representative Institutions.

The Technical Issue

It has to be shown that a tax has been levied in circumstances irreconciliable with liberties guaranteed, under Magna Charta and the Common Law to British subjects born in unconquered territory; and also that the aggregation of Malta to the British Empire has been by " *compact* " and not by any form of compulsion. Moreover that that compact was entered into before the treaty of Paris of 1812 ratified by the Congress of Vienna of 1815. Such was the opinion of Sir John Stoddart:

Points against Judgment of Court Below

The Court below declares that Malta was acquired by " cession "; but omits reference to the terms thereof, or to the Proclamations of General Pigot and of Civil Commissioner Cameron of 1801, confirmed by Sir Thomas Maitland, and by the use of the word " confirmat " over the Main Guard.

The Court below states that the Imperial Act of 1801 was passed long before Malta became part of the British Empire by the Treaty of Paris; but omits to indicate that Sovereignty had been vested in the People (under the Protectorate of the King) after the non-fulfilment of the Treaty of Amiens.

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The Court has given weight to the alleged " cession " by Sir Hildebrand Oakes without indicating how he obtained a mandate from the Maltese People to cede or from the King to accept.

The Court below fails to show that the promise of Representative Institutions (viz. of a Legislature of which half at least is elected) contained in the constitution of 1887 has been cancelled. and the Court omits to show how the restricted powers in the Imperial Act of 1936 (in the light that the King is a " Limited Monarch ") can operate against the Common Law as evidenced by the Act of 1801; or to show how the King can delegate powers granted by Parliament without specific parliamentary grant by Parliament of power to delegate, or how the position of the Crown as regards legislation after the Act of 1936 reverted to what it was before the Letters Patent of 1921, notwithstanding the provisions in the Interpretation Act of 1889 in Section 11 and Section 38.

THE CONTENTION OF SIR PHILIP PULLICINO

The contention of the Defendant (set out on Page 35 of the Record) is that Malta became a " British " Colony on the 4th October 1813, when Governor Sir Hildebrand Oakes accomplished a " cession " behind the back of the Maltese People, notwithstanding, Sir Thomas Maitland, repeated the pledge given in 1801 to the leaders of a conquering population. The pledge had been embodied in the Proclamation of Civil Commissioner Cameron, namely " the enjoyment of all your dearest Rights." In plain English, we have officially from Maltese Law Officers, a suggestion that England acquired Malta by a trick, on an occasion when Sir Hildebrand Oakes acted as a Sovereign Power independent of England, and ceded a possession belonging to a sovereignty that was admittedly not English. In other words one Englishman gave Malta to all the other Englishmen when it was not his to give, and he assumed to act for the Maltese who shared in the sovereignty to give that share to their " Protector " *without consideration*, and without any reservation and with a submission to the disabilities of having to be treated as a Nation conquered or ceded by the King of Naples or other party assuming a right to cede. There must be two parties to a cession. Grenada was described as a ceded colony because the French gave it up after the loss of sea power.

The Defendant's pleadings are ominously silent on the crucial point—that the King cannot otherwise than by Precise Parliamentary authority delegate the prerogative of Law making without Parliamentary authority. See Hailsham Edition of Laws of England (Vol 27. Page 229.)

WHO GAVE AWAY MALTA?

Was Malta a land belonging to Sir Hildebrand Oakes; or to the King of Naples? And whose was it to give? It was (as admitted by the Defendant) to be a " Protectorate " of Great Britain and according to the contention supported by the Court below, the Protector swallowed up the People protected.

When Sir John Stoddart wrote—that, if Malta was conquered by the English the conquest must have been from the Maltese—this was evidently written to make a joke of an atrocity, it was never imagined that serious use thereof would ever be attempted.

The Marriages case records that the epic efforts of Sir Alexander John Ball were belittled by the military chief who was able to dispense with his services, and bring about his removal from Malta. In a letter of complaint Sir Alexander John Ball points out his enormous pecuniary losses, and he claims a baronetcy. This honour was later conferred upon him, with an appointment as Governor of Malta.

NECESSARY TO PROVE " COMPACT "

The question as to the title of England over Malta had been obviously controverted in the highest circles, for more than a century; nevertheless, in the question now before this Court, the judgment of the Court below has reopened it in a manner that makes the final decision thereof indispensable in the interests of everyone born in Malta, and of the principle of " Equality of Opportunity " for those born in territories within the British Commonwealth of Nations that have not been acquired by conquest. On this point the Common Law was authoritatively laid down in Calvin's case, known as the case of the " post nati," of which an extract of the report thereof in the Library of the House of Lords is available; that case is followed in *Campbell* v *Hall*, and in the case of the Bishop of Natal. See also *Keir and Lawson passim.*

The Hailsham Edition of the Laws of England makes it clear that cession is a species of conquest by using the words promiscuously. Other writers use " cession " for contract, and should not omit to set out the " consideration."

SIR JOSEPH CARBONE'S CONTENTION

There are shades of opinion in the case signed by Sir Joseph Carbone in the Malta Marriages case before the Privy Council inasmuch as in that case it was argued that England, after the capitulation by the French of the Fortress held Malta as a trustee of all the Allies who were entitled by conquest to a partition. It was also held in the case that General Pigot stipulated capitulations having reference only to the fortifications, and not to the rest of the Archipelago already conquered: and moreover, that according to the express terms of the capitulation General Pigot purported to act for ALL THE ALLIES. The Maltese had been recognised as allies previously. The laying down of their arms on the glacis before entering may be explained by apprehension or petitions on the part of the French who were afraid that some of the Maltese would seek reprisals which were deserved.

SIR ALEXANDER BALL'S PROTEST AGAINST " CONQUEST " IN 1800

As a matter of fact Sir Alexander John Ball protested against General Pigot's action inasmuch as he was Civil Governor of Malta, and had orders

from Lord Nelson, who had appointed him, that in case of a capitulation the fortresses were to be handed over to the Maltese, after which it would be the duty of the Maltese to hand them over to the King of Naples.

In defying Lord Nelson General Pigot acted without orders and contrary to a policy of His Majesty's Government towards the King of Naples. General Pigot's letter exculpating himself is printed with the pleadings in the Marriages case. The decision thereon of His Majesty's Government is not available, but the policy of His Majesty's Government at that time was embodied soon afterwards in the Treaty of Amiens, when all those who were co-conquerors of Malta from the French except the Maltese liquidated their rights in favour of the Order of St. John.

Result of the Treaty of Amiens—22nd March 1802

The Maltese were not a party to the Treaty of Amiens. They protested against reinstating of the Knights and retained their share of Sovereignty acquired by conquest from the French, and remained without partners in the Sovereignty on the part of any other of the allies once entitled to share therein. The King of Naples was unable to fulfil the obligations of a feudal lord by putting the Knights of St. John in possession, against the protest of the Maltese people submitted at the foot of the Throne in England by a Deputation led by the Marquis Testaferrata of which the composition and the submissions are printed with the pleadings in the Marriages case.

The treaty guaranteed the Independence of Malta.

Effect of the Treaty of Paris

Between the repudiation of the Treaty of Amiens and the Treaty of Paris ratified by the Congress of Vienna the Sovereignty over Malta was vested in the Maltese Nation. Sovereignty was surrendered on behalf of the Crown of England and it had to rest somewhere. The Maltese as a Sovereign Nation were entitled to enjoy as much as was acceptable of the Rule of a Protector.

Contrary to First Court Sovereignty Rests Somewhere

It is more than inconceivable that Sovereignty rested nowhere before the Treaty of Paris. "The People's Government has to go on" under any circumstances, and the People's Government went on in Malta in the hands of a bureaucracy with the tacit assent of the Maltese who had accepted a Protectorate. Documents printed with the Malta Marriages case show that during the early part of the last century there was favouritism and abject subservience by Maltese Leaders actuated by greed of office, and that there was much patronage mixed up with tyranny to an extent that depressed character and stifled freedom.

Vindication of National Rights

The real issue in the appeal is a vindication of the rights of the Maltese Nation and not the creation of chaos. The essence of the judgment of the Court below is in the words.

> " . . . before the promulgation of Letters Patent of 1921 the " prerogative had not been surrendered either in whole or in part " and the Crown had power to legislate as regards Malta. This " power still pertains to the Crown as by the revocation of the " Letters Patent of 1921 their position reverted to what it was " just before the promulgation of such Letters Patent."

There can be no revival against the Sovereignty of the People of Powers to legislate for Malta by Letters Patent denied by English Common Law and barred by the compact with coconquerors from the French and barred by the grant of 1887 implying a promise only revocable by Act of Parliament.

Main Guard Inscription Explains

In view of the Treaty of Paris, and in order to regularise the position, the inscription now over the Main Guard in Valletta briefly recorded as a compromising declaration " MAGNAE ET INVICTAE BRITANNIAE MELITENSIUM AMOR ET EUROPAE VOX HAS INSULAS CONFIRMAT A.D. 1814."

The inscription does *not* say *Victoriam harum insularum* nor does it say *Deditionem*, nor *cessionem ab haerede Imperatoris Caroli V. in Regno Aragonese.*

The Key of the Position

The word " confirmat " implies *continuation of conditions existing previously.* That diction proves that the Treaty of Paris confirms Sovereignty already existing, namely that of the People with the King of England as Protector.

The impelling psychology was to place the Maltese People in the position of the Knights of St. John and have the King of England in the position of the Emperor, Charles the V. ignoring the severance of Naples from Aragon and that Naples had lost the Feudal over lordship by becoming a vassal of the Papal States.

The " Compact " with " Protectorate "

The " compact " recorded by Sir Thomas Maitland's minute printed in the above pleadings confirms the original compact embodied in the Proclamations of General Pigot and of Civil Commissioner Charles Cameron of 1801 also printed as above. Sir Thomas Maitland's minute assumed—that the Protectorate had continued from 1801 up to the Treaty of Paris, notwithstanding the Treaty of Amiens. This may be denied perhaps. What is certain is—that the Sovereignty of the Maltese, first in part, and then as a whole, continued without interruption to be

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vested in the People of Malta and nothing has legally or honourably occurred to deprive the People of Malta by conquest or " cession."

If the word cession is to mean contract the terms have to be ascertained and held sacred.

RES INTER ALIOS GESTA

It should be noted that neither in Vienna nor Paris were the Maltese constitutionally represented, and nothing was done by the Maltese in Vienna or Paris that can be properly called a " voluntary cession."

The most that might be said is, — that there was at Vienna a " res inter alios gesta," and that the Maltese did not protest effectively.

They had a promise of a Protectorate with full rights of British Subjects from an overlord in a position similar to that of the Emperor Charles V in 1530, and a share of Sovereignty similar to that held by the Order of St. John belonged to the Maltese.

The letter of the Marquis Testaferrata (preserved in the Record Office) sets out the claims made in the name of the Maltese Nation at the time of the Treaty of Amiens.

The enclosures to the recent communication to the Secretary of State from the Advocates of Malta, is valuable evidence.

Mr. Eaton an officer employed in Malta, as well as the Marquis Testaferrata record that a Palace Clique was in existence subservient to a scandalous degree and swayed by terrorism and looking for place and promotion. Such a clique no doubt might have acquiesced to any interpretation of the Treaty of Paris, but no self-constituted authority could legitimately represent the Maltese Nation, so as to cede their liberties in secret, and so as to set up the fiction of a " cession " equivalent to accepting the status of a conquered Nation.

The Hailsham Edition of the Laws of England, after scheduling Malta, as a quasi dominion, says that " Malta must be *regarded* as a "*cession*," it hesitates to say that the case of Malta is that of a "*cession*." " That book cannot alter facts.

The word " cession " appears to have two different meanings on the same page.

SIR GEORGE CORNWALL LEWIS' EQUIVOCATION

Reference must be made to English Law to establish the meaning of " cession " for the purpose of establishing legislative power by Letters Patent and this had to be sought in accordance with the findings in Calvin's case. Cession necessarily requires the bilateral acts of two nations one of which has been conquered. Two parties legitimately represented are in fact required whatever may be the meaning ascribed to the word " cession." This cannot be altered by a vague *obiter dictum* of Sir George Cornwall Lewis, who loosely used the word " cession " without having the training of Sir John Stoddart and without having checked the report in Calvin's case. In fact Cornwall Lewis attached the word " voluntary " to " cession " to make a combination legally contradictory: his book omits further discussion on that problem. Wherefore " cadit quaestio."

He used the word cession in the sense not of capitulation but in the place of contract.

SIR G. C. LEWIS' AUTHORITY VALUELESS AS TO "VOLUNTARY CESSION"

On page 18 of Correspondence respecting Sir John Stoddart's claim for compensation (Ordered to be printed for Parliament on the 18th of June 1839) in a Report to the Secretary of State signed by Sir George Cornwall Lewis and dated the 27th March, 1839, the following words occur. "Although the British Crown had acquired Malta by CONQUEST, " these Abuses would have justly offended the Maltese, and considering " the manner in which the British Crown actually acquired the Islands, " they were a grievous Wrong, as well as a galling insult for the native " population."

This suggests that if there was a conquest it had to be considered as being from the Maltese.

Hence it is evident that when Sir George Cornwall Lewis was writing officially he pledged his reputation to the view that Malta was acquired by " conquest." On the other hand when he was writing a book to capture the custom of the Public, many of whom would have resented such an insult, the same Sir George Cornwall Lewis wrote that Malta had been acquired by " voluntary cession."

The addition thereto of the word " voluntary " is legally unsuitable and adds to the evident contradiction.

It arises from the " dicta " in *Campbell v. Hall* that the difference between " conquest " and " cession " may be — that conquest is a more comprehensive term in indicating the use of force. The judges in that case were dealing with the Island of Grenada, of which the acquisition from France was obtained by the destruction of French sea-power, and by the consequent transfer to England by treaty of Versailles of 1783.

Sir John Stoddart explains, that cession is the transfer of Sovereignty over territory that may not belong to the inhabitants but to an overlord who has the sovereignty, and can pass it on under compulsion, which power may be exercised at a distance and diplomatically. In these circumstances the quotation from a book of Sir George Cornwall Lewis is inapplicable to Malta.

Cession must imply compulsion if it is to give the right to legislate by Letters Patent.

If cession means an agreement without compulsion it gives no other right than what emerges from a spontaneous contract.

PRECONQUEST HISTORY

The Sovereignty of Malta was in 1530 vested on the Emperor Charles V who was King of Aragon, he transferred to the Grand Master of the Knights of St. John his feudal Vassal certain rights of Sovereignty subject to a Protectorate under the obligation to tender an annual tribute of recognition of the overlordship to future Kings of Aragon. At the battle of Lepanto

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the Order of St. John fought as a Sovereign Power; and the Grand Master, the Cardinal Verdala, some time after that battle refused to obey a summons to Rome to a conference on the apportionment of the spoil. In fact Grand Master Verdala asserted independence from all overlords, even from the Pope, by setting up an emblematic monument in front of the North corner of the Palace, and his successors established this Sovereignty by substituting for the emblematic Berretta of the Master of the Hospital of St. John the closed crown surmounted by an orb as indicating Kingship. The French in 1798 acquired Malta by conquest from the Sovereign Order of St. John. The Maltese as principal belligerents with the English and other Allies acquired Malta by conquest from the French in 1800, after nearly two years of war, in which the Maltese lost many thousand lives. No British lives were lost in this campaign.

Since the time of Charles V, Naples had become a feudatory of the Papacy and had lost the *nexus* with the Kingdom of Aragon.

EXTRACT FROM REMONSTRANCES OF THE MALTESE DEPUTATION

In the words of the Deputation led by Marquis Testaferrata.

" The Maltese, therefore, demand that if the Island is not delivered up " to them that all expenses incurred for that share of the war which they " took, be paid to them, and the damage they suffered by the war, be made " good to them, and that they be indemnified for the plunder of the French.

" They allege that they, as principals of the war, were the captors, " that every public property is theirs, and that if by superior force it should " be wrested out of their hands, the mortgages on them should be paid.

" They claim the Island, therefore, by right of conquest from the " French, who had by right of conquest acquired it from the Order of St. " John."

It was rightly said in that Representation of the Deputation of the Maltese People, that the King's Ministers would discover with horror and contempt the way the Maltese troops had been treated by Major-General Pigot. This is proved by the terms of the proclamation of Civil Commissioner Cameron confirmed by Governor Maitland and by the speech of Lord Glenelg quoted in the House of Lords by Lord Strickland in November, 1936.

ROYAL COMMISSION ON 1887 CONSTITUTION

The concluding paragraph of the Report of the Royal Commission of Sir George Bowen and Sir George Baden-Powell to settle details of the Constitution of 1887, show that at last the eyes were then opened of the Minister at Downing Street.

Parliamentary Debates—LORDS. 1935–36. Fifth Series.

I beg leave to read to your Lordships' House not merely extracts from speeches of previous Secretaries of State or other noble Lords, but an extract from no less authority than the findings of a Royal Commission of not very remote date, the Report of which was approved by Parliament and by Her Majesty Queen Victoria.

The Royal Commissioners were Sir George Ferguson Bowen, formerly Governor of Queensland and Victoria, and Sir George Baden-Powell, a member of the House of Commons and brother of a very famous member of your Lordships' House. The Royal Commission said :—

> " *In conclusion, we would submit that an additional argument in favour of our recommendations is that, if approved by Your Majesty, they would tend to reconstitute, so far as is either desirable or practicable at the present day, the most characteristic features of the ancient popular Council (Consiglio Popolare) of the Maltese people. That Council was first established after the expulsion of the Saracens by the Normans in A.D.* 1090 *; it maintained its influence for several centuries and even a part of the autocratic rule of the Knights of St. John ; and it resumed its vitality (of which the Maltese are rightly proud) during that bright epoch of their history, the interregnum between the French invasion in A.D.* 1789 *and the subsequent spontaneous entry of Malta into the British Empire.*"

May I emphasise the word " spontaneous " ? The Royal Commissioners go on :

> " *We are pleased to think that our recommendations are in accordance with the traditions of the people of Malta and of their ancient Constitution ; for the annals of these islands show that the Consiglio Popolare contained representatives of the nobles and chief families, and of the clergy ; and also deputies elected by the resident inhabitants of the cities, and of the casals, or village communities, arranged in groups.*
>
> " *Malta holds a very important and prominent position among the principal military and naval stations of the British Empire ; while its interesting history, and the loyalty of the people to Your Majesty's Throne and Person, together with their well-known industry and law-abiding character, entitle them to the most favourable consideration on the part of the Imperial Government and Parliament.*"

A quotation of even greater importance is from a speech made by Mr. Joseph Chamberlain, as Secretary of State for the Colonies, in dealing with Malta in another place.

Protest of the Marquis Testaferrata and Others

The following argument may be gathered from the quotation hereunder,—

" Melitensium Amor " (of the type that gives away) had been superseded between 1798 and 1814 by a cautious and enlightened patriotism evinced in various documents and described in the letter of the Marquis Testaferrata recorded among the Colonial Office Papers as Malta No. 3, dated 25th November, 1801, enclosed in a communication dated the 25th November, 1801, addressed by Civil Commissioner Charles Cameron, to Lord Hobart, Secretary of State for the Colonies, of which the translation has been printed.

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Evidence of the happenings at the defeat of France in Malta is also revealed in another document endorsed " Translation of the Representation of the Deputies of Malta and Gozo." In that representation the following words occur. (See the Marriages Case.)

" During the siege of Valletta the Maltese lost about 20,000 men, " the English army had not one single soldier killed," and further, " The British troops took possession of the place and called on the " Maltese to put down their arms on the glacis before they entered " the town."

and :

" The Maltese, without suspicion, and relying on the good faith " of the English Nation, gave up their country into the hands of the " British General without stipulation, obeying them with fidelity " and submission, as Ministers of the Sovereign their hearts had " elected. They forbear to make any comment on the manner they " have been treated, because they are fully persuaded that it will " be discovered with horror and contempt by the King's Ministers."

And the same document further on records :—

" Notwithstanding that no stipulation is recorded to have been " made when the Maltese were induced to lay down their arms in 1800, " STIPULATIONS WERE MADE IN TIME TO BE EMBODIED IN THE " PROCLAMATION OF 1801 BY COMMISSIONER CAMERON IN THE NAME " OF THE KING OF ENGLAND AS ' PROTECTOR ' OF THE MALTESE."

SIR ALEXANDER JOHN BALL'S VIEW OF INTERNATIONAL SITUATION

The Colonial Office paper, Malta No. 9, 1803 contains extracts of a letter from Captain Alexander Ball to Major-General Pigot commanding the allied troops of Malta, dated 1st September, 1800, and records as follows :

" I consider the Maltese a distinct Corps who besieged La Valette " twelve months with unexampled bravery and perseverance, without " the aid of Foreign Troops, at present they have three thousand Troops " who occupy the advanced posts, and they have three thousand Militia " enrolled ready to act; They have been lately maintained at the joint " expense of England, Russia and Naples, and if I am not allowed to sign " the Capitulation alluded to, I am apprehensive, it will give much offence " to the two latter courts as well as to the Maltese, who conceive from " both a Civil and Military point of view they are entitled to an important " voice."

" I beg leave to acquaint you that, when Rear-Admiral Lord Nelson " commanded in the Mediterranean, I received his order to hoist the " colours of St. John of Jerusalem, whenever I enter La Valette in " conformity with an agreement between the Ministers of England, Russia " and Naples, since which I have been informed by Mr. Paget, the British " Minister at Palermo, that he has not received counter orders; If there " be any objection to the execution of that order I trust there will not

" be any to the hoisting of the Sicilian Majesty's Colours with those of his " Brittannick Majesty."

There is corroboration from a letter of Lord Nelson referring to the capture of Valletta from the French addressed to Captain Ball of H.M.S. Alexander which occurs in Nelson's order book.

25th October, 1798. " You are hereby required and directed to take " under your command the ships (Audacious, Goliath, Terpsichord, " Incendiary.) Their Captains having directions to follow your orders " and to undertake to take the blockade of the Island of Malta, and to " prevent as much as is in your power any supplies of arms, ammunition " or provision getting to the French army or caught in their possession, " and to grant every aid and assistance to the Maltese, and, *consulting* " *with the Maltese Delegates* upon the best methods of distressing the " enemy using every effort to cause them to quit the Island or oblige them " to capitulate. And relying upon your zeal and ability in the service, " in advent of a capitulation with the enemy, the Island, towns and forts " to be delivered unto the islanders, to be restored to their lawful Sovereign, " but to insist on the French ships, Guilliame Tell, Diane, Justice to be " delivered up you are to despatch the Terpsichord to Naples, on the " 14th of November next with an account of your proceedings to that " time."

HORATIO NELSON.

SIR JOHN STODDART'S PERPLEXITIES

Extract from the first report on the Law of Malta and administration thereof, by the Honourable Sir John Stoddart, Knight LL.D., Chief Justice of the said Island and its Dependencies :—

105. The doubts, then, my Lord, which I humbly propose for your Lordship's consideration, are first, whether those inhabitants of Malta who were in insurrection and were against the French from 2nd September, 1798, to 4th September, 1800, are not to be considered as having exercised by means of their chiefs such Sovereign Acts as gave them during that period the legal character of an independent " nation " ?

106. Secondly, whether that character did not wholly cease on the last mentioned day, so that they are from that time to be regarded as British subjects.

107. Thirdly, if they become British subjects from the 4th September, 1800, whether they did so by what happened at the time, or by relation back from a subsequent period.

108. Fourthly, if by what happened at that time, then whether it was by right of conquest in virtue of the capitulation granted to General Vaubois or by right of compact in virtue of the understood agreement between the Maltese chiefs on the one hand, and the British Officers, General Pigot, Captain Ball, &c., on the other.

109. Fifthly, if they became British subjects at a period subsequent to the 4th September, 1800, then whether it was in virtue of the declaration

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made on the part of his then Majesty on the 5th October, 1813, or in virtue of the Treaties of Paris on the 30th May, 1814, or at any and what other time?

110. Sixthly, if they became British subjects on the 5th October 1813, then whether His Majesty's Sovereignty and their subjection respectively is not limited by the declaration then made to the same terms and conditions as those which were reciprocally understood as matter of compact in 1800.

111. Seventhly, whether if so limited, any English Legislature which is directly opposed to the free exercise of the Roman Catholic religion or the maintenance of the Roman Catholic ecclesiastical establishment in these islands, as reciprocally understood in 1800, can be of any force and effect in Malta without the consent, tacit or express, of the inhabitants of Malta.

112. Eightly, whether they became British subjects on the 30th May, 1814, or at any and what other time, in virtue of any treaty or treaties between His Majesty and any other Sovereign.

113. Ninthly, whether, if any such treaty did so operate, then whether it had then any and what effect in limiting or extending the rights of the Crown or the subject in Malta resulting from the previous transactions of 1800 and 1813.

114. Tenthly, whether any English Legislation of a date prior to the Sovereignty of the British Crown over these islands (except that which regards the succession to the Crown), is merely as such, to be here deemed of any force and effect.

115. My Lord, I should not have ventured to trouble your Lordship at such length, but for your kind permission to make to you an unreserved communication on the law, which it falls to my duty to administer, and which I am most conscientiously anxious to administer in such manner as to merit your Lordship's approbation. The time does not permit me now to proceed further on this Report; but with your Lordship's permission after discussing the general topics above stated (section 68) I mean in a future communication to enter on those particular questions, relating as well to the spiritual as to the temporal law, and as well to the civil as to the criminal, which appears to me necessary to be submitted to your Lordship's judgment, and finally, I shall proceed to examine the mode in which those various branches of the law are here administered.

All which is humbly submitted.

(Signed) JOHN STODDART,
Chief Justice, Malta

Malta, 10th February, 1836.

COMPARISON OF "CESSION" AND "SOVEREIGNTY"

"Cession" if used in the sense of the word which gives power to tax by Letters Patent, extends over countries conquered by force or by treachery or ceded under compulsion e.g. by capitulations.

The power to legislate by Letters Patent, at Common Law does not extend over countries annexed by marriage settlement such as the Orkney Islands, or such as the Isle of Man annexed by the transfer of the Kingship through female heiresses marrying English subjects, or to the assumption of a Protectorate with a stipulation of conditions, such as are embodied in the Proclamations of General Pigot of the 20th February, 1801 and that of Civil Commissioner Cameron dated 15th July, 1801 and confirmed by Governor Maitland on the 4th February 1814. The material words of Mr. Cameron's proclamation are—" His Majesty grants you full protection and the enjoyment of your most cherished rights. He will protect your Churches, your Holy Religion, your Persons and your Property."

WORDING OF COMPACT—WHO CONQUERED ?

The material words of Sir Thomas Maitland's declaration are—" His Majesty's gracious determination henceforth to recognise the people of Malta and Gozo as subjects of the British Crown, and as entitled to the fullest protection."

In the words of the Chief Justice of Malta Sir John Stoddart—" If Malta was by England acquired by conquest and not by compact, the conquest must have been from the Maltese."

The above is a precise legal qualification contrasting conquest (or cession) with compact

INTERPRETATION OF COMPACT

A protectorate was created in 1801 which fully included that the rights of the Maltese subsisting at the time of the conquest from the French in 1800 should be safeguarded to a Nation in which there was an organised Government. There was a representative Assembly which was a cherished liberty. The Maltese Nation had carried on a successful war of conquest and liberation with that objective.

This condition of the safeguarding of the Maltese rights was part of a *compact* which emerges not only from the Proclamation of Commissioner Charles Cameron in 1801, but also from the confirmation thereof by Governor Sir Thomas Maitland, and from the passing of the Imperial Act of Parliament of 1801, proving a status to be dealt with by Act of Parliament and not by Letters Patent under the Prerogative.

NO ONE-SIDED CONTRACT

At law a " voluntary contract " is one that is " without consideration " and is a wrongly used expression in fact a contradiction in terms.

Although the author of the phrase mentions the conception he drops the subject.

The decision in Calvin's case demonstrates beyond equivocation that the use of the word " cession " lacks technical meaning where force has not been applied to obtain possession. If " cession " is used to imply some form of contract there must be consideration e.g. The promises made in 1801,

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confirmed in 1814 (a) " the liberties of the people." (b) " full protection of all dearest rights." There was a compact not a " cession."

This power of conquest by the victor under the Roman Law was expressed in the words *Jus esse belli ut victores victis quaelibet vellint imperassent.* The Maltese were never " victi " viz. persons conquered, by the English, over the Maltese no King of England ever acquired a " vitae et necis potestas." By the occurrences in 1800 when the French were vanquished, the Maltese acquired Sovereignty, and if afterwards they lost it, Chief Justice Stoddart shows that any such conquest must have been after the Maltese had with their Allies conquered the French.

Only by ignoring the above position can the Court below argue that Malta did not form part of the British Empire till after the Treaty of Paris of 1812 ratified by the Congress of Vienna of 1814.

Early Imperial Acts

The Court below has no adequate ground for rejecting the position deriving from the Imperial Act of 1801, Letters Patent then were obviously illegal.

The British Settlements Act passed in 1887, in virtue of the sixth clause thereof, does not affect Malta ; because Malta had already before 1887 a Legislature, and was well populated, and could boast a long established civilisation. The defendant admits this.

The Malta Constitution Act of 1932 has not been repealed, only some clauses have been repealed. What remains of the Act of 1932 is evidence that, at the time, Malta had been promised liberty and citizenship which must include the promise to Malta of Representative Institutions. Such a promise was made irrevocably in 1887, if not earlier in precise terms.

The existence of such a promise evidenced by the Act of 1932 remained unchallenged by the Act of Parliament of 1936. That Act admitted any form of bona fide amendment of the Constitution of 1921, had it not been revoked. The power to amend only allowed amendments congruous with the substance of the Constitution of 1921; they had to be " Ejusdem Generis." By the abolition of the Constitution of 1921, the position becomes that indicated by the Settlements Act of 1887, viz that set out in *Campbell* v. *Hall,* and that of the Bishop of Natal and Calvin's case. The *status quo ante* was required by the Common Law as established by the Act of 1801.

Effort to Uphold Conquest

Some observation may be desirable with reference to the Royal Commission of 1813 which argued against the rights of the Maltese as submitted to their Representatives by accepting an opinion obtained from a lawyer called Doctor Dolci evidently selected as a special pleader. Overwhelming evidence against these conclusions have been accepted and published by subsequent Royal Commissions and other authorities.

Moreover a Royal Commission endeavoured to uphold the policy of General Pigot. With the help of arguments from Advocate Dolci the Commission was able to report that the Ancient Maltese Council,

established by King Roger the Norman, never according to them had constitutional importance. It should have been reported that its importance had been unlawfully set aside by the Knights.

RECENT AUTHORITATIVE TESTIMONY

What is however convincing is, that the main decision adverse to Maltese claims by the Royal Commission of 1813, is contradicted by a Secretary of State for the Colonies and War, namely Lord Glenelg in his speech in the House of Lords delivered on the 3rd. April, 1839, at the time when many were alive, who could testify to facts as set forth in his speech. There is no record of decisions by a Secretary of State favourable to the Report of 1813.

In addition, reliance should be placed on the more recent Royal Commission on electoral divisions of Sir George Ferguson Bowen and Sir George Baden Powell, of which the report had the approval of His Majesty's Government, before the Constitution of 1887.

THE CONSIGLIO POPOLARE

It is argued on behalf of the Government that the practice of the Council set up by Norman Kings which requires Parliamentary decisions to be submitted to the King bars the recognition of the Maltese popular council as being a " Representative Institution " within the definitions of such bodies in the Hailsham Edition of the Laws of England.

But the above contention is incorrect: to this day when assent is given to acts of the Imperial Parliament by commission after announcing the title of each Bill in the House of Lords, the clerk of Parliament declares " *Le roi le vult.*"

Immediately before the advent of the Knights the position of the Maltese People and Council was similar to that of the Norman Islands and Parliament in the English Channel. By the payment of 30,000 golden crowns to buy out the intermediate lordship which the King of Sicily attempted to create in favour of Monroi the Maltese not only established the above position but extracted a pledge that no successor in the kingdom of Aragon could alter that status.

The Emperor Charles V. broke that pledge by granting to the Order of St. John the position of an intermediate lord. According to feudal law this absolved the Maltese from allegiance to the successor of the Norman King Roger. When the Knights of St. John no longer ruled Malta, the Maltese expelled the French and then they had no overlord and no intermediate lord. At the time of the Treaty of Amiens England was entitled to make over to the King of Naples, if he was in a position to accept it, the English share in the conquest from the French, but no more: certainly not the extent of sovereignty possessed by King Roger or the Emperor Charles V.

SIR JOSEPH CARBONE AND THE CANON LAW

In the Malta Marriages Case, the Crown Advocate of Malta based his case on proving that the Canon Law in reference to that question, is

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the law of Malta; perhaps he went too far in denying any power to the Consiglio Popolare in general terms, instead of in terms that limited the restriction as regards the Canon Law position.

MR. HARDMAN'S BOOK

Mr. Hardman's book contains a collection of documents made to counteract the Crown Advocate's case by proving that Malta was acquired by conquest. As the latter view has been repudiated before the Court on behalf of the Government, weight need not be given to passages in that book which are not quoted and are not made open to the analysis of their intrinsic merits.

LETTERS PATENT ACT, 1936

Moreover the rule of interpretation as to any Enabling Act, makes it imperative that, when once the power therein conferred by the Act has been fully used, the Act becomes spent. In fact as the Act has been availed of to repeal the whole of the Constitution of 1921, it has resulted that, after that, nothing which could be amended by the Act of 1936 remained.

The levying of taxation which this court is asked to declare to be *ultra vires* purports to be by Ordinance enacted under powers exercised after the powers in the Malta Letters Patent Act of 1936 had been exhausted. See sections 11 and 38 of the Interpretation Act of 1889.

Validity of the Ordinance was challenged within the period of one year in order to respect our Common Law as set out in Justinian's Digest Book 47.

LIMITED POWER "TO AMEND"

The Malta Letters Patent Act, 1936 has to be interpreted strictly, and it has evidently been so drafted not to challenge the Common Law following Calvin's case and so as not to offend other portions of the Empire by not upholding anywhere the creation of a non representative constitution after a representative one had been granted or promised.

In fact the Act of 1936 gives power to "amend" a constitution which had, *as its essence Representative Institutions* the Act also gives power to repeal the Constitution of 1921 *in toto*. It does not give power to add any provision which is not *bona fide* "an amendment" of the Constitution of 1921; and such power had to be exercised before a repeal in toto which leaves nothing congruous open to amendment. There was power to add to the Reserved Matters within the ambit of the Diarchual System of the Constitution of 1921 as embodied in Section 68. There was power to change the Letters Patent constituting the Office of Governor but no power to delegate to him authority to enact laws that levy taxation.

The Interpretation Act provides that the repeal of a Statute does not revive the previous conditions.

The Constitution of 1887 admittedly contained power to amend that Constitution by Letters Patent, not that of 1921 which limited the exercise of the Prerogative to Reserved Matters.

Previous Letters Patent could not, and did not contain power to revoke the promise of Representative Institution so as to be exercisable without Parliamentary authority.

The Prerogative, inasmuch as it did not extend to taxation in 1801 could only be established by an Act of Parliament that says so. There is no such Act, the " Status Quo ante " is therefore the Common Law as it existed in 1800.

The so-called " Constitution " of to-day is not a Constitution in any sense that such a word has had heretofore: and if the concoction that has resulted is to be called a " new constitution " the same arrangement cannot at the same time be called an " amendment " of the constitution of 1921.

THE SO-CALLED COMMON LAW PREROGATIVE

In arguing that there was a " Common Law " Prerogative that has been unlimited and inextinguishable, it was forgotten that the King's Prerogative must have existed long before there could be any " Common Law " or any jurisprudence based on judicial decisions. What an English lawyer might mean by " Common Law " Prerogative, can only be what remains of the original unlimited Prerogative after the same has been from time to time restricted by Acts of Parliament, by the Cromwellian Revolution, and by the " Act of Settlement of a Protestant Succession."

THE STATUTE OF WESTMINSTER (1913)

The statute of Westminster surrenders the Prerogative to a limited degree and the powers of the Imperial Parliament to legislate for "dominions" (as comprised by the new definition of the word dominions) but it does not bar the unlimited power of Parliament to legislate for other portions of the Empire. The definition of possessions upon the ground that they are not " dominions " is incomplete. There are possessions that are not colonies in fact such as Malta, the Orkney Islands, the Isle of Man, and territories in the Arctic and Antarctic Regions. Malta is a possession " Secundum Quid." But to call Malta a colony is a misnomer.

LIMIT TO LEGISLATION BY LETTERS PATENT

In the Letters Patent of 1887 greater power could not be given than any Letters Patent ever had in themselves, e.g., no power to repeal " Magna Charta " or to curtail the constitutional functions of the Parliament of Westminster as the custodian of the Prerogative for the Crown and its subjects.

A reference was made to Lord Milner's Despatch regarding the necessity of an Act of Parliament for any withdrawing of the Constitution: it might be added that Lord Milner considered that of Malta more democratic than that of New South Wales.

LORD PLYMOUTH'S AUTHORITY

To quote Lord Plymouth in debate as an authority on a future effect of the Bill of 1936 might have had more weight if Lord Plymouth was

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voicing the opinion of a Law Officer of the Crown with a professional reputation to safeguard, rather than that of a faithful Under-Secretary doing the best for a Colonial Office mentality but slightly improved since the day when officials were inclined to treat Malta as an African Island under the Falkland Islands Act, and this to such an extraordinary degree that the Customs and other Departments had to pass three Acts of Parliament to declare that Malta is in Europe.

" COMMON LAW PREROGATIVE "

When the Court was informed that the Common Law " says " this or that, it has to be remembered that the Common Law arises from a number of accepted decisions obtaining established assent : in fact the Common Law is not a written law, but it is what is accepted as binding in the absence of Statutes or by explaining Statutes.

INTERPRETATION ACTS

At the same time it is laid down by the Interpretation Acts, that whatever is generally accepted as the Common Law, can only be altered by Acts of Parliament that professedly and unmistakably are prepared for that purpose.

See Halsbury Edition of Laws of England, Vol. 27, Section 283 :—

" Statutes which limit or extend common law rights must be expressed " in clear unambiguous language."

And further on :—" Such are — (9) Those which affect the prerogative " of the Crown."

STRICKLAND,
Of the Inner Temple,
Barrister-at-Law.

APPENDIX I

Extracts from First Report on the Law of Malta and the Administration thereof, by the Hon. Sir John Stoddart, Knight LL.D., Chief Justice of the said Island and its Dependencies.

NOTE : *The pages and paragraphs are those of an Appendix to the Malta Marriages Case.*

Page 15. Para. 16.

. . . The Maltese insurgents placed themselves under certain chiefs, who formed a sort of Council, and chose for their president, Captain (afterwards Sir Alex.) Ball, he being authorised, both by his own Sovereign, and the King of Naples, to assume that office. Much uncertainty prevailed as to the flag under which the Maltese should fight. At one time, the ancient Maltese colours were hoisted on the batteries; at another time the Sicilian; and at length Mr. Vincenzo Borg, chief of the battalion of Birchircara, having hoisted the English flag on the battery which he commanded, his example was followed by other chiefs, and so became general. The Maltese,

both within and without Valletta, underwent great sufferings; so that their numbers are said to have been reduced above 20,000 during the blockade, which lasted two years, being kept up by an English squadron on the sea, and by the Maltese (with the assistance of a small number of English soldiers and some Sicilians) by land. In June, 1800, General Graham (afterwards Lord Lynedoch) issued a proclamation, in which, subscribing himself "Brigadier General commanding the allied troops at the blockade of Valletta," and promising the Maltese further aid, in the name of the King of England, he called on them to persevere in fighting for freedom, for their religion, and for their country.

17. On the 4th September, 1800, General Pigot, who had succeeded General Graham in command, granted to General Vaubois a capitulation to which Admiral Villeneuve and Captain Martin, the French and English naval commanders, were also parties. This document, however, is in no degree political, it says nothing of the Sovereignty or future Government of Malta; but merely stipulates on the one hand, for the evacuation of the town and forts, and on the other for the transportation of the Garrison and its followers to France. General Pigot signed it not merely as an English officer, but as "commanding the troops of His Brittanic Majesty and his allies," and it appears from the 11th Article, that those allies were the "armed Maltese," from whose hostile spirit the French general apprehended violence, and therefore chose to trust to English honour and humanity for the fulfilment of the capitulation. (Appendix No. 4.)

Page 16. Para. 19.

The first mode of Government adopted was to separate the Military power from the Civil. An English general commanded the garrison, and an English Commissioner directed the civil government. The latter (Mr. Cameron), on his arrival, in July, 1801, issued a proclamation to the "Maltese nation," assuring them, that His Majesty granted them, full protection and the enjoyment of their dearest rights," and that he would "protect their churches, their holy religion, their persons, and their property." In the same year, an Act of Parliament passed, declaring Malta to be "in His Majesty's possession," and empowering him to regulate the trade and commerce to and from that island. (Stat. 41 Geo. III, c. 103.)

20. It is needless to notice the stipulations of the treaty of Amiens further than to observe, that a Maltese deputation went to England to remonstrate against them, and that they were annulled by the resumption of hostilities in 1803.

Page 17. Para. 25.

. . . In the meantime the military and civil government was united, in the person of Sir Thomas Maitland, who immediately on his arrival published the memorable Declaration of the 5th October, 1813, that the Prince Regent, in the name and on behalf of King George III, had determined "thenceforth to recognise the people of Malta and Gozo as subjects of the British Crown, and as entitled to its fullest protection." To this was added the further

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assurance that the King's intention was " to secure to the Maltese, in the fullest manner, the free exercise of their religion, to maintain their ecclesiastical establishment, to introduce such ameliorations in the proceedings of the Courts of Law as would secure to everyone the certainty of speedy and effective justice, and to make such improvements in the laws themselves as past experience or change of circumstances might render necessary and advisable.

Page 20. Para. 34.

It was in Sir Thomas Maitland's time that the first Piracy Commission was issued to Malta, under Stat. 46 Geo. III, c. 54, and he then declared that had he possessed any discretionary power he would not have advised it; . . .

Page 22. Para. 39.

. . . Lastly, Sir J. Richardson suggested (as indeed the Commissioners of 1812 had done) the appointment of a Legislative Council, the Governors, up to that period, having assumed to themselves the sole legislative power as devolved to them from the Grand Masters, although the Grand Masters had never pretended to publish laws (properly so called) without the advice and assent of a council. To this suggestion, however, the Marquess of Hastings readily and liberally acceded.

Page 25. Para. 49.

. . . Of the Maltese, a large class were born under the Government of the Knights. These (reckoning according to the ordinary chances of life) may be about 33,000. By a similar computation it may be assumed that 500 were born under the French denomination, 2,500 under the power of the insurgent natives, 22,000 whilst the Islands were in British possession merely, and 66,000 since the recognition of 1813. . . .

Page 30. Para. 69.

His Majesty's right of Sovereignty over these Islands is admitted on all hands, but from what source that right is to be derived seems to be by no means so clearly agreed. Three sources have been stated which may indeed all coincide together, but which in their nature are perfectly distinct, and may lead to very different consequences in law; the first is conquest, the second is cession, and the third is compact. It is for His Majesty's Government to decide whether His Majesty's title to the Sovereignty of these islands rests on one or more of these grounds; but I humbly submit my reflections on each, to Your Lordship's superior wisdom, in the hope that such decision, if already formed, may be officially made public for the guidance of the judicial authorities in Malta; or that if not hitherto definitely settled, Your Lordship may see reason to bring it under consideration in His Majesty's Council.

70. Those who consider Malta and its dependencies simply as a conquest effected by the British arms, will naturally place His Majesty's

title to the Sovereignty on the right of conquest as recognised either by the law of England or by the International Law of Christian Europe.

71. On the right of conquest, with reference to the subsequent government of the conquered people, the principal authorities commonly cited in the English laws are those of Lord Chancellor Ellesmere and the 12 judges (7. Co. Rep. 17. 6), Lord Chief Justice Holt (Salk 411) the Privy Council in 1722 (2 Peere Wms. 75), Lord Mansfield (Coup. 208), Lord Chief Justice De Grey (Coup. 161), and Lord Ellenborough (30 St. Trials, 865). On a comparison of these authorities, considerable differences between them will appear. The doctrines maintained in Lord Ellesmere's time are certainly of too barbarous a character to suit the present day. They amount to little more than Væ Victis ! . . .

Page 32. Para. 76.

The received principles of international law on this subject are clearer than those of the law of England. Instead of attributing to the conqueror a right over the lives of the vanquished, or even a property in their persons, the most eminent writers lay it down " that all legitimate conquest supposes on the part of the vanquished a consent to submit themselves to the conqueror " (" Pufendorf " 7, 7, 2), and that " unless they voluntarily submit, the state of war continues " (" Vattel," 3, 13, 201). The consent may be unconditional or conditional : in modern times it is generally the latter, the terms being set forth in a capitulation, beyond which the conqueror is only bound by the ties of natural equity and received usage.

77. It would seem that the Colonial Commissioners of 1830 considered His Majesty's Sovereignty over his Maltese subjects to rest on a foundation of this sort, for they say " these islands came into our possession by capitulation in 1800." (Parliamentary Papers, 1830, No. 64 Page 9). But with all deference to those gentlemen, this statement does not seem consistent with the facts above stated (Section 17). The capitulation does not even profess to put these islands into any person's possession, nor is it a compact made with any British authority merely as such, but with an Officer as commanding the forces of His Brittanic Majesty and his allies and it engages to put that Officer in possession of Valletta and the adjacent forts, then occupied by a military force of the French Republic. For aught that appears on the face of this document, the places given up may have been situated on neutral, allied, or even British Territory, and the French Republic may neither have had nor pretended to have over any other part of the Islands, any Sovereignty, property, or occupation in right or in fact.

78. To give this capitulation a bearing on the question of a Sovereignty over the Islands and their inhabitants, proof must be sought *aliunde* ; and that proof must go to the extent of showing not only that the French Republic was at that time the rightful Sovereign of the islands and of their inhabitants, but that it was so considered and treated with

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by His Britannic Majesty and his allies through their common representative General Pigot, and that the intention of all parties to this agreement was to make a transfer of the Sovereignty from the French Republic to His Britannic Majesty, the towns and forts being handed over as a sort of symbolic delivery of the islands.

79. The whole *res gesta*, however, is in opposition to any such proof. The capitulation is expressly declared in the answer to the eighth article to be a mere military convention. The Maltese inhabitants appear, on the face of the document, to have been at the time in arms against the French Republic, and consequently *per actum facti* denying its Sovereignty. They, therefore, could not in the same document be standing in the opposite character of a party admitting the Sovereignty, which they must have done, if they were, as allies, consenting to the transfer. On the other hand, if it be contended that the allies, in whose name General Pigot granted the capitulation, were not the Maltese but some other people, still it cannot be disputed that the Maltese were armed and acting in concert with the British troops against the French.

80. The British Commander had not only not " spared their lives " or " acquired by conquest a right over their persons and property," but he had availed himself of their bravery to obtain this very conquest; and no principle of international law can be clearer than that " those who assist us to carry on a war are joint parties with us " and " a conqueror acquires no power over those who were his companions-in-arms " (" Vattel," 3, 14, 207, " Locke," Civil Government, 2, 16; " Barbeyrac ad Prefend," 8, 6, 21).

81. Such, my Lord, are the reasons which incline me to think, with all submission, that it would be difficult to rest His Majesty's right of Sovereignty over these islands on conquest alone. If, however, in the wisdom of His Majesty's Council a different conclusion should be deemed more correct, still, I doubt not, it would be thought proper that the harshness of the title should be mitigated by the mild exercise of the right, and that, if the " conquered country is to be really subject to the conqueror as its lawful Sovereign, he must rule it according to the ends for which Civil Government has been established " (" Vattel," 3, 13, 201).

82. The second ground of Sovereignty to which I have alluded is cession, that is, a transfer, effected by Treaty between His Majesty and some Power or Powers (distinct from the people of Malta) of the rights of Sovereignty over these islands actual or contingent.

I have abstained from saying anything relative to the existence of any such treaty or treaties, as a matter of fact, because my information on that head is very limited. I am aware that a treaty was concluded on the 30th May, 1814, between Great Britain and France, and similar treaties at the same time on the part of France with Austria, Russia, and Prussia, respectively, the Seventh Article of which is in the following terms: " The island of Malta and its Dependencies, shall belong in full property and Sovereignty to His Britannic Majesty." The object of those

treaties, as expressed in their preamble, was to ensure permanency to the general peace by a just distribution of force between the different powers of Europe. In this view the article just cited may be regarded as a renunciation in favour of His Majesty, of all pretentions, on the part of the contracting powers or their allies, to the Sovereignty of these islands. But if, on the one hand, such a treaty alone is not sufficient to transfer full Sovereignty, on the other hand it is perfectly consistent with the existence of a better right, in His Majesty, derived from a different source.

83. The question of law, " for full Sovereignty can be held to pass by the mere words of a treaty," was decided by Lord Stowell in the negative, on general principles of jurisprudence on the usage and practice of nations and on the authority of a judicial decision (5 " Robinson," 114). Besides the written and formal stipulation, two things more seem requisite, namely a delivery of possession by the ceding power and a notification to the inhabitants of the ceded country. The possession may precede or follow the stipulation, according to circumstances. In the case before Lord Stowell the delivery was subsequent to the treaty, and during the intervening period the Sovereignty of the ceding power was held to continue. But in many cases the cession is made merely to confirm an existing right. So it always is with regard to conquest; for the right of conquest rests immediately—" *ea quae ex hostibus capimus statim nostra fiunt.*" (" Justinian," T. 2, 1, 17).

Page 34. Para. 85.

Moreover, whether the Treaty be or be not conclusive of the right of Sovereignty, as between the contracting parties, still it cannot reasonably be considered to bind the people of the ceded party until it is duly notified to them. " In transfer surely " (says Lord Stowell) " where the former rights of others are to be superseded and extinguished, it cannot but be necessary that such a change be indicated by some public acts; that all who are deeply interested in the event, as the inhabitants of such settlements, may be informed under whose dominions and under what laws they are to live " (5 " Robinson," 116). No such information of any treaty has ever been given to the Maltese; but several months before the treaty of 1814 existed or could have been foreseen by any human sagacity, they were informed that they had been recognised as subjects of the British Crown. After that notification few of them, I apprehend, conceived that their Sovereign's authority depended in any degree on future negotiation with France, Austria, Russia or Prussia. There may indeed have been, and still may be, some who from old impressions, consider a cession of the right of *alto dominio* by the King of Naples, to be essential to the completion of His Majesty's title, and the existing predilection of certain individuals here for the Neapolitan language and laws tend to give weight to that opinion. If, therefore, any such treaty exists, it might be advisable to let that fact be publicly known at Malta; and if no such treaty exists, it might be equally proper to take means for satisfying the people that nothing is now wanting

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to render the King's Sovereignty over this part of his dominions full and complete.

86. I CONFESS, MY LORD, THAT AS A CONSTITUTIONAL ENGLISH LAWYER, I AM MOST DISPOSED TO REST HIS MAJESTY'S SOVEREIGNTY, WHENEVER IT CAN BE DONE CONSISTENTLY WITH TRUTH AND LEGAL PRINCIPLE, ON THE GROUND OF COMPACT. THE VOLUNTARY CHOICE OF A FREE PEOPLE SEEMS TO ME TO AFFORD THEIR RULER A MORE SECURE, AS WELL AS A MORE HONOURABLE TITLE, THAN ANY WHICH HE COULD DERIVE FROM HAVING THEM UNCONSCIOUSLY DELIVERED OVER TO HIM BY A THIRD POWER, OR FROM COMPELLING THEM BY HIS OWN FORCE INVOLUNTARILY TO SUBMIT TO HIS DOMINATION. THE MALTESE IN GENERAL HAVE A PRIDE IN THINKING THAT THEY VOLUNTARILY PLACED THEMSELVES UNDER THE PROTECTION OF THE BRITISH CROWN, AND I OWN THAT THE HISTORY OF THAT TRANSACTION APPEARS TO ME TO JUSTIFY THIS VIEW OF THEIR RELATION TO THEIR SOVEREIGN.

Page 37. Para. 92.

The cession made in the name of the Knights was either a voluntary or an involuntary act. If voluntary (besides being null as made without the authority of the Order itself duly given and testified in the legal forms), it amounted to a forfeiture of the islands under the very grant by which the Order held them (Appendix No. 1) and it was, moreover, void as against the Maltese for want of the same formal consent on their part, which was originally required to give effect on that grant (Appendix No. 2), for " if a King who holds his crown on the free consent of the people desires to alienate the Sovereignty, or to make any change in the manner of reigning established by the fundamental laws, all that he does to that end is null." (" Pufendorf," 7, 8, 8.)

Page 38. Para. 96.

The insurgents were the whole rustic population, who spoke exclusively the Maltese language. The friends of the French were to be found only among the speakers of Italian; and of these they formed an inconsiderable minority. The insurrection, may therefore, be justly called national, among the Maltese, and the insurgents are not to be deemed rebels, for " The name rebels is given to subjects who unjustly take up arms against the ruler of their society." (" Vattel," 3, 18, 298.)

. . . The Maltese and English, however, were each engaged in war with the same enemy; they mutually assisted each other, and thus stood to each other in the relation of allies in war (" Vattel," 3, 6, 8).

97. I humbly conceive that the Maltese must be considered during the whole blockade as an independent people, imperfectly organised, indeed, but acting under the direction of their chiefs, as in certain cases of *interregnum* in which " the people, properly speaking, have not the Sovereignty, because they have not yet determined to place it permanently in the hands of a general assembly of the citizens : but yet the people may, in the meanwhile, exercise, either by themselves or their deputies, all the Acts of Sovereignty

which they judge necessary to their own preservation" ("Pufendorf," 7, 7, 7). The continued conduct of the British Officers, naval and military (more especially of Captain Ball and General Graham, sup., section 16), which must have been known to and approved by their Sovereign, amounts, I conceive, to a clear recognition of the Maltese, in this character, by the British Government.

98. This state, it will be observed, continued for two years, during which time the whole of both islands, with the exception of Valletta and its environs was *de facto* in the hands of the Maltese people and, as I humbly submit, under their Sovereignty. A great number of persons now living were born in this state of things. Will it be possible to say they were not natural born subjects of the Maltese Nation? . . .

Page 39. Para. 99.

. . . "SUCH A PEOPLE," SAYS THE EMINENT JURIST WHOM I HAVE OFTEN QUOTED, "ARE NOT REALLY SUBDUED; THEY ARE ONLY DEFEATED AND OPPRESSED, AND ON BEING DELIVERED BY THE ARMS OF AN ALLY, THEY DOUBTLESS RETURN TO THEIR FORMER SITUATION. THEIR ALLY CANNOT BECOME THEIR CONQUEROR. HE IS THEIR DELIVERER, AND ALL THE OBLIGATION OF THE PARTY DELIVERED IS TO REWARD HIM." ("Vattel," 3, 14, 213.)

Page 40. Para. 101.

. . . "If the inhabitants of a town or country, seeing themselves pressed by the enemy, implore in vain the protection of their king, who finds himself not in a state to succour them, so that they are reduced to the necessity of defending themselves as well as they can by their own force and by their own counsels, the right which their ancient master had over them is at an end." ("Pufendorf," 7, 7, 5, N. 4.)

Page 42. Para. 108.

Fourthly, if by what happened at that time, then whether it was by right of conquest in virtue of the capitulation granted to General Vaubois or by right of compact in virtue of the understood agreement between the Maltese Chiefs on the one hand, and the British Officers, General Pigot, Captain Ball, &c., on the other.

Page 42. Para. 112.

Eighthly, whether they became British subjects on the 30th May, 1814, or at any and what other time, in virtue of any treaty or treaties between His Majesty and any other Sovereign.

EXTRACTS FROM SIR JOHN STODDART'S THIRD REPORT

Page 76. Para. 9.

Persons of high respectability regard the right of conquest as His Majesty's sole title to the sovereignty of these islands. Should that point come before me judicially, as similar points have done before the courts in

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 15. Plaintiff's Note of Submissions, 26th January, 1938—*continued.*

England (first report, section 104) I should be bound to deliver on it my judicial opinion. At present I abstain from so doing; but I feel it my duty to submit to consideration my view of the inferences likely to be drawn from such an hypothesis, and of the consequences which may ensue from its adoption by authority.

10. It is obvious that the hypothesis cannot be gratifying to the native Maltese, who have been taught to look on the epoch of the insurrectionary war as one glorious to them as a people; and that on the other hand it must tend to impress the British inhabitants with a haughty opinion of themselves as a conquering caste, which (unless very clearly founded in fact) ought by no means to be encouraged.

11. The conquest took place (if at all) on the 4th September, 1800. Up to that very day the native Maltese had fought as Allies and brothers-in-arms under the same standard with the English; but on that day they suddenly found themselves (on the assumed hypothesis) a conquered people, and the English their conquerors. Nay, they were more absolutely subjected to their late associates, than if they had been opposed to them in open war, for they were transferred (as is argued) by the capitulation of General Vaubois; and he stipulated for none of those privileges in their favour which modern practice usually grants to a capitulating enemy. In this view the King of England became simply their conqueror. He had a right as such to give them what Laws he chose; and until he did so their ancient laws remained in force, with the exceptions before noticed (first report, section 72.)

Page 81. Para. 26.

The compact (I speak *ex hypothesi*) had its origin on 4th October, 1800, and its full and entire completion on the 5th October, 1813, and between those periods there was no variation of its terms by mutual understanding and consent. It was a compact between the independent people of Malta and the Sovereign of the British Empire, the former of which parties offered to the latter a temporal allegiance, and a temporal allegiance only. They offered what they had owed to their former temporal sovereigns, mediate and immediate, and what they considered those sovereigns to have forfeited, the immediate sovereigns (the Knights) by a voluntary surrender of the islands and the mediate sovereign, the King of Sicily, by an involuntary disability to afford full and entire protection to these dominions. Neither the King of Sicily nor the Knights ever pretended to a spiritual supremacy in these Islands, nor would such a claim have been at any time admitted by the Maltese. On the contrary, it was a principle recognised on all hands that the Sovereign was bound to protect the subject, as well in his religion as in his wordly concerns. In transferring their allegiance, therefore, to the King of England, the Maltese, meant to choose him as the protecter not as the subverter of their religion, nor would they ever have voluntarily submitted to enactments, such as those contained in the statutes of Elizabeth.

Page 87. Para. 59.

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No. 15. Plaintiff's Note of Submissions, 26th January, 1938—*continued.*

59. I have stated separately the distinct hypothesis of conquest and of compact, because the case of Malta is viewed in these distinct lights by persons whose opinions are not to be disregarded, but with reference to the practical administration and reformation of the law perhaps neither hypothesis ought to be pushed to its extreme consequences.

60. It may be sufficient to observe that the case of Malta is one of a peculiar nature, and that if, on the one hand, the English obtained no conquest over the Maltese, acting as subjects of a Power at war with England, so on the other hand, the Maltese had no distinctly recognised character as an independent people formally contracting with the King of England.

61. But the real equity, the substantial justice of the case, is little affected by these technical niceties. Nor does the right of conquest in its most liberal acceptation, differ much from that right which a fair and unconstrained compact between the same parties would establish, for, as Vattel wisely observes, " if the conquered country is to be really subject to the conqueror as its lawful Sovereign he must rule it according to the ends for which civil government is established " (Lib. 3, Section 201) " *Id firmissimum Imperium, quo obedientes gaudent.*" The terms, therefore, which a wise conqueror would grant are the same for which an independent people might reasonably stipulate : protection for the religion which they professed—confirmation of their laws when just and suited to their condition —reformation of such laws as might be found defective—and communication of privileges enjoyed by other members of the same Empire. Such are, indeed, the benefits announced to the Maltese by Sir Thomas Maitland's declaration of the 5th of October, 1813, and it is only necessary for the common good of Sovereign and subject to act on that declaration, disengaged from all principles either of English or Maltese law which conflict with its plain spirit and natural construction.

COLONIAL OFFICE PAPERS, MALTA, No. 20. 1812

(Translation)

Malta, 2nd November, 1812

My Lord,

It is rumoured here that the Commissioners, before leaving this Island, had formed their opinions upon the demands made in the name of the Maltese Nation. It is also publicly understood that several English Gentlemen (we do not know if on political grounds or from a spirit of contradiction) had greatly busied themselves in discrediting and offering every impediment to the very moderate propositions of the nationalists. But what has most displeased the discreet part of the people is that, the abovementioned English gentlemen, who have shown themselves as inimical to the rights and privileges of the nation and to its happiness there have been communicated all the representations that were made by the Nationalists for the information of His Royal Highness the Prince Regent in Council;

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No. 15. Plaintiff's Note of Submissions, 26th January, 1938—*continued.*

while, on the other hand, they were not made acquainted with any of the many difficulties said to have been advanced by the opposite party, whose conduct in the affairs of government, particularly what interests the country, has contributed not a little to oblige the Maltese to appeal to their Sovereign.

Under these impressions the undersigned, together with all persons jealous of the honour and happiness of their country, and attached to the Government and to British honour, are fearful that the representations that have been made to their Sovereign and the signal favour conferred upon them by His Royal Highness the Prince Regent in sending his Commissioners will be of no avail, if the secret opposition of these gentlemen who have proved themselves so ill affected towards the nation, should be presented to the Council without there appearing any answer to their baneful representations, and more particularly if these have had any weight on the minds of the Commissioners, which is by no means unlikely, as they did not permit any explanation or reply on the part of those who had made their demands, and it cannot be supposed to be in the power of the Commissioners to get unaided the necessary knowledge of the Ancient Constitution of Malta, and to distinguish legitimate right from despotism, by which former Governments have often nearly subverted the privileges of the Nation.

Therefore, if the Commissioners' Report should be blindly passed approved, without giving the Maltese an opportunity of knowing its contents, in order that they may deliver such reflections and documents as may be necessary to dissolve the difficulties that may have been raised to the prejudice of their national appeal, it is much to be feared that it will occasion a very different result to that intended by H.R.H. the Prince Regent, who certainly was more inclined to favour the Maltese nation than to encumber their rights with new shackles, and add degradation to their civil and political existence.

From what is rumoured here it would appear that it is intended either never to re-establish or greatly diminish the privileges of the people, while others report that the unlimited power formerly enjoyed and still held by the Royal Commissioner over the nation and its Magistrates, certainly much more extensive than that exercised by the King in his dominions, will be checked: and it is said that several Englishmen will be appointed for the purpose of counteracting and resisting every act of despotism. Should this be the case the Nation will certainly not be ameliorated by the change; on the contrary, it will be more degraded than it actually is. These rumours occasion just fears that by the introduction of new authority in the person of Englishmen every shadow of National influence will vanish with regard to the Civil Government and instead of the magistrates being dependent on the nation, and on the sole authority of a representative and of his council, composed of elected Maltese, they will be dependent to and influenced by persons not natives, and consequently their authority will be greatly degraded and in all decisions of the Government which may interest the

nation entirely taken away. They will be thus prevented from counteracting such acts of despotism, as may take place, either a consequence of false information or from the want of a perfect knowledge of the privileges and laws of the Maltese, evils that must necessarily emanate from persons not natives being invested with public authority.

We flatter ourselves that after the representations made by us to the Commissioners shall have been laid before the Prince Regent in Council, so great a misfortune shall not befall the nation, which would give a final blow to all its civil liberty. But as it is the duty of everyone to endeavour to avert so unfortunate an event, I take the liberty of submitting these ideas to your Excellency, begging you will communicate to the persons who have made the present representations, all the difficulties the Commissioners have had to encounter in not adhering altogether or in part to the proposed projects for the re-establishment of the ancient privileges of the country, also to acquaint them of the nature of the opposition that may have been made by the disaffected to the Maltese Nation, men who certainly can care but little for the honor of the British Government.

I cannot forbear stating to Your Excellency that amongst the Maltese, in common with all other nations, are to be found individuals, deprived of every sentiment of honor and love of their country, who are easily corrupted by any person invested with the least character to second his desires, although injurious to the interests and to the honor of their native country. The representations of such men ought therefore to make no impression on the Sovereign and his Ministers should they present a memorial subscribed by a number of Maltese opposing the demands made in favour of the nation. As it will be very easy for me to demonstrate the absurdity of such opposition and the little confidence that should be placed in their propositions, which under the authority of the abovementioned persons tend to destroy the interests and the honor of the very people who incautiously subscribed to them.

I have the honour to be,

(Signed) Nicolo Capo Di Ferro Marchese Testa Ferrata.

Right Hon. The Earl Bathurst,

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 16. Judgment, 4th March, 1938.

No. 16.

Judgment.

HIS MAJESTY'S COURT OF APPEAL

(CIVIL JURISDICTION)

Judges:

His Honour SIR A. MERCIECA, KT., M.A., LL.D., Chief Justice and President of His Majesty's Court of Appeal.

ROB. F. GANADO, LL.D.

Prof. E. GANADO, LL.D.

Sitting of Friday, fourth day of March, 1938

No. 2.

Writ-of-Summons No. 231/1937.

THE COURT,

Having seen the Writ-of-Summons filed before His Majesty's Civil Court, First Hall, whereby Plaintiff nomine, premising that he imported, or caused to be imported, articles suitable for use in connection with the Coronation Festivities, manufactured in Japan, of the value of three shillings and ninepence; and that Defendant Edgar Sammut nomine exacted on such articles a duty higher than that chargeable, and this in terms of Ordinance No. XXVII of 1936, which is illegal and null and void, so much so that, in order to withdraw the said goods, the Plaintiff was constrained to pay, under protest, the sum of two shillings and nine pence, notwithstanding that the Plaintiff on the 1st of March, 1937, had filed in the Registry of this Court a protest against the Defendant—premising the Declaration, if necessary, that the said Ordinance No. XXVII of 1936 is *ultra vires*, and, therefore, illegal and null and void—prayed that the Defendants be ordered to refund to him, out of the said sum of two shillings and ninepence, the amount paid in excess by Plaintiff under Ordinance No. XXVII of 1936, or under any other law invalidly and illegally enacted; with interest and with costs against the Defendants;

Having seen the Declaration filed by Plaintiff in terms of article 175 of the Laws of Procedure, and the Statement of Defence of Defendant Edgar Sammut nomine, and of the Honourable Edward R. Mifsud, C.M.G., O.B.E., as Secretary to Government, wherein they stated; (1) that the "Malta Letters Patent Act, 1936" empowered His Majesty the King to amend or revoke the Letters Patent of 1921, therefore in virtue of the said Act of the Imperial Parliament, His Majesty the King re-acquired the power to revoke the Letters Patent of 1921, which were so revoked on the 12th August, 1936; (2) that the effect of the revocation of the said Letters Patent of 1921 was to place the Crown in the same position which it enjoyed previous to the issue of the said Letters Patent of 1921; that is, these Islands,

in virtue of the Common Law Prerogative of the Crown, were again made subject to legislation by Order in Council, which means that the King acquired again the power to legislate by Order in Council, and, in virtue of such order, he has the power of constituting the office of Governor by means of Letters Patent, and also the power of providing for the Government of these Islands, in accordance with such Letters Patent or with the Instructions given to the Governor; (3) that on the 12th August, 1936, Letters Patent were emanated, which empowered the Governor to make laws for the peace, order and good government of these Islands (section 15), and on the same day Instructions were issued to the Governor laying down the matter in which legislation is to be carried out; (4) that Ordinance No. XXVII of 1936 was promulgated in virtue of the powers given to the Governor by means of the said Letters Patent of 1936, and in accordance with the Instructions aforementioned; wherefore the said Ordinance is not *ultra vires*, but is a valid and legal one, and, consequently Plaintiff's claims are to be disallowed with costs;

Having seen the declaration of the Defendants nomine, in terms of article 179 of the Laws of Procedure;

Having examined the judgment given by His Majesty's Civil Court, First Hall, on the 11th October, 1937, by which it was adjudged and declared that Ordinance No. XXVII of 1936 has been validly and legally enacted; and, consequently, rejected Plaintiff's claim, and ordered that costs were to be borne by Plaintiff, after having considered that, in virtue of the powers granted to him by the Act of Parliament of the 12th August, 1936, His Majesty the King revoked the Malta Constitution Letters Patent of 1921, and as regards the validity of such revocation, no doubt can be entertained. Plaintiff's contention is to the effect that once His Majesty, availing himself of the power granted to him by the Act of the Imperial Parliament of the 12th August, 1936, revoked the Letters Patent of 1921, by so doing his power was exhausted and could not go any further;— Plaintiff does not question the power of the Imperial Parliament to pass legislation involving the revocation of a Constitution granted to a Colony; and both parties to the suit agree 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 aforesaid Letters Patent of 1921. Plaintiff, however, denies that before 1921, the Royal Prerogative to legislate existed as regards Malta. He agrees that a ceded Colony is subject to legislation by Order in Council, but denies that Malta may be considered as a ceded Colony; and, therefore, the main point to be established in this case is whether Malta is a ceded Colony or not;

That, as regards the position of Malta in the British Empire, this Court in re *Strickland* v. *Galea*, determined on the 22nd June, 1935, held as follows : " This is not the first time that this point is being raised before a Court of Law on such an issue; and to quote a notable instance, in the Marriages Case, which was specially referred to the Judicial Committee of His Majesty's Privy Council in 1892, one of the main pleas of the Malta Government was that the Island was not a conquered territory and could not therefore, be

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 16. Judgment, 4th March, 1938—*continued.*

so regarded for the purpose of the exercise on the part of Great Britain of the powers of legislation in regard to the Island. There can be no doubt or question as to the true and real nature of the title of the British Sovereignty over Malta, and that is the very reverse of a right of conquest, whether that term be taken in its broader sense, as including its legal aspects and bearing, or in its restrictive meaning of an acquisition by force of arms. This is made perfectly clear by reference to official documents, several of which were contemporary with the events with which they dealt, and to authoritative declarations of several British statesmen who successively held the office of Colonial Secretary. The first of these is also the most important, inasmuch as it was made by the Minister who was in charge of the Colonial Office at the time Malta became British, and indeed in the very same despatch in which he conveyed the decision of His Majesty's Government definitely to recognise the Island as forming part of the British Empire. In fact, in his instructions to Sir Thomas Maitland of the 28th July, 1813, Lord Bathurst, Secretary of State for War and Colonies, stated *inter alia* :—" The Maltese people have (with an inconsiderable exception) attached themselves enthusiastically to the British connection and offer to His Majesty a wealthy and concentrated population of 100,000 persons, whose active industry is most satisfactorily attested." Lord Glenely, who belonged to the generation which had lived through the events referred to, declared in the House of Lords on the 30th April, 1839, when the question of granting liberty of the press to Malta was being debated :—" Look at the peculiar tenure under which Malta was held by the British Crown. Malta was not a possession the result of a conquest. Malta, when it belonged to the French, resisted French usurpation, and appealed to this Country for aid. Great Britain furnished auxiliaries and with the Maltese had blockaded Valletta, and to those united powers the French surrendered, and then the Maltese people, by their own act and authority, voluntarily assented to the protection of Great Britain. In that light the rights and privileges of Malta had ever since been regarded, and it was peculiarly the duty of Great Britain to take care that the principle of British freedom and the full benefit of British legislation should be brought into operation in that, even above all other dependencies of the British Crown." Seven years later, Lord Grey, in a despatch to the Governor of Malta, proclaimed that " Her Majesty was deeply sensible of the noble confidence reposed by the Maltese people in the honour and good faith of Great Britain, at the period when, having nearly achieved their independence by their own gallant efforts, they placed their dearest rights almost unconditionally at the disposal of Her Majesty's Royal Predecessor." More explicitly Mr. Joseph Chamberlain declared in 1900 at the Valletta Palace : " Malta is in a *unique* position. It has not come to us in the ordinary way in which the possessions of the Crown have been acquired. She is not ours by right of the first discoverer, nor she is ours by right of conquest. Her independence, which was threatened by the Great Napoleon, was maintained largely by the action of the Maltese themselves; and it is due, I think, to their clear perception of their position in the world that they were led, of their own

accord, to offer their patrimony to the British Government and came under the protection of the British Empire." An identical statement was made by Mr. Chamberlain in the House of Commons in January, 1902, quoted in the judgment under appeal. All important is also the testimony of Sir George Cornwall Lewis, who, with John Austin, formed the Royal Commission of Enquiry into the affairs of Malta in 1836, and who, in his " Essay on the Government of Dependencies," dealing with " Acquisition by Conquest or Voluntary Cession," remarked in a foot note : " No instance is given in this section of *really voluntary cession*, as, for instance, *in the case of Malta.*" It is consequently, in this restricted sense only that the statement of the First Court that Malta may be regarded as a Colony acquired by cession, is to be accepted. It was not quite precise to state, as Lord Grey put it, that the people of Malta who fought for their freedom at the close of the 18th century " placed their dearest rights almost unconditionally at the disposal of His Britannic Majesty." It was a " compact," that they called the Declaration of Rights of the inhabitants of Malta and Gozo of the 15th June, 1802, and if the clauses thereof—which included the establishment of representative government—were not exactly conditions or terms as they were called by Mr. Chamberlain, they certainly expressed the general wishes and aspirations of the declarants. That the main principles underlying that and other declarations were agreeable and agreed to by the British Government at the time is made clear beyond doubt from official proclamations and addresses, as well as by an eloquent fact which has not received the notice it deserves. As early as the 5th October, 1813, Sir Thomas Maitland was appointed to and assumed the administration of the Islands not as Civil Commissioner (like his predecessor from 1800) but as Governor and Commander-in-Chief in and over the Island of Malta and its Dependencies, and in the well-known minute of that date, which repeated *verbatim* the Instructions of Lord Bathurst, he proclaimed the " gracious determination of the Prince Regent, acting in the name and on behalf of His Majesty, *henceforth* to recognise the people of Malta and Gozo *as subjects of the British Crown* and as entitled to its fullest protection, etc., etc." This was nearly a year before the Treaty of Paris (1814) was signed, and two years before its ratification by the Congress of Vienna (1815), which shows that the inscription over the Main Guard, that records the event is chronologically true " Melitensium Amor " prior to " Europae Vox," and that whatever treaties were necessary or expedient in order to affirm her position *vis a vis* the other European Powers, England recognised the " Melitensium Amor " as the first and immediate source of her sovereign rights over these Islands. It may be evinced, therefore, that although no instrument was signed between the people of these Islands and Great Britain, and no terms were fixed, what occurred was perhaps the first instance of the exercise of what is now known as the " right of self-determination," and constituted, as between the parties directly concerned a " gentlemen's Agreement." Such compact, while losing none of its moral value or effect by the lapse of time, cannot, however, without undue straining, be construed, as appellants seem to suggest, as constituting a

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formal treaty by the terms of which the relations between Malta and Great Britain must be governed. On the other hand, if the Maltese people may not claim such treaty rights, it is safe to maintain that they are, more perhaps than the people of any other part of His Majesty's possessions, entitled to representative institutions. This, however, does not mean or imply, as appellants seem to suggest, that the Royal prerogative with the inherent right to legislate was never vested in regard to Malta, in the British Crown. If the sovereignty over these Islands passed, as it cannot be doubted that it did, to the British Sovereign by virtue of the cession, however unique and really voluntary of the Maltese people, the Prerogative was likewise acquired by the Crown ";

That the arguments set forth by His Majesty's Court of Appeal in the judgment above referred to, and the conclusion it reached as regards the position of Malta in the British Empire are to be adhered to. Consequently, Malta must be regarded as a Colony acquired by cession;

That it is common knowledge, and even Plaintiff agrees, that a ceded Colony is subject to legislation by Order in Council; in fact, Anson in his Treatise " The Law and Custom of the Constitution " (The Crown, Part II, Vol. II, page 61) states that " a colony acquired by conquest or cession is by common law prerogative of the Crown and subject to legislation by Order in Council. Under such an Order the King can constitute the office of Governor by Letters Patent, and by the terms of these Letters can provide for the Government of the Colony. But this power does not exist in the case of colonies acquired by settlement; and is lost when once the representative institutions have been granted to a Colony." In " Halsbury's Laws of England " (Vol. IX, page 569, 1909 Edition) we find that " the Royal Prerogative extends to the whole of His Majesty's Dominions, and, consequently, the King has jurisdiction to legislate for all Colonies by Order in Council, until His Majesty grants or even promises, a separate legislature, on which the jurisdiction ceases, except as far as there is a reservation in the promise or grant." Also in Halsbury (Vol. II, pages 13 and 14) it is stated that the power of the Crown to legislate under the Royal Prerogative is lost by the grant of a representative legislature to a Colony, unless it is expressly retained in whole or in part; and, if not so retained, power to legislate as to the Constitution or generally can be recovered in the authority of an Act of Parliament;

That after it has been established that Malta's position in the British Empire is that of a ceded Colony, and 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 such Letters Patent, the next point to examine and determine is whether at that time the Royal Prerogative to legislate existed as regards Malta. As stated above the power of the Crown to legislate under the Royal Prerogative is lost by the grant of representative legislature to a Colony, unless " it is expressly retained in whole or in part, or unless it is recovered by an Act of Parliament." Prior to the Malta Constitution Letters Patent of 1921, representative government in Malta

was introduced by Letters Patent of 1849, followed by others in 1887, and in 1903. At the time of the promulgation of the Letters Patent of 1921, Malta was governed in terms of the Letters Patent of 1903, which under sections 58 and 59 contained the following reservations: "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. 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." Similar reservations are to be found in the Letters Patent of 1849 and 1887, and, in view of same, it cannot be held that the Royal Prerogative was surrendered because it was expressly reserved when representative government was granted to Malta by the Letters Patent of 1849, 1887 and 1903. Consequently, before the promulgation of the Letters Patent of 1921, the Royal Prerogative had not been surrendered either in whole or in part, and the Crown had power to legislate as regards Malta. This power still pertains to the Crown as by the revocation of the Letters Patent of 1921 her position reverted to what it was just before the promulgation of such Letters Patent;

That Plaintiff has quoted the Act of the Imperial Parliament of 1801, whereby His Majesty was empowered to regulate the trade and commerce to and from the Island of Malta, to show that the Royal Prerogative did not exist before 1921, and that at that time the Law Officers of the Crown were of opinion that they had no power to legislate by Order in Council. As rightly submitted by Defendants, the Act of 1801 above referred to was passed long before Malta came to form part of the British Empire, and the quotation of same cannot, therefore, have any bearing in this case. As a matter of fact, in 1801 Malta was not yet a British Colony, and it became such on the 5th October, 1813, when Sir Thomas Maitland was appointed to and assumed the administration of these Islands not as Civil Commissioner (as his predecessors) but as Governor and Commander-in-Chief, and proclaimed "the gracious determination of the Prince Regent, acting in the name and on behalf of His Majesty, *henceforth* to recognize the people of Malta and Gozo as subjects of the British Crown." Plaintiff has also submitted that the Act of Parliament of the 12th August, 1936, gave power to His Majesty to amend or repeal the Letters Patent of 1921, and that, therefore, the Act of 1932, which recognizes the right to responsible government, still holds good. By the Act of 1932 the Letters Patent of 1921 were amended and doubts were removed as to the validity of the Malta Constitution Letters Patent of 1928, 1930 and 1932, of the Malta (Temporary Government) Order in Council, 1930, and of certain other local enactments. According to section 6, sub-section 2, of that Act "every enactment and word which is directed by the amending Letters Patent or by this section to be substituted for or added

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to any portion of the principal Letters Patent assigned to it by the Amending Letters Patent or the second schedule to this Act, as the case may be; and, after the commencement of this Act, the principal Letters Patent shall be construed as if the said enactment or word has been included in the Principal Letters Patent in the place so assigned, and where it is substituted for another enactment or word, had been so included "in lieu" of that enactment or word." In virtue of this provision, that part of the Act of 1932 which amended the Letters Patent of 1921 must be read as if it had originally formed part of said Letters Patent; and, consequently, by the Letters Patent of the 12th August, 1936, were revoked the Letters Patent of 1921 as subsequently amended by the Act of 1932, which, therefore, as regards the clauses relative to representative government in Malta, ceased to be in existence;

That, once by the Act of Parliament of the 12th August, 1936, the Royal Prerogative was fully restored, as prevailed prior to the promulgation of the Letters Patent of 1921, His Majesty had power to issue the Letters Patent of the 12th August, 1936, whereby he empowered the Governor of Malta to make laws for the peace, order and good government of these Islands, and issued instructions to the Governor respecting the making of such laws. Ordinance No. XXVII of 1936 having been promulgated in virtue of the powers given to the Governor by the said Letters Patent of the 12th August, 1936, and according to the instructions aforementioned, is valid and legal; and, therefore, Plaintiffs contention as to the nullity of same cannot be entertained, and the claim brought forward in the Writ-of-Summons must be rejected;

Having seen the note of appeal of the Honourable Mabel Strickland nomine and her petition by which she prays that the judgment delivered by H.M.'s Civil Court, First Hall, on the 11th October, 1937, be revoked with costs and that the claims brought forward by Plaintiff in the Writ-of-Summons aforementioned be allowed with costs of first and second instance against Defendants;

Having seen the answer filed by H's Honour Sir Harry C. Luke C.M.G., Lieutenant Governor in his capacity as the Legal Representative of the Government of Malta and of Edgar Sammut in his capacity as Collector of Customs, who asked that the judgment of the First Court be confirmed with costs;

Having examined the record of proceedings of the present case and of that to which the parties have made reference;

Having heard the oral submissions of the Right Honourable Lord Strickland G.C.M.G., LL.B., Count della Catena on his behalf and of the Senior Crown Counsel on behalf of defendants nomine;

Having examined the written pleadings filed by the parties; and

Having considered

That the main issues which have been submitted for the decision of this Court are: (1) whether His Majesty the King had *ab initio* from the time when these Islands were considered to form part of the British Empire, the right to legislate by Orders in Council and Letters Patent;

(2) in the affirmative whether His Majesty lost that right when Responsible Government was granted to these Islands in 1921, and (3) whether that right was re-acquired in virtue of the Imperial Malta Constitution Act of 1936 or in virtue of the common law of England.

To solve the first point it is necessary to examine the manner in which these Islands were acquired by the Crown and became British Possessions, i.e. if by conquest, by cession of by compact. When these Islands came under the sovereignty of the Grand Masters of the Order of St. John, as a noble fief by grant made to them in 1530 by Charles V Emperor of Spain and King of Sicily, under reservation in his favour and in that of his successors on the throne of Sicily of the high suzerainity, the Maltese continued to administer their municipal affairs. In 1798, Grand Master Hompesch without taking the consent of His Sicilian Majesty, surrendered these Islands to General Napoleon Bonaparte, who, on his way to Egypt, had entered the harbour with his fleet and landed a garrison. The French Republic thus took possession of these Islands; but local jurisprudence subsequently considered the laws promulgated by the French, during their short period of occupation, to have been null and void, on the ground that Napoleon had not obtained the cession of Malta from all those who enjoyed, at the time, the full sovereignty over it.

The Maltese were dissatisfied with the new regime, in view of the revolting changes effected in their ancient and traditional laws, and owing to certain open attacks to their Religion, which the inhabitants of these Islands have always cherished as a most precious treasure brought to their shores by St. Paul himself. The Maltese, furthermore, had enjoyed, from very ancient times, liberal institutions, amongst which the "Consiglio Popolare" with regard to which the Royal Commission of Malta of 1888 reported thus on the 7th February: "That Council was first established after the expulsion of the Saracens by the Normans in A.D. 1090; it maintained its influence for several centuries, and even during a part of the autocratic rule of the Knights of St. John, and it resumed its vitality (of which fact the Maltese are justly proud) during that bright page of their history, the "interregnum" between the French invasion in A.D. 1798 and the subsequent spontaneous entry of Malta into the British Empire." And the historian Mons. Alfredo Mifsud in his "Origine della Sovranita' Inglese su Malta" wrote: "Un consiglio avevano avuto in antico che reggeva con una data indipendenza gli affari tutti interni dell'isola, e questo i Maltesi ora rivedevano rinnovato con efficace vitalita' e prestigio"; (para. 20), and in para. 22: "Re Alfonso, trattando i Maltesi come formanti parte del Regno di Sicilia, loro accordava nel 1428 la piena amministrazione civile e criminale del proprio paese . . . . . lo stesso Alfonso nel 1441 confermava i privilegi, circoscriveva la giurisdizione del Castellano al solo Castello S. Angelo ed ordinava i giurati e i capitani della citta' di osservare le risoluzioni del Consiglio Popolare . . . . . infine Giovanna e Carlo nel 1516 riconfermavano i detti ed altru privilegi che dimostrano che i Maltesi prima della venuta dell'Ordine godevano di una libera Costituzione."

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" This Consiglio Popolare was a permanent representation of the whole people. Its existence and its functions are acknowledged, authorized and confirmed by all their Suzerains. The gradual encroachments on its rights and privileges and its final suppression by the Grand Masters, were the principal causes of the dissatisfaction of the Maltese, and of the many conspiracies which were formed to subvert the usurped power. In the Consiglio Popolare resided the whole legislative authority . . . . . The Grand Master, as has been said, was in reality only the First Magistrate, controllable by the Consiglio Popolare, which had a right to send Ambassadors and appeal to the Suzerain against him " (Extract from Eton's Authentic Materials for a history of the People of Malta, as Appendix X, page 126 to the case of the Protestant Communities on Mixed Marriages brought before His Majesty's Privy Council in 1893). The same author at page 129 ibid. notes: " No duty or tax could be collected without the consent or order of the Consiglio Popolare, and it seems that the consent of the Suzerain, who protected the people individually as well as collectively, was also necessary, at least, to taxes of importance . . . The Consiglio Popolare was abolished in 1775 when it had long ceased to be the representative of the people as will be more particularly stated." The assumption that originally all legislative powers resided in the Consiglio Popolare is not well substantiated. Several historians limit them to the right of making municipal laws, and imposing certain taxes. The fact, however, remains that in 1802 the inhabitants in their Declaration of Rights claimed for the Consiglio Popolare the right of legislation and taxation (clause 5). It is not to be wondered, therefore, if the Maltese could not accept and suffer the harsh treatment meted out to them by the French General in the name of his Government. As a natural effect of this, an open revolt of the people broke out in all the villages and in the old city of Notabile, as a consequence of which the French garrison was kept blockaded for two years in the capital town of Valletta. During that period the Maltese, under their constituted Chiefs, sought help from the British, at that time at war against the French Republic, which help was given them by the British Fleet under Admiral Nelson and by a small British garrison. They also asked assistance from His Sicilian Majesty, who, however, being also engaged in war with France could only furnish a small contingent of Neapolitan troops. The Maltese, the English, as well as the Neapolitans thus became co-belligerents against a common enemy, and as a former Chief Justice of Malta (Sir John Stoddart, who in 1803 had held the office of King's Advocate in the Admiralty Court) put it in his first Report on the Laws of Malta dated 10th February, 1836: " they mutually assisted each other and thus stood to each other in the relation of allies in the war " (Vattel 3.6.8).

General Vaubois surrendered to the British General on the 4th September, 1800, the latter having accepted the capitulations as Commanding the British Troops in Malta and as representative of his allies, including, as it has already been mentioned, the Maltese, who had fought and were acting independently from any sovereignty, and who, in that

capacity, after the capitulations, offered their Islands to His Britannic Majesty.

Malta and the smaller Islands were thus placed under the protection of the British Crown, according to the wishes of the inhabitants. Mons. Mifsud in the above quoted work writes at page 110 para. 36: " Laonde la profferta fatta nel 1801 dai Maltesi alla Gran Brettagna non poteva, ne' puo' considerarsi quale originaria o nuova offerta; sibbene un'ulteriore insistenza dettata dalle circostanze risultanti dalle trattative d'Amiens a cagion delle quali l'Inghilterra pareva volesse retrocedere dalla situazione di fatto creata in questa terra. Eccoli pertanto redigere piu' tardi sull' esempio dell'Assemblea Francese del 18 Agosto, 1799, e di simile operato del medesimo popolo Inglese la Dichiarazione dei Diritti, il cui primo cardine affermava: " Il Re degli Stati Uniti della Gran Brettagna ed Irlanda e' nostro Sovrano Signore, ed i suoi legittimi successori saranno in tutti i tempi a venire riconosciuti, come nostri legittimi Sovrani."

Great Britain, however, came to a compromise with France after long years of war on the 25th March, 1802, and by virtue of the Treaty of Amiens these Islands were to revert to the Knights of the Order of St. John. The Maltese were unwilling to sever their connection with His Britannic Majesty, whom they petitioned for protection praying that He might be graciously pleased to accept them as Members of the British Empire. The historian abovementioned thus comments on that event: " ne' desistettero di insistere nei loro memoriali, massime in quello celebre del 1811, su questi loro sentimenti, di modo che la loro saggia condotta agevolo' non poco la risoluxione britanna del luglio 1813, pubblicata a 5 Ottobre dello stesso anno e per la quale i Maltesi venivano riconosciuti apertamente quali sudditi di Sua Maesta' il Re della Gran Brettagna molto prima del Trattato di Parigi, col quale queste Isole venivano riconosciute di piena proprieta' della Gran Brettagna."

For reasons of an international character the Treaty of Amiens never had any execution, and after a short lapse of time, war between Great Britain and France was renewed, and it was concluded with the Treaty of Paris signed on the 30th May, 1814, by representatives of Great Britain, France and other Powers, whereby *inter alia* the Island of Malta came to be incorporated into the British Empire.

From the facts aforesaid it is clear that the allegation that these Islands became British Possessions by title of " conquest " is to be immediately dismissed, as unsubstantiated by any proof whatsoever, and in direct contrast with the chain of events of the time in question. It would be absurd to consider as conqueror and conquered, in relation to each other, two allies, the English and the Maltese, who waged war against and defeated one common enemy, the French. That assumption is, furthermore, to be set aside, because none of the parties in this suit claims that Malta was conquered by the British Forces: appellant contends that the real title of acquisition lies in a " Compact " between the Maltese and the English, respondents urge that there was a " voluntary cession " of the Islands to Great Britain.

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This Court in giving judgment in *Strickland* v. *Galea* on the 22nd June, 1935, after reviewing the opinions expressed by several Ministers of the Crown and Civil Commissioners on different occasions, held the view *inter alia* that " it was not quite precise to state, as Lord Grey put it, that the people of Malta who fought for their freedom at the close of the 18th century " placed their dearest rights almost unconditionally at the disposal of His Britannic Majesty." It was a " compact " that they called the Declaration of rights of the inhabitants of Malta and Gozo, of the 15th June, 1802, and if the clauses there—which included the establishment of representative government "—(in fact clause 5 ran thus :— that the right of legislation and taxation belongs to the Consiglio Popolare, with the consent and assent of His Majesty's representatives, without which the people are not bound)—" were not exactly conditions or terms, as they were called by Mr. Chamberlain, they certainly expressed the general wishes and aspirations of the declarants."

On the 5th October, 1813, Sir Thomas Maitland Governor and Commander-in-Chief, acting on the instructions of Lord Bathurst, proclaimed " the gracious determination of the Prince Regent, in the name and on behalf of His Majesty, henceforth to recognize the people of Malta and Gozo as subjects of the British Crown and as entitled to its fullest protection. . . . " This Court in the aforesaid judgment commented on that fact and pointed out that " this was nearly a year before the Treaty of Paris (1814) was signed, and two years before its ratification by the Congress of Vienna (1815), which shows that the inscription over the Main Guard, that records the event, is chronologically true, " Melitensium Amor " prior to " Europae Vox," and that whatever treaties were necessary or expedient in order to affirm her position *vis a vis* the other European powers, England recognized the " Melitensium Amor " as the first and immediate source of her sovereign rights over these Islands. It may be evinced, therefore, that although no instrument was signed between the people of these Islands and Great Britain, and no terms were fixed, what occurred was perhaps the first instance of the exercise of what is now known as the " right of self-determination " and constituted, as between the parties directly concerned, a gentlemen's agreement."

Such an agreement by which the Maltese were promised the enjoyment of their religion, their own temporal laws and jurisprudence, subject only to such reforms and improvements as were deemed necessary by their new legislator, must be considered as binding on the part of the declarants. In fact on the 5th October, 1813, Sir Thomas Maitland added the assurance that the King's intention was " to secure to the Maltese, in the fullest manner, the free exercise of their religion, to maintain their ecclesiastical establishment, to introduce such ameliorations in the proceedings of the Courts of Law as would secure to everyone the certainty of speedy and effective justice, and to make such improvements in the laws themselves as past experience or change of circumstances might render necessary and advisable," (V. Sir John Stoddart's first report,

page 18 in Crown Advocate's Case abovementioned). On the departure of the French when the British troops took possession of the Island Sir Alexander Ball said that " the privileges of the Maltese should be preserved, and their ancient laws continued " (ibid. page 16, section 18). In fact the position of Malta towards Great Britain is unique; it is the product of a " compact " between the two parties; " compact " of a very special nature which owing to its speciality, has also been termed by some writers " a voluntary cession." Cession may be the effect of conquest or of a special transaction between two nations; in both these instances the inhabitants of the place thus ceded " are at the outset rightless as against the Crown " (V. Kier and Lawson, Cases in Constitutional Law, page 408). When, however, the inhabitants by " self-determination " elect a Sovereign, the idea of " cession " is inapplicable and the acquisition of the territory would be by " compact " between the inhabitants and the new sovereign. Consequently it is inadmissible that the acquisition of these Islands by Great Britain was made by cession, because the majority of the States who took part in the Treaty of Paris had no right of sovereignty over these Islands and in consequence were juridically incapable of " ceding " or transferring them to Great Britain. On the other hand owing to the fact that the Order of St. John, His Sicilian Majesty and perhaps also France were claiming, rightly or wrongly, rights over these Islands, the Treaty of Paris was considered necessary to put an end to such pretensions.

The title of acquisition of this territory by the British has been rightly described as being unique in the history of the Empire. Sir John Stoddart referred to it in these terms : (V. III Report of 7th October, 1836, para. 60) " It may be sufficient to observe that the case of Malta is one of a peculiar nature and that if, on the one hand, the English obtained no conquest over the Maltese, acting as subjects of a power at war with England, so on the other hand, the Maltese had no distinctly recognized character as an independent people formally contracting with the King of England." In the case on behalf of the Crown advocate before His Majesty's Privy Council in Mixed Marriages case at para. 30 it is stated : " The British authorities have never advanced a claim to a right to administer Malta as if it were acquired by the right of capture alone, and the claim of England to Malta has always been accepted as one resulting from the free request and concurrence of the Maltese, as declared by the assumption of the Protectorate subsequently recognized by the Treaty of Paris in 1814 (See extracts from the Essays of Sir George Cornewall Lewis—App. XVI—also letters from Lord Nelson annexed to the case—App. XVII).

Notwithstanding this unique position of our Islands in the British Empire and the speciality of the title of the acquisition by the British Crown, it was held from the very outset, that His Majesty the King had the right in His Prerogative to legislate by Orders in Council and Letters Patent. Sir John Stoddart, above quoted, in his said Third Report, of the 7th October, 1836, submitted that " as a general rule, the English law, common or statutory, antecedent to 1800, has never had merely as such, any force or

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effect in Malta," saving certain necessary exceptions, but he continued in para. 41 : " His Majesty has the same power and authority to issue Orders in Council and other Orders, regulations, commissions and instructions to constitute offices, to appoint officers, to confer rank and honours, and to do other like acts for the government of Malta, as he has in regard to the Government of Dependencies of the British Crown in general." The Crown Advocate, in his aforesaid case before H.M. Privy Council at para. 35 stated " that from 1800 to 1836 the Legislative and Executive Powers were vested absolutely in the King of England, and were exercised by his representative in Malta, in his name, for the benefit of the Maltese and of the Crown of Great Britain; and legislative acts were enacted by Proclamations and Notifications or " Bandi ";

This interpretation was, at the time and also after, given to the Royal Prerogative with regard to these Islands, and the Maltese appear to have submitted themselves somehow to this state of things, it not having been proved that, especially in the early times when the legal nature of the acquisition was uncertain, the exercise of the Royal Prerogative was seriously challenged. It is a fact that the Maltese have always insisted by means of petitions to His Majesty, of special missions of their representatives in London, of resolutions passed in the Council of Government and otherwise, on their right of having representative institutions and even responsible government, but there is no record that they ever challenged, formally or judicially, the right of His Majesty to legislate by Orders in Council and Letters Patent. So that even assuming " ex hypothesi " that the aforesaid interpretation of the royal Prerogative, as applied to a civilised country like Malta not acquired by conquest or real cession, was not correct, the uniformity of usage had, as its natural and legal effect, that of bestowing on His Majesty, a right of legislating in the manner aforementioned. That usage, according to the principles of Roman Law (Justinian's, to which we must refer in doubtful cases when there is no positive enactment to the contrary) possessed the required conditions for its validity; it was uniform, public, multiplied, observed by the people, spread over a long space of time, and implicitly accepted by the Legislature, when from the year 1849 onwards representative government was granted to these Islands. (V. Pothier, Pandectae Justinianae, Lib : I, Tit. II, Sect. II, No. 28 to 30, with special reference to L. 2. Cod. Quae sit Longa Consuetudo,—Voet ad Pandectas Lib. I, Tit. III, No. 27 et, Phillimore : " Principles and Maxims of Jurisprudence on Usage," page 324, and judgment of this Court dated 27th June, 1892, in re *Low* v. *Low*).

Consequently the contention that His Majesty the King never had the right of legislating for Malta by Orders in Council and Letters Patent prior to 1921 cannot be upheld.

Having considered with regard to the second point, as to whether the Crown lost that right when responsible government was granted in 1921, that it is an undoubted maxim of Constitutional Law, unchallenged by Appellant and Respondents, that once a Colony or Possession has received from the Crown or from Parliament legislative institutions, the Royal

Prerogative to legislate by Orders in Council and Letters Patent comes to an end, and is lost by His Majesty, unless a special reservation is made in the grant itself. (V. Kier and Lawson Cases on Constitutional Law, pages 279, 408, 409,—Kieth, The Constitution, Administration and Laws of the Empire, pages 11 and 12,—Jenkyns, Rule and Jurisdiction Beyond the Seas, 1902, page 6, Halsbury, Laws of England, Vol. VI, para. 652, page 435, Anson, Law and Custom of the Constitution, Vol. II, 1892, Edit. page 259).

In 1921 Responsible Government was granted by His Majesty to these Islands by Letters Patent of the 14th April of that year, and except in so far as certain reserved matters were affected no reservation in favour of the King was made in the instrument itself, so that there is no doubt that in respect of all other matters the Royal Prerogative was irrevocably surrendered by the grant of the Constitution.

Having considered with reference to the third point,—whether His Majesty the King re-acquired the right to legislate by Orders in Council and Letters Patent in virtue of the Imperial Constitution Act of 1936 or of the English Common Law—that :

Appellant contends that His Majesty could never re-acquire that right, save by an express dictum of the Imperial Parliament, once it had been surrendered in favour of the Maltese people, by granting them a Constitution based on Responsible Government; on the other hand Respondents contest that submission, and urge that His Majesty re-acquired the said right by virtue of the Royal Prerogative according to the Common Law of England, when authority was accorded him by Parliament in virtue of the Malta Constitution Act of 1936 to revoke the Constitution of 1921 and He did actually revoke the said Constitution by Letters Patent of the 11th August, 1936. Respondents submit that His Majesty did not re-acquire the Prerogative to legislate in these Islands by Orders in Council and Letters Patent by direct virtue of the said Act of Parliament, but in view of the revival of the Common Law Prerogative, after that, by the revocation of the said Constitution, the cause for which that Prerogative had been lost was put aside. The second paragraph of their Statement of Defence runs, in fact, thus : " that the effect of the revocation of the said Letters Patent of 1921 was to place the Crown in the same position which it enjoyed previous to the issue of the said Letters Patent of 1921; that is these Islands, in virtue of the Common Law Prerogative of the Crown, were again made subject to legislation by Order in Council.

It is an established Constitutional principle not contested by the parties, and based on " *Campbell* v. *Hall* " (1774) Coupel's Reports, that the grant of representative institutions could not be recalled and the legislative power of the Crown in respect of a conquered or ceded colony departed when the Crown had granted such a Constitution, unless indeed, the Crown had reserved its rights in the instrument by which the Constitution was granted. This means that the only manner in which the Crown, in granting representative institutions to a conquered or ceded possession, could avoid immediately and irrevocably losing the right to legislate by Letters Patent or Orders in Council is by making an express reservation to that effect in

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the instrument itself by which the grant has been made. There is no question between the parties that in the Malta Constitution Letters Patent of 1921 no such reservation was made except in so far as certain specified matters were concerned; the legislative power with regard to all other matters was, therefore, irretrievably lost for the Crown.

Similarly no doubt exists about the soundness of the other maxim of constitutional law that the Imperial Parliament, by virtue of its so-called "omnipotence," can restore back to the Crown the right to legislate for that possession, which it had lost as a consequence of the concession without reservation of representative institutions. But in such instance the power of the Crown to make laws, does no longer derive from the Common Law Prerogative or from any title acquired by conquest or cession—which Prerogative or title was irrevocably lost,—but in virtue of an authority or power granted to him by Parliament—In other words, the old title, in such cases, does not revive, but a new one is substituted therefor. This is another consequence of the rule laid down in "*Campbell* v. *Hall*," and never since challenged, that the right of legislation based on a previous title, if not specifically reserved in the instrument of grant, is immediately and irrevocably lost, when representative institutions are granted. What has been said in this paragraph leads to another inference, namely, that the new title for legislating must be accorded by Parliament "expressis verbis," in clear and unequivocal terms, and not by implication, otherwise convincing evidence of such an extraordinary and exceptional concession will not exist. Anson, in dealing with another kind of delegation by Parliament, says: "Parliament, which is omnipotent, may, if it so chooses, delegate to the executive any of its powers, but *the Courts in construing a statute will not admit an interpretation* which would derogate from the Bill of Rights *unless the intention to do so is expressed in the clearest possible words*" (The Law and Custom of the Constitution, Vol. I, 1922).

In the case of Malta, it is contended that the legislative rights over these Islands were restored to His Majesty by virtue of Clause I of the Malta (Letters Patent) Act of the Imperial Parliament 1936, which runs as follows: "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."

Respondents do not claim that by the Clause now reproduced a new title for legislating was given to the King in Council by Parliament; it has already been pointed out that the plea put forward by them in their Statement of Defence, and insisted upon in their other written and oral submissions, is that as an effect of the revocation of the Letters Patent of 1921 authorized by the Imperial Parliament and effected by Him by virtue of the Letters Patent of the 12th August, 1936, His Majesty re-acquired the right to legislate for Malta by Orders in Council in virtue of the Common Law Prerogative. This same construction appears to have been given to that clause by the exponent of the government in sponsoring the passage

of the Act before Parliament. The Earl of Plymouth, then Parliamentary Under-Secretary of State for the Colonies, in moving the second reading spoke thus: "There was a wide area over which the Crown *reserved no power to legislate*, and, *in particular*, it reserved no power *to revoke* the Constitution as a whole. It is primarily in order to remove this limitation that this Bill is brought forward. When it becomes law and the limitation is removed the Crown will be restored to the position which it held prior to 1921, and will have a full and undoubted right to legislate for Malta by virtue of the Prerogative (Parliamentary Debates, Lords, 1935-36, p. 749)."

To attain that alleged object the form chosen was the framing of a clause whereby it was laid down that the Malta Constitution Letters Patent should have effect as if the Crown had reserved to itself the power to revoke and amend each and every clause of those Letters Patent. Firstly, the question must be examined as to whether a similar reservation i.e. to revoke or amend all and any of the clauses of the Letters Patent, had it been inserted in the original instrument, would have sufficed to prevent the surrender of the King's right to legislate by Orders in Council or Letters Patent. The negative may be inferred from the general and constant rule followed in the issue of instruments granting representative government to Colonies or other possessions, whenever it was meant to preserve the Royal Prerogative. In all such Letters Patent two kinds of reservations are inserted. One is to the effect that His Majesty reserves to Himself *full power to revoke, or amend all or any of the provisions* of the instrument itself; by the other He reserves *the undoubted right to make laws for the Colony* or *possession with the advice of the Privy Council as if the Letters Patent had not been made.* In order to remain in the purview of the representative institutions conceded to Malta prior to the grant of Self Government in 1921, reference may be made to the Letters Patent of 1849, to Clause XLIV of the Letters Patent of 1887 and to Clauses 58 and 59 of the Letters Patent of 1903, in which the two distinct sets of reservations are inserted, in the case of 1849 in two separate clauses, wide apart one from the other, in that of 1887 in one clause, and in that of 1903 in two separate clauses. Even in the Letters Patent of 1921, in view of the fact that there were several reserved matters, the two reservations were made in respect of those matters viz. in Clause 68 of the principal instrument: "We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke alter or amend Section 41 and all other provisions relating to reserved matters or Imperial property and interests etc." and in Clause 12 of the Letters Patent constituting the Office of Governor: "Provided also that nothing herein contained shall affect Our right by any Order in Council to make from time to time all such laws with regard to any such reserved matters as aforesaid as may appear to Us necessary for the peace, order and good government of Malta."

The same inference may be drawn from the other fact that in other Letters Patent, complementary or subsidiary, dealing with some specific point and bearing no danger of the Crown surrendering any part of the

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Royal Prerogative in respect of general legislation, only the minor reservation occurs: "We do hereby reserve to Ourselves, Our heirs and successors the undoubted right to revoke alter or amend *these* Our Letters Patent etc."; but not the other relative to the right to make laws by Order in Council for the peace, order and good government. Such was the case of the minor Letters Patent issued for Malta between 1849 and 1921, those for example of 1870, 1883, 1888, 1891 and 1893.

It is thus made clear that the reservations which are considered necessary to prevent the loss by His Majesty of the power to legislate when representative institutions are granted are two. They are distinct one from the other and are expressed at times in two separate clauses. Each has its own importance, because no word, and *multo magis* no enactment is superfluous in a statute of such relevance, as Letters Patent instituting Councils of Government with legislative functions undoubtedly are. If any degree of importance were to be assigned to each of those reservations, that whereby the right to make laws is maintained must be taken to bear more weight in the consideration of the point at issue, as being more specific, clear and comprehensive. According to Jenkyn's (Rule and Jurisdiction Beyond the Seas, 1902, p. 6) "in the case of a conquered or ceded Colony, the Crown has absolute power of legislation by Orders in Council, but that power may be surrendered—by establishing a representative assembly or, *if expressly reserved, may be exercised concurrently.*" In the same sense Bridges, (Constitutional Law of England, 1922, p. 425): "The right of the Crown ceases unless it has been *specially reserved.*" Halsbury (Laws of England, Vol. VI, para. 652, p. 425): "The Crown, in general, loses the right of legislation with regard to the Colony unless *expressly retained;*" Anson (Law and Custom of the Constitution, Vol. II, 1892 Edition, p. 259): Its powers of legislation by Order in Council, unless *expressly reserved,* are at an end." It is clear that the powers of legislation cannot be *expressly* reserved unless some such words, or others equipollent, are used: We do reserve Our right to make by Order in Council Laws for the peace, order and good government etc. And this was done in all instruments granting representative institutions.

In the Malta (Letters Patent) Act, 1936, only the first reservation was put in, Clause I having enacted that the Malta Constitution Letters Patent, 1921, should have effect as if there were thereby reserved to His Majesty full power to revoke or amend all or any of its provisions. No mention whatsoever was made of the other more important and, as it has been seen, necessary reservation, relative to the right of making laws for the peace, order and good government of Malta. The consequence is that this power, which had been parted with by His Majesty when Self Government was granted by virtue of the Letters Patent 1921, except in so far as certain reserved matters were concerned, was not in an expressed and unequivocal manner restored to the Crown.

By Letters Patent of the 12th of August, 1936, His Majesty was pleased to revoke the Malta Constitution 1921, *in toto,* as well as the other Letters Patent of 1933, 1934 and 1936 whereby it had been amended. In the

instrument of August 1936 there does not appear recited by virtue of what power those Letters Patent were issued. Granted that authority to revoke came to His Majesty from Clause I above mentioned of the Imperial Parliament Act of 1936, the indirect and insufficient formula adopted relative to the revocation of the Malta Constitution Letters Patent may have meant that Maltese Self-Government could be put to an end, and that the legislative functions vested in the Legislature were withdrawn. It does not, however, mean that there was enough for restoring them to the Crown. Whatever may have been the title belonging to the Crown for exercising them prior to the Malta Constitution of 1921, that title could only have been preserved by clear and exhaustive reservations in the instrument itself; failing that, the original title for making laws—save for certain specific matters—was surrendered and lost, and could not revive. As already stated, a fresh title for legislating could only be granted by an Act of the Imperial Parliament. Clause I of the Malta (Letters Patent) 1936 cannot be taken to amount to the grant of such a new title—and the Respondents do not claim that it amounts to that, their plea being that it served to remove the obstacle without which the Common Law Prerogative of the King could not come again into existence, a theory this which, as it has already been explained, cannot be upheld. There not having been *expressis verbis* a clear and unequivocal grant by the Imperial Parliament to the Crown in Council of the Right to once more make laws for the peace, order and good government of the people, that power—except in so far as it was reserved in respect of certain matters in 1921—is non-existent.

This is more forcibly so if one bears in mind the uncertainty of the original title for legislation vested in the King consequent on the equally vague nature of the acquisition of these Islands by the British Crown. It has been already pointed out, in dealing with the first point of this Appeal that British Sovereignty on Malta was not based on conquest, which would have justified the prerogative of the conqueror to impose laws on the conquered; nor on that of a real cession, taking that word in its proper and legal sense, which would have furnished the conditions of transfer of all rights from the State operating the cession; but principally on the self-determination of the inhabitants under circumstances which came nearer to a compact than to anything else. It was then considered necessary for His Majesty to assume an absolute power to legislate in order that the laws in force at the time should be conformed, as much as possible, with fundamental British principles. That interpretation, although not acquiesced in altogether by the Maltese who during the whole period of British rule, by various methods, kept clamouring for a representative government—which was conceded by stages in 1849, 1887 culminating in 1921 in the grant of a not unlimited Self-Government—was not legally and judicially challenged, and consequently gave rise to the title of usage. This title evidently lapsed with the enactment of autonomy, and cannot be revived.

The above stated considerations lead to the conclusion that the power delegated to the Governor in virtue of Clause 15 of the Letters Patent of

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 16. Judgment, 4th March, 1938—*continued.*

the 12th August, 1936 to make laws for the peace, order and good government of Malta was *ultra vires*, except in so far as what were described to be reserved matters in the Malta Constitution Letters Patent, 1921 are concerned, and that consequently Ordinance No. XXVII of 1936 was made and promulgated *ultra vires* and is not binding.

For the foregoing reasons,

The Court adjudges and decides as follows :—

The Judgment given by His Majesty's Civil Court on the Eleventh (11th) October, 1937, is reversed, and Plaintiff's Appeal as well as his demands brought forward in the Writ-of-Summons are allowed. In view of the novelty of the points at issue, there is no order for costs between the parties, but the Registry Fees shall be borne by Respondents.

(Signed) CARM. VELLA,
Deputy Registrar.

A true copy.

EDG. STAINES,
Registrar.

No. 17. Proceedings recording Plaintiff's Objection to Defendants' claim that they are exempt from tendering security, 7th March, 1938.

No. 17.

Proceedings recording Plaintiff's Objection to Defendants' claim that they are exempt from tendering security.

This 7th day of March, 1938.

Submissions were made by the Right Honourable Lord Strickland, personally, by Dr. G. Borg and by the Senior Crown Counsel.

Applicants urge that as representatives of the Government they are not called upon to give the surety contemplated in Sections 4 and 5 of the Order in Council of 1909.

This claim as well as those contained in the application are resisted by Plaintiff.

The case is put off for judgment to the 11th March, 1938.

(Signed) CARM. VELLA,
Deputy Registrar.

A true copy.

EDG. STAINES,
Registrar.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 18. Application of Plaintiff for an Order that he be allowed to file a Note of Submissions and Decree thereon, 11th March, 1938.

No. 18.

Application of Plaintiff for an Order that he be allowed to file a Note of Submissions and Decree thereon.

Application of Plaintiff, the Right Honourable Gerald, Lord Strickland, G.C.M.G., LL.B., Count della Catena.

Respectfully sheweth :—

That Defendants' application for leave to appeal to the Privy Council and for a stay of execution has been put off for judgment to Friday the 11th March, 1938;

That it is in the interest of justice that Plaintiff should file the attached nota in reply to the remarks made by Defendants' Counsel at the last sitting and the Plaintiff should explain orally in open Court the contents of the said Nota.

Petitioner, therefore, respectfully asks that he may be allowed to file the said nota and to explain its contents before judgment is delivered to-morrow.

(Signed) GEORGE BORG,
Advocate.

(Signed) STRICKLAND.

This tenth day of March, 1938.

Filed by Lord Strickland with a note.

(Signed) CARM. VELLA,
Deputy Registrar.

HIS MAJESTY'S COURT OF APPEAL

The COURT,

Dismisses the application on the ground of irrelevancy.

This eleventh day of March, 1938.

(Signed) CARM. VELLA,
Deputy Registrar.

A true copy.

EDG. STAINES,
Registrar.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 19.
Order granting conditional leave to appeal, 11th March, 1938.

No. 19.

Order granting conditional leave to appeal.

His Majesty's Court of Appeal
(Civil Jurisdiction).

Judges:—

His Honour Sir A. Mercieca, Kt., M.A., LL.D., Chief Justice and President of His Majesty's Court of Appeal.

Dr. Rob. F. Ganado, LL.D.
Prof. Dr. E. Ganado, LL.D.

Sitting held on Friday, eleventh day of March, 1938.

No.

Writ of Summons No. 231/1937.

By Petition filed on the 4th of March, 1938, Defendants in the aforementioned case asked for leave to appeal from the judgment of this Court delivered in that same date to His Majesty in Council in terms of section 2 (a) and (b) of the Order in Council of the 2nd November, 1909, and prayed that the execution of that judgment be suspended pending the appeal according to Section 5 of that Order in Council. During the oral pleadings at the sitting of the Court held on the 7th March, 1938, they furthermore claimed that, as representatives of the Crown, they be not called upon to give security for the due prosecution of appeal and for costs, as well as, if the execution of the judgment is suspended, for the due performance of any Order that His Majesty in Council shall think fit to make on the appeal, as required by Sections 4 and 5 of the same Order in Council. All these demands have been resisted by Plaintiff.

Apart from the fact whether the matter in dispute on the Appeal amounts to or is of the value of five hundred pounds sterling (£500) or upwards or involves, directly or indirectly, some claim or question amounting to that value or upwards, no doubt can be entertained that the question involved in the proposed Appeal is one which, by reason of its great general and public importance,—dealing as it does with the validity or otherwise of laws,—ought to be submitted to His Majesty in Council for decision, under section 2 (b) of the above quoted Order in Council. The convenience that the execution of the judgment from which Defendants propose to appeal be suspended, pending the appeal, is also manifest, in view of the effects which such execution may produce.

As regards the applied for exemption from giving the securities required by the Order in Council, it is not contested that Defendants appear and are acting for the Crown. In "*Attorney General of the Isle of Man* vs. *Cowley*" (1859, 12 Moore, C. 27), it was held by the Judicial Committee of

No. 19. Order granting conditional leave to appeal, 11th March, 1938—*continued.*

the Privy Council on the strength of " *The Lord Advocate* vs. *Lord Dunglas* " (9 Clk. v. Fin. 173), that the Attorney General was entitled to appeal to the King in Council, without entering into the security bond required by the Court below, and it was ordered that he should be at liberty to enter and prosecute his appeal, without complying with the security for costs required by the acceptance of appeal. The same rule was followed by the Privy Council in " *Robertson* vs. *Dumaresq* " (N.S.W. 1864, 2 Moore—N.S.—p. 80) and in re " *The Attorney General for Victoria* (Vict. 1866, 3 Moore—N.S.—527). This being the view adopted by the Judicial Committee of the Privy Council, the opportunity does not arise of applying, as it has been urged by Defendants, to the case at issue, the provision of article 923 (1) of the local Laws of Civil Procedure, whereby in the absence of particular provisions to the contrary, the Crown is exempt from giving any security whatsoever which may be prescribed or required.

What has been so far said is also applicable to the surety for the stay of execution of the judgment, in view also of the tenuity of the amount which Defendants have been condemned to refund.

For the foregoing reasons the Court,

Allowing the demands put forward by Defendants,

Grants them conditional leave to appeal from the judgment given by this Court on the 4th March, 1938; provided they procure the preparation of the Record and the despatch thereof to England, within three months from the 7th March, 1938;

Directs that the execution of the said judgment be suspended pending the Appeal.

Costs reserved to the Order granting final leave to appeal or otherwise.

(Signed) CARM. VELLA, Dep. Registrar.

A true copy.

EDG. STAINES,
Registrar.

No. 20.

No. 20. Application of Plaintiff for an Order as to printing of Record and Decrees thereon, 18th March, 1938.

Application of Plaintiff for an Order as to printing of Record and Decrees thereon.

The Application of the Right Honourable GERALD LORD STRICKLAND G.C.M.G., LL.B., Count della Catena.

Respectfully sheweth :—

That in virtue of a Decree delivered on the 11th March 1938, this Court granted conditional leave to the Defendants to appeal to His Majesty in Council in the above case from judgment given on the 4th March 1938, provided that the Government procures the preparation of the Record and the despatch thereof to England within three months from the 7th March 1938;

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 20. Application of Plaintiff for an Order as to printing of Record and Decrees thereon, 18th March, 1938—*continued.*

That in view of the desire that no time should be lost in obtaining a hearing before the Judicial Committee of the Privy Council, it is submitted that the printing of the Record in Malta would be much more expeditious and far less costly and would save possibly several weeks for appointments at the Privy Council Office for the Solicitors of both sides to meet, correct proof sheets and assent to the correctness of the printing;

That the rules provide that there should be no avoidable delay;

That every step in the procedure is subject to the directions of this Court;

Wherefore, petitioner respectfully prayeth that the Court may be pleased to direct that the time within which the preparation of the Record and the despatch thereof to England is to be effected, be reduced to two months and that the printing of the Record be carried out in Malta.

(Signed) GEORGE BORG, Advocate.
(Signed) G. FLORES, Advocate.
(Signed) STRICKLAND.

This eighteenth day of March, 1938.

Filed by Lord Strickland without Exhibits.

(Signed) CARM. VELLA,
Deputy Registrar.

HIS MAJESTY'S COURT OF APPEAL.

The COURT,

Having seen the application.

Directs that copy of same be served on defendants who will have two days to file a reply, if they wish to do so.

This twenty first day of March 1938.

(Signed) CARM. VELLA,
Deputy Registrar.

HIS MAJESTY'S COURT OF APPEAL.

THE COURT,

Having seen the Answer of Defendants;

Has considered that there are no grounds for holding that Defendants are not expediting the preparation of the Record: and that it is for Appellants to choose whether the Record is to be printed in Malta or in England:

Disallows the Application.

This 25th day of March, 1938.

(Signed) CARM. VELLA,
Deputy Registrar.
A true copy.
EDG. STAINES,
Registrar.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 21. Application of Plaintiff for an Order that he be allowed to file Note of Submissions and Decree thereon, 22nd March, 1938.

No. 21.

Application of Plaintiff for an Order that he be allowed to file Note of Submissions and Decree thereon.

Application of Plaintiff, the RIGHT HONOURABLE GERALD LORD STRICKLAND G.C.M.G., LL.B., COUNT DELLA CATENA.

Respectfully sheweth :—

That he has prepared the annexed note of submissions relative to the first meeting held between the contending parties on the preparation of the Record to be forwarded to the Judicial Committee of His Majesty's Privy Council;

Petitioner, therefore, humbly prays that the Court may be pleased to give the necessary directions on the lines indicated in the said note of submissions.

(Signed) GEORGE BORG, Advocate.

(Signed) STRICKLAND.

This Twenty second day of March 1938.

Filed by the Right Honourable Gerald Lord Strickland with a note and a document.

(Signed) G. VELLA,
Assistant Registrar.

HIS MAJESTY'S COURT OF APPEAL.

THE COURT,

Directs that the application, the note and the exhibit be shown to Counsel for Defendants, who may wish to file a reply within two days.

This the twenty third day of March 1938.

(Signed) CARM. VELLA,
Deputy Registrar.

HIS MAJESTY'S COURT OF APPEAL.

THE COURT,

Having seen the answer of Defendants;

Has considered that a similar demand for the inclusion in the Record of the shorthand notes of the oral pleadings was refused by order of the 4th March 1938 as the parties had been given permission to file written pleadings which they did.

Disallows the application and orders that the document "A" annexed thereto be removed and returned to Plaintiff.

This twenty fifth March 1938.

(Signed) CARM. VELLA,
Deputy Registrar.

A true copy.

EDG. STAINES,
Registrar.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 22. Plaintiff's Note of Submissions, 22nd March, 1938.

No. 22.

Plaintiff's Note of Submissions.

The humble submissions of GERALD LORD STRICKLAND:

The appearer begs leave to file a print agreed upon by Counsel of both sides as recording proceedings before the Registrar for which both parties seek the sanction of the Court with a view to expediting proceedings by agreement.

At a suggestion of the Attorney-General the appearer respectfully submits a formal request that the Shorthand Notes prepared by the Government and submitted to both sides may be printed to accompany the Record as an Appendix because it is necessary according to practice of the Privy Council to distinguish at the hearing before the Judicial Committee what points have been raised before the Court below and what may be objected to as new points.

And it is essential to the defence of the Respondent to show first that at the hearing before the Court of Appeal in Malta the point was raised by the Appellant that Malta is "a colony" and that the Respondent was upheld by the Court in holding that within the correct meaning of Imperial Acts it cannot be held that Malta is a colony: and secondly that the point whether a treaty can be concluded verbally and can be recorded by a writing signed only by one of the parties, was discussed and dealt with in reference to the Proclamation in the name of the King of England by Civil Commissioner Cameron in 1801.

According to the text book of Privy Council practice by Bentwich, the Shorthand Notes may not be referred to to challenge the reasons and findings of the Judges of the Court from which there is an appeal, but there is nothing to prevent the Shorthand Notes being referred to to support those findings, and the fact that the point was raised.

Bentwich also teaches that every exhibit and document before the Court below must be indexed and be before the Judicial Committee to facilitate the raising of the question whether it should be printed or not in case the Parties cannot agree to the printing before the Record is filed.

The only valid ground for objecting to the printing of any exhibit appears to be the question of "costs," and, subject to that reservation thereupon the Attorney General has waived objection to the printing of the Shorthand Notes, which the Respondent desires to be able to refer to inasmuch as they show that both parties at the hearing before the Court of Appeal agreed on the point that Malta is a "protectorate," and the Respondent desires to show that Courts of Law and other authorities in Malta have consistently and successfully protested from time to time against the application of the designation "colony" being connected with Malta.

With regard to the printing of the Record in Malta, the appearer submits that besides a large saving of expenditure abroad of Maltese money, that may thus be diminished, and much time may be saved, because the

accuracy of the transcript would become the subject of agreement on the reading of the proofs before the Registrar in Malta, instead of at the Privy Council Office in England, by lawyers representatives of both parties who would find it difficult at times to make appointments mutually practical at short notice. This procedure in Malta avoids the previous comparison of the correctness of the transcript, by adopting one comparison on the proof-sheets. The part of the pleadings submitted in print by the appearer namely his written pleadings before the Court of Appeal were set up in type in accordance with the rules for printing Records, and the type is still available for the use of the Government Printing Office.

When a printed Record is sent to England by agreement the Petition for appeal can be filed quickly. The preparation of the " case " to be filed by each party could be undertaken beforehand, and the hearing could be put on the list by agreement perhaps within a month of the exchange of the " cases " in England.

The result of sending straight to England a script instead of a printed record would probably be,—that a hearing could not be expected before October, and, that which may be important, the discussion of a Bill of Indemnity in either House of the Imperial Parliament might be blocked on the grounds that an " appearance " has been entered by both sides before the Privy Council and therefore the matter has to be treated as *sub judice.*

Printing in Malta hastens the possibility of a Judicial decision and the procedure leaves open for a considerable time the alternative of obtaining a Bill of Indemnity in a form that may render unnecessary further legal proceedings.

The appearer therefore prays that the Court may be pleased to approve of a compromise indicated in the annexed printed summary of agreements before the Registrar which summary was considered in proof by the lawyers of both sides before it was printed in the present form.

And the appearer also prays that the Court may order that the printing of the Record should be proceeded with in Malta, and that the Shorthand Notes should be printed as an Appendix, subject to disallowance by an Order of the Judicial Committee of the Privy Council.

The appearer begs leave to refer to Page 561 of Volume 8 of the Second Edition of " Halsbury's Laws of England " as well as to Privy Council Practice by " Bentwich."

(Signed) STRICKLAND.

(Signed) GEORGE BORG,
Advocate.

A true copy.

EDG. STAINES,
Registrar.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 23. Defendants' Answer, 23rd March, 1938.

No. 23.

Defendants' Answer.

The answer of Defendants nomine, to the Application filed by Plaintiff on the 18th of March, 1938, and to the Note of Submissions filed on the 22nd March, 1938;

Respectfully sheweth :—

1. That it is in their interest that the record should be despatched with the least possible delay. In fact typewritten copies have already been prepared and are ready to be certified by the Registrar. The Appellants hope that with the co-operation of the Plaintiff it will be possible for the record to reach the Registrar of the Privy Council within a month from the date of the decision of this Court.

2. That the choice whether the printing is to be done in Malta or in England rests with the Appellants who consider that it would be more expeditious to have it done in England.

3. As regards the printing of the Shorthand Notes in the form of an Appendix to the record, Appellants submit that these do not form part of the record and should, therefore, not be printed, unless Plaintiff satisfies the Court that there are good grounds for the notes to go to the Privy Council, in which case Appellants would not press their objection, and submit to the decision of this Court. In this connection, however, Appellants submit that the notes have not been agreed to by the parties, nor have the *obiter dicta* as shown in the notes been approved by the Court.

In no case should the notes, be printed, if this is to cause delay.

(Signed) J. H. REYNAUD,
Senior Crown Counsel.
(Signed) J. P. BUSUTTIL, L.P.

This twenty third (23rd) day of March, 1938.
Filed by L.P. J. P. Busuttil without exhibits.

(Signed) CARM. VELLA,
Deputy Registrar.
A true copy.

EDG. STAINES,
Registrar.

In His Majesty's Court of Appeal, Civil Branch, Malta.

No. 24.
Procés Verbal, 28th March, 1938.

No. 24.

Procés Verbal.

THE HONOURABLE MABEL STRICKLAND *nomine*

—v—

EDGAR SAMMUT *nomine* and others.

This Twenty-eighth day of March, 1938.

On the request of Respondent that an official copy be kept by the Registrar of the Shorthand transcript of the oral pleadings submitted to this Court.

In view of the objection of the Counsel for Appellants that no official copies could be made of a document which does not form part of the Record,

The Court directs that the Shorthand transcript be kept by the Registrar and that it be transmitted at the expense of Plaintiff to the Judicial Committee if and when that Committee shall so order on an application which Respondent states that he proposes to make, and only after such transcript shall have been controlled by the parties and by the Court.

(Signed) CARM. VELLA,
Deputy Registrar.

A true copy.
EDG. STAINES,
Registrar.

In His Majesty's Court of Appeal, Civil Branch. Malta.

No. 25. Order granting final leave to appeal to His Majesty in Council, 28th March, 1938.

No. 25.

Order granting final leave to appeal to His Majesty in Council.

Judges :—

HIS HONOUR SIR A. MERCIECA, Kt., M.A., LL.D., Chief Justice and President of His Majesty's Court of Appeal.
Dr. ROB. F. GANADO, LL.D.
Prof. Dr. E. GANADO, LL.D.

Sitting held on Monday, twenty-eighth day of March, 1938.

No. 8.

Writ-of-Summons No. 231/1937.

The Honourable MABEL STRICKLAND as attorney of the Right Hon. GERALD LORD STRICKLAND G.C.M.G., LL.B., COUNT DELLA CATENA in virtue of a private writing filed in the records of the case *Hon. Mabel Strickland* v. *Anthony Bartolo* pending before the Commercial Court; and by a Note, filed on the 27th April, 1937, the Hon. EDWIN VASSALLO A & C.E., in view of the absence from these Islands of the Plaintiff nomine, entered an appearance in the suit on behalf of the Rt. Hon. GERALD LORD STRICKLAND, who is absent from these Islands as per power of attorney dated 2nd March, 1937, filed in the suit *Hon. Mabel Strickland* v. *Anthony Bartolo* pending before His Majesty's Commercial Court, and by a Note filed on the 16th October, 1937, the Hon. MABEL STRICKLAND, having returned to the Island took up the proceedings on behalf of the Plaintiff, Rt. Hon. LORD STRICKLAND who is absent from these Islands, and by a Note dated the 3rd day of December, 1937, Plaintiff the Right Honourable GERALD LORD STRICKLAND, COUNT DELLA CATENA, who having returned to the Island took up the proceedings

—v—

EDGAR SAMMUT in his capacity as Collector of Customs and His Honour SIR HARRY LUKE C.M.G., as the Legal Representative of the Government of Malta, and by a Note, filed on the 11th May, 1937, the Hon. EDWARD R. MIFSUD C.M.G., O.B.E., in his capacity as Secretary to the Government in lieu of SIR HARRY LUKE C.M.G. absent from these Islands, and by a Note filed on the 2nd June, 1937, His Honour SIR HARRY LUKE C.M.G., in his capacity as Lieut. Governor having returned to the Island assumed the proceedings of the suit in the place of the Hon. EDWARD R. MIFSUD O.B.E., C.M.G., and by a Note of the 4th March, 1938, EUSTRACHIO PETROCOCHINO in his capacity as acting Collector of Customs took up the proceedings in lieu of EDGAR SAMMUT.

THE COURT,

Having seen its decree given on the eleventh (11th) March, 1938, whereby conditional leave was granted to Defendants to appeal from

No. 25. Order granting final leave to Appeal to His Majesty in Council, 28th March, 1938—*continued.*

the judgment of this Court delivered on the fourth (4th) March, 1938, to His Majesty in Council, and costs were reserved to the final order granting leave to appeal;

Having seen the application of Defendants filed on the 25th March, 1938, claiming such final order;

Having heard Counsel for the parties;

Having ascertained that the one condition imposed in the said Order of the 11th March, 1938, has been duly complied with;

Allows the application of Defendants and grants them final leave to appeal from the aforementioned judgment of the 4th March, 1938, to His Majesty in His Privy Council. The costs of this order and those of the provisional order given on the 11th March, 1938, are to be borne by Defendants, for whom, however, a reservation is made to recover them from Plaintiff, if it be so ordered by His Majesty in Council.

(Signed) CARM. VELLA,
Deputy Registrar.

A true copy.
EDG. STAINES,
Registrar.

Exhibits.

EXHIBITS.

A.1. Unofficial Copy of the Translation of the Protest entered by Plaintiff, 1st March, 1937.

A.1.—Unofficial Copy of the Translation of the Protest entered by Plaintiff.

IN HIS MAJESTY'S CIVIL COURT

FIRST HALL.

Rt. Hon. GERALD LORD STRICKLAND, G.C.M.G., LL.B., COUNT DELLA CATENA.

v.

EDGAR SAMMUT in his capacity as Collector of Customs

&

Hon. Sir HARRY LUKE, C.M.G., Lt.-Gov. of Malta on behalf of the Government of Malta.

Protest of the Right Hon. GERALD LORD STRICKLAND, COUNT DELLA CATENA, G.C.M.G., LL.B.

Respectfully sheweth:

That Lord Strickland proposes to import articles liable to duty under Ordinance XXVII of 1936 or by other laws, and does not propose to pay the taxation imposed thereon inasmuch as no provision of any Act of the Imperial Parliament or other Law now in force authorises His Majesty the King to impose taxes on the Maltese by Letters Patent or can convey power to the Governor to enact Ordinances to that effect.

2. That moreover the exercise of power to legislate by a Governor requires, at Common Law, that His Majesty the King should by statute have power to delegate the same as part of the Royal Prerogative in virtue of a specific enactment contained in such a Statute. Such delegation cannot otherwise be legally assumed over territory that has not been conquered from its inhabitants, and much less over Malta which is part of the British Commonwealth of Nations under International Law as a sequel to the conquest from the First French Republic in which conquest the Maltese were the principal co-belligerents; and

3. Whereas powers in the Malta Constitution Letters Patent of 1921, as subsequently amended, only authorised the Governor in the case of a certain declaration of emergency, to legislate by Ordinance both with reference to "Reserved Matters," and with reference to matters of general interest, side by side with the power of the Maltese Parliament to legislate upon matters not reserved; and

4. Whereas such powers to legislate by Ordinance in an emergency on matters of a general character have been entirely revoked by Letters Patent of the 12th August, 1936, enacted under the Malta Letters Patent Act of 1936; and

5. Whereas any power that a Governor may have now to legislate by Ordinance in reference to Malta must derive from an unrevoked provision of some Act of the Imperial Parliament giving power to His Majesty to legislate for Malta by Letters Patent or Orders in Council, with power to His Majesty to delegate such authority to legislate; and

6. Whereas the Act of 1801, 41 George III, Chapter 103, has been repealed with the exception of Section 3 thereof, and whereas the Act known as the Falklands Islands and Territories in, and adjacent to Africa, 6 & 7 Victoria, Chapter 13 (1843), has been repealed, and replaced by the British Settlements Act, of 1887; and

7. Whereas the repeal of the Malta Constitution Act of 1932 in part only, implies the recognition in the remainder thereof of the principle that Malta has received the grant of Representative Government and also of Responsible Government as a " Quasi-Dominion," which grant established under the Common Law a Constitutional position confirmed by Statute, and which is in accordance with Pacts and Covenants between England and Malta at the time of the annexation, and by the operation of International Law, and on the circumstances under which Malta was annexed to the Empire, fundamental and irrevocable; and

8. Whereas no general power to legislate for Malta by Letters Patent or Orders in Council is added to the Prerogative or created by the Malta Letters Patent Act of 1936, it follows that by the above Act of 1887, or by the unrepealed portion of the above Act of 1801, or by the Malta Constitution Act of 1932 have to be examined to ascertain whether any such power may be claimed rightly or wrongly; and

9. Whereas none of the Acts applicable to Malta give power to the King to delegate to the Governor of Malta any power exercisable as part of the Royal Prerogative, and the King cannot exercise such Royal Prerogative of Legislation in the case of a Possession not conquered by force of arms from the inhabitants thereof and unless the same were not possessed of an established form of Government at the time of the annexation; and inasmuch as the Act of 1887 does not apply to the annexation of territory where a Legislature was previously established, as was the case when Malta was organised to expel the French; and

10. Whereas the Malta Constitution Act of 1932 gave retrospectively sanction derived from an Act of Parliament to certain Ordinances therein scheduled and specified limits, and because the terms thereof cannot be extended by interpretations and implication against the Common Law; and

11. Whereas by the Malta Letters Patent Act of 1936 power was given to His Majesty to " amend " and " revoke " by Letters Patent, the Malta Constitution Letters Patent of 1921, as subsequently amended, but no power is given to alter same, by an amendment which is not an amendment, of a Representative Constitution and within the rule " ejusdem generis "; and

Exhibits.

A.1. Unofficial Copy of the Translation of the Protest entered by Plaintiff, 1st March, 1937—*continued.*

12. Whereas such power to " revoke " has been exercised fully and the power to " amend " has not been and could not be subsequently exercised in the Letters Patent of the 12th August, 1936, and consequently the Letters Patent of 1921 and the power therein, if any, to legislate by Ordinance is spent; and

13. Whereas such Letters Patent of 1936 have exhausted all the powers granted under the Act of 1936, and have entirely repealed the previous Constitution Letters Patent of 1921, as subsequently amended, now there is nothing left of that Constitution which may be so amended, whence it emerges that the Governor of Malta can have no power to legislate derived from either the Act of 1887, or from the Act of 1932, or the Act of 1936, or from any other Act of the Imperial Parliament, or from the accepted interpretations of the Common Law of England; and

14. Whereas to apply such an Act to Malta would be contradictory because the Act purports to apply only to possessions of the Crown which at the same time are unoccupied and outside the United Kingdom and open to be settled by migrants or adventurers from England; and

15. Whereas the further definition in Section 6 of the Act of 1887 enacts that the provisions of the said Act of 1887 are not to apply whereever a Legislature had been previously established, as at the time of the annexation was the case in Malta, or to any Possession which has not been a " Settlement," therefore it follows that the Act of 1887 cannot give power to a Governor to Legislate for Malta by Ordinance; and

16. Whereas the British Settlements Act of 1887 would be erroneously applied to Malta on the supposition that Malta is a part of Africa, or that Malta had been a Possession settled by adventurers from England at a time when Malta was unoccupied or was bereft of a Legislature; and

17. Whereas Malta, as regards the applicability of the Act of 1887, is not to be classified as part of Africa but is in the same category as the Channel Islands and the Orkney Islands, and Southern Ireland, as regards its Constitutional " Status " with Europe, and is held in trust by the Crown for the Maltese as victorious co-belligerents in a conquest from the French Republic under Bonaparte; and

18. Whereas the Act of 1887 or some other Act derogatory to the Common Law, is now being applied erroneously so as to purport to authorise the Governor of Malta to impose taxation and to legislate by Ordinance; and

19. Whereas Magna Charta applies to parts of the British Commonwealth beyond the Seas it is established that taxation without representation is irreconcilable with the rights of British citizenship, and is also irreconcilable with the Common Law as declared by the Judicial Committee of His Majesty's Privy Council in the case of the Bishop of Natal quoted by Mr. Secretary Ormsby Gore on the second reading debate of the Malta Letters Patent Act of 1936 ; and

Exhibits.

A.1. Unofficial Copy of the Translation of the Protest entered by Plaintiff, 1st March, 1937—*continued.*

The Defendants, Edgar Sammut and Sir Harry Luke, are hereby called to refrain from any attempt to levy taxes against Lord Strickland under any Law, or alleged Law, proclaimed since the passing of the Malta Letters Patent Act of 1936, and they are called upon to give instructions to Customs Officers accordingly, and to show cause why Ordinance XXVII of 1936 should not be declared to have no legal effect being null and void;

Wherefore, while formally bringing the aforesaid facts to the knowledge of the said Edgar Sammut, Collector of Customs, and Sir Harry Luke, Lieutenant Governor, appearer calls upon them to make good any damage that may be suffered at any future time by him on account of the enforcement of the said Ordinance No. XXVII of 1936, lodges a formal protest against the said Edgar Sammut, and Sir Harry Luke, in their aforementioned capacity, holding them answerable for fraud, delay, and negligence for all legal purposes, with costs.

(Signed) G. AMATO,
Advocate.

(Signed) STRICKLAND.

A true copy.

EDG. STAINES,
Registrar.

B.1.—Authorization to the Hon. E. R. Mifsud to represent the Government in the Case.

B.1. Authorization to the Hon. E. R. Mifsud to represent the Government in the Case, 8th May, 1937.

The Palace, Valletta,

8th May, 1937.

I authorize Edward R. Mifsud, Esq., C.M.G., O.B.E., Secretary to the Government, to represent the Malta Government in the case *The Honourable Mabel Strickland nomine* vs. *Edgar Sammut nomine and others*, Citation No. 231C of 1937, pending before His Majesty's Civil Court, First Hall, during the absence from these Islands of His Honour Sir Harry Charles Luke, C.M.G., Lieutenant-Governor.

(Signed) CHARLES BONHAM CARTER,
Governor.

A true copy.

EDG. STAINES,
Registrar.

Exhibits.

B.2. Extract from Judgment delivered by His Majesty's Court of Appeal, Malta in re *The Hon. Mabel Strickland* v. *Salvatore Galea*, 22nd June, 1935.

B.2.—Extract from Judgment delivered by His Majesty's Court of Appeal, Malta, in re "The Honourable Mabel Strickland v. Salvatore Galea."

HIS MAJESTY'S COURT OF APPEAL. (CIVIL COURT)

Judges:

His Honour SIR A. MERCIECA, KT., M.A., LL.D., Chief Justice
DR. ROB. F. GANADO, LL.D.
The Hon. SIR A. BARTOLO, KT., B.LITT., LL.D., M.R.H.S.

Sitting of Saturday, the twenty second day of June, 1935.

No. 1.

Writ-of-Summons No. 802 of 1934.

The Honourable MABEL STRICKLAND *pr. et noe. ed.*
v.
SALVATORE GALEA *nomine, ed.*

. . . . . Omissis . . . . . .

Before discussing these points the First Court premised a brief recapitulation of the principal Constitutional enactments in Malta since 1921. In that year the secular claims and aspirations of the Maltese people to govern themselves were recognised by the British Government, subject only to certain limitations considered necessary in the general interests of the Empire. Upon this fact and upon the circumstances connected therewith Appellants have based one of their main arguments in support of their interpretation of the spirit of the Constitution, stressing particularly the special position which Malta holds in the British Empire as the result of the special manner in which it came within the domains of the British Crown. This is not the first time that this point is being raised before a Court of Laws on such an issue; and to quote a notable instance, in the Marriages Case, which was specially referred to the Judicial Committee of His Majesty's Privy Council in 1892, one of the main pleas of the Malta Government was that the Island was not a conquered territory and could not therefore be so regarded for the purpose of the exercise on the part of Great Britain of the powers of legislation in regard to the Island. There can be no doubt or question as to the true and real nature of the title of the British Sovereignty over Malta, and that it is the very reverse of a right of conquest, whether that the term be taken in its broader sense, as including its legal aspect and bearing, or in its restricted meaning of an acquisition by force of arms. This is made perfectly clear by reference to official documents, several of which were contemporary with the events with which they dealt, and to authoritative declarations of several British statesmen who successively held the office of Colonial Secretary.

The first of these is also the most important, inasmuch as it was made by the Minister who was in charge of the Colonial Office at the time Malta became British, and indeed in the very same despatch in which he conveyed

the decision of His Majesty's Government definitely to recognise the Islands as forming part of the British Empire. In fact, in his instructions to Sir Thomas Maitland of the 28th July, 1813, Lord Bathurst, Secretary of State for War and Colonies, stated *inter alia :* " The Maltese people have " (with an inconsiderable exception) attached themselves enthusiastically " to the British connection and offer to His Majesty a wealthy and con- " centrated population of 100,000 persons, whose active industry is most " satisfactorily attested."

Lord Glenely who belonged to the generation which had lived through the events referred to, declared in the House of Lords on the 30th April, 1839, when the question of granting liberty of the press to Malta was being debated. " Look at the peculiar tenure under which Malta was held by " the British Crown. Malta was not a possession the result of a conquest. " Malta, when it belonged to the French, resisted French usurpation, and " appealed to this country for aid. Great Britain furnished auxiliaries " and with the Maltese had blockaded Valletta, and to those united powers " the French surrendered, and then the Maltese people, by their own " act and authority, voluntarily assented to the protection of Great " Britain. In that light the rights and privileges of Malta had ever since " been regarded, and it was peculiarly the duty of Great Britain to take " care, that the principle of British freedom and full benefit of British " legislation should be brought into operation in that, even above all " other dependencies of the British Crown". Seven years later, Lord Grey, in a despatch to the Governor of Malta, proclaimed that :—" Her " Majesty was deeply sensible of the noble confidence reposed by the " Maltese people in the honour and good faith of Great Britain, at the " period when, having nearly achieved their independence by their own " gallant efforts, they placed their dearest rights almost unconditionally " at the disposal of Her Majesty's Royal Predecessor".

More explicitly Mr. Joseph Chamberlain declared in 1900 at the Valletta Palace: " Malta is in a *unique* position. It has not come to us " in the ordinary way in which the possessions of the Crown have been " acquired. She is not ours by right of the first discoverer, nor is she " ours by right of conquest. Her independence, which was threatened by " the Great Napoleon, was maintained largely by the action of the " Maltese themselves; and it is due, I think, to their clear perception of " their position in the world that they were led, of their own accord, to " offer their patrimony to the British Government and came under the " protection of the British Empire". An identical statement was made by Mr. Chamberlain in the House of Commons in January 1902—quoted in the judgment under appeal. All important is also the testimony of Sir George Cornewall Lewis who, with John Austin, formed the Royal Commission of Enquiry into the affairs of Malta in 1836 and who, in his " Essay on the Government of Dependencies", dealing with " Acquisition by Conquest or Voluntary Cession", remarked in a foot note :—" No instance is given in this section of *really voluntary cession as*, for instance '*in the case of Malta*' ". It is consequently in this restricted sense only

Exhibits.

B.2. Extract from Judgment delivered by His Majesty's Court of Appeal, Malta, in re *The Hon. Mabel Strickland* v. *Salvatore Galea*, 22nd June, 1935—*continued.*

that the statement of the First Court that Malta may be regarded as a colony acquired by cession is to be accepted.

It was not quite precise to state—as Lord Grey put it—that the people of Malta who fought for their freedom at the close of the eighteenth century " placed their dearest rights almost unconditionally at the disposal ' of His Britannic Majesty ' ". It was " a Compact " that they called the " Declaration of Rights of the inhabitants of Malta and Gozo " of the 15th June, 1802, and if the clauses thereof—which included the establishment of representative government—were not exactly " conditions " or terms as they were called by Mr. Chamberlain, they certainly expressed the general wishes and aspirations of the declarants. That the main principles underlying that and other declarations were agreeable and agreed to by the British Government at the time, is made clear beyond doubt from official proclamations and addresses, as well as by an eloquent fact which has not received the notice it deserves.

As early as the fifth October, 1813, Sir Thomas Maitland was appointed to and assumed the administration of the Islands not as Civil Commissioner (like his predecessors from 1800) but as Governor and Commander-in-Chief in and over the Island of Malta and its Dependencies, and in the well known Minute of that date which repeated *verbatim* the Instructions of Lord Bathurst, he proclaimed the " gracious determination " of the Prince Regent acting in the name and on behalf of His Majesty, " *henceforth* to recognize the people of Malta and Gozo *as subjects of the British Crown* and as entitled to its fullest protection etc. etc." This was nearly a year before the Treaty of Paris (1814) was signed, and two years before its ratification by the Congress of Vienna (1815); which shows that the inscription over the Main Guard that records the event is chronologically true (" Melitensium Amor", prior to " Europae Vox ") and that whatever treaties were necessary or expedient in order to affirm her position *vis a vis* the other European Powers, England recognized the " Melitensium Amor", as the first and immediate source of her sovereign rights over these Islands. It may be evinced, therefore that although no instrument was signed between the people of these Islands and Great Britain, and no terms were fixed, what occurred was perhaps the first instance of the exercise of what is now known as the " right of self-determination " and constituted as between the parties directly concerned a " Gentlemen's agreement." Such compact while losing none of its moral value or effect by the lapse of time, cannot however, without undue straining, be construed as appellants seem to suggest, as constituting a formal treaty by the terms of which the relations between Malta and Great Britain must be governed. On the other hand, if the Maltese people may not claim such treaty rights, it is safe to maintain that they are, more perhaps than the people of any other part of His Majesty's possessions, entitled to representative institutions.

. . . . Omissis . . . .

(Signed) J. N. CAMILLERI,
Deputy Registrar.

C.—Unofficial Copy of the Act of the Imperial Parliament to regulate Trade and Commerce to and from Malta.

CAP CIII.

An Act to empower his Majesty to regulate the trade and commerce to and from the Isle of Malta until the signing a definite treaty of peace, and from thence until six weeks after the next meeting of parliament; and to declare the isle of Malta to be part of Europe. (2nd July, 1801).

Preamble.

WHEREAS the island of Malta, with the dependencies thereof, are now in the possession of his Majesty, and it is expedient, under the present circumstances, that the trade and commerce to and from the same should be regulated for a certain time in such manner as shall seem proper to his Majesty, by and with the advice of his Privy Council, notwithstanding the special provisions of an act or acts of parliament that may be construed to affect the same; 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, That, from and after the passing of this act, and until the signing a definite treaty of peace, and from thence until six weeks after the next meeting of parliament, it shall and may be lawful for His Majesty, by and with the advice of his Privy Council, by any order or orders to be issued from time to time, to give such directions and make such regulations touching the trade and commerce to and from the said isle and the dependencies thereof, as to His Majesty in Council shall appear most expedient and salutary, anything contained in an act passed in the twelfth year of the reign of His Majesty King Charles the Second, intituled, An act for the encouraging and increasing of shipping and navigation; or in an act passed in the seventh and eight years of the reign of His Majesty King William III intituled, An Act for preventing frauds and regulating abuses in the plantation trade; or any other act or acts of Parliament now in force relating to His Majesty's Colonies and plantations, or any other act or acts of Parliament, law, usage, or custom to the contrary in anywise notwithstanding.

His Majesty may, by order in council make such regulations touching the trade to and from Malta as shall appear expedient.

Goods imported or exported contrary to any such order in council, shall be forfeited.

II. And be it further enacted, that if any goods, wares, or merchandise whatever shall be imported into, or exported from, any place or places, part of the said island or its dependencies or shall be exported from any part of His Majesty's dominions to any of the said places, or if any goods, wares, or merchandise shall be so imported or exported in any manner whatever, contrary to any such order or orders of His Majesty in Council, the same shall be forfeited, together with the ship

Exhibits.

C. Unofficial Copy of Act of the Imperial Parliament to regulate Trade and Commerce to and from Malta, 2nd July, 1801—*continued.*

or vessel in which such goods, wares or merchandise shall respectively be imported or exported, with all her guns, ammunition, furniture, tackle, and apparel; and every such forfeiture shall and may be sued for, prosecuted, and recovered by such and the like ways, means, and methods, as any forfeiture incurred by any law respecting the revenue of customs to be sued for, prosecuted, and recovered in places where respectively the offences shall be committed; and the produce thereof shall be disposed of, paid, and applied in like manner in the said places respectively; any law, usage, or custom to the contrary in anywise notwithstanding.

Malta shall be deemed part of Europe.

III. And be it further enacted, that the said Island of Malta and dependencies thereof, shall be deemed, taken, and construed to be part of Europe for all purposes, and as to all matters and things whatever; any law or laws, usage or custom, or act or acts, to the contrary thereof notwithstanding.

D. Unofficial Extract from Act of Imperial Parliament revoking the Act of 1801, 10th August, 1872.

D.—Unofficial Extract from Act of Imperial Parliament revoking the Act of 1801.

STATUTE LAW REVISION ACT 1872. 35 & 36 VIC. CAP 63.

c. 103. in part.

An Act to empower Her Majesty to regulate the Trade and Commerce to and from the Isle of Malta until the signing a Definitive Treaty of Peace, and from thence until Six Weeks after the next Meeting of Parliament; and to declare the Isle of Malta to be Part of Europe.

Except Section Three.

E. Unofficial Copy of Act of Imperial Parliament to provide for the Government of Her Majesty's Settlements on the Coast of Africa and in the Falkland Islands, 11th April, 1843.

E.—Unofficial Copy of Act of Imperial Parliament to provide for the Government of Her Majesty's Settlements on the Coast of Africa and in the Falkland Islands.

6 & 7 VIC. CAP XIII

An Act to enable Her Majesty to provide for the Government of Her Settlements on the Coast of Africa and in the Falkland Islands.

(11th April, 1843)

" WHEREAS divers of Her Majesty's subjects have resorted to and taken up their Abode and may hereafter resort to and take up their Abode at divers Places on or adjacent to the Coast of the Continent of Africa and on the Falkland Islands : And whereas it is necessary that Her Majesty should be enabled to

make further and better Provision for the Civil Government of the said Settlements": Be it therefore enacted by the Queen'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, That it shall be lawful for Her Majesty, by any Order or Orders to be by Her made with the Advice of Her Privy Council, to establish all such Laws, Institutions, and Ordinances, and to constitute such Courts and Officers, and to make such Provisions and Regulations for the Proceedings in such Courts, and for the Administration of Justice, as may be necessary for the Peace, Order, and good Government of Her Majesty's Subjects and others within the said present or future Settlements respectively, or any of them; any Law, Statute, or Usage to the contrary in anywise notwithstanding.

The Queen in Council may make Laws, constitute courts, &c.

II. And be it enacted, That it shall be lawful for Her Majesty, by any Commission or Commissions under the Great Seal of the United Kingdom, or by any Instructions under Her Majesty's Signet and Sign Manual, accompanying and referred to in any such Commission or Commissions, to delegate to any Three or more Persons within any of the Settlements aforesaid respectively the Powers and Authorities so vested in Her Majesty in Council as aforesaid, either in whole or in part, and upon, under, and subject to all such Conditions, Provisoes, and Limitations as by any such Commission or Commissions or Instructions as aforesaid Her Majesty shall see fit to prescribe: Provided always, that notwithstanding any such Delegation of Authority as aforesaid it shall still be competent to Her Majesty in Council, in manner aforesaid, to exercise all the Powers and Authorities so vested as aforesaid in Her Majesty in Council: Provided also, that all such Orders in Council, Commissions, and Instructions as aforesaid, and all laws and Ordinances so to be made as aforesaid, shall be laid before both Houses of Parliament as soon as conveniently may be after the making and enactment thereof respectively.

The Queen may delegate her Powers and Authorities to resident officers.

Orders in Council, &c. to be laid before Parliament.

III. And it may be enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

Act may be amended, &c.

Exhibits.

F. Unofficial Copy of Act of Imperial Parliament Amending Act of 1843, 28th August, 1860.

F.—Unofficial Copy of Act of Imperial Parliament Amending Act of 1843.

CAP. CXXI, p. 614

An Act to amend an Act passed in the Sixth Year of Her Majesty Queen Victoria, intituled An Act to enable Her Majesty to provide for the Government of Her Settlements on the Coast of Africa and in the Falkland Islands.

(28 August, 1860)

6 & 7 Vict. c. 13.

" WHEREAS by an Act passed in the Sixth Year of Her Majesty, Queen Victoria, intituled An Act to enable Her Majesty to provide for the Government of Her Settlements on the Coast of Africa and in the Falkland Islands, Provision was made for the Government of such Settlements which were then or might thereafter be made by any of Her Majesty's Subjects resorting to the said Coast or in the said Islands: And whereas divers of Her Majesty's Subjects have occupied or may hereafter occupy other Places, being possessions of Her Majesty, but in which no Government has been established by Authority of Her Majesty: And whereas it is necessary that Provision should be made for the Civil Government of such Places, and for the Administration of Justice therein ": Be it therefore enacted by the Queen'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:

6 & 7 Vict. c. 13. extended to certain Territories.

I. The Provisions of the said Act shall extend to all Possessions of Her Majesty not having been acquired by Cession or Conquest, nor (except in virtue of this Act) being within the Jurisdiction of the legislative Authority of any of Her Majesty's Possessions abroad.

Orders of Council as to Jurisdiction of Supreme Courts in certain Possessions abroad.

II. It shall be lawful for Her Majesty by any Order or Orders in Council to authorise and require the Supreme or other Principal Court of Judicature in any of Her Possessions to be specified in such Order (subject always to such Conditions and Limitations as the said Order or Orders shall be mentioned) to take cognizance of all or any Suits, Actions, or Prosecutions for Treason or Felony, which may arise in respect of any Act or Matter occurring within any Possession of Her Majesty to which this or the said hereinbefore recited Act shall extend, and by such Order or Orders to make Regulations respecting the Attendance of Witnesses in any such Suit, Action or Prosecution, and the Mode of enforcing such Attendance, and respecting the

F.
Unofficial Copy of Act of Imperial Parliament Amending Act of 1843, 28th August, 1860—*continued.*

Custody and Conveyance of any Person charged with the Commission of any such Crime within such lastmentioned Possessions, and respecting such other Matters as may be requisite for the due Trial of such Person by such Court as aforesaid, and every such Order shall be laid before both Houses of Parliament as soon as conveniently may be after the making thereof.

G.—Unofficial Copy of Act of Imperial Parliament to remove doubts as to Validity of Colonial Laws.

G.
Unofficial Copy of Act of Imperial Parliament to remove doubts as to Validity of Colonial Laws, 29th June, 1865.

ANNO VIGESIMO OCTAVO & VIGESIMO NONO VICTORIÆ REGINÆ

CAP. LXIII.

AN ACT TO REMOVE DOUBTS AS TO THE VALIDITY OF COLONIAL LAWS. (29th June 1865).

Whereas Doubts have been entertained respecting the Validity of divers Laws enacted or purporting to have been enacted by the Legislatures of certain of Her Majesty's Colonies, and respecting the Powers of such Legislatures, and it is expedient that such Doubts should be removed:

Be it hereby enacted by the Queen'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:

Definitions: "Colony."

1. The Term "Colony" shall in this Act include all of Her Majesty's Possessions abroad in which there shall exist a Legislature, as hereinafter defined, except the Channel Islands, the *Isle of Man*, and such Territories as may for the Time being be vested in Her Majesty under or by virtue of any Act of Parliament for the Government of *India*:

"Legislature." "Colonial Legislature."

The Terms "Legislature" and "Colonial Legislature" shall severally signify the Authority, other than the Imperial Parliament or Her Majesty in Council, competent to make Laws for any Colony:

"Representative Legislature."

The Term "Representative Legislature" shall signify any Colonial Legislature which shall comprise a Legislative Body of which One Half are elected by Inhabitants of the Colony:

"Colonial Law."

The Term "Colonial Law" shall include Laws made for any Colony either by such Legislature as aforesaid or by Her Majesty in Council:

Exhibits.

G. Unofficial Copy of Act of Imperial Parliament to remove doubts as to Validity of Colonial Laws, 29th June, 1865—*continued.*

Act of Parliament &c. to extend to Colony when made applicable to such Colony.

An Act of Parliament, or any Provision thereof, shall, in construing this Act, be said to extend to any Colony when it is made applicable to such Colony by the express Words or necessary Intendment of any Act of Parliament:

"Governor."

The Term "Governor" shall mean the Officer lawfully administering the Government of any Colony:

"Letters Patent."

The Term "Letters Patent" shall mean Letters Patent under the Great Seal of the United Kingdom of *Great Britain and Ireland.*

Colonial Law when void for Repugnancy.

2. Any Colonial Law which is or shall be in any respect repugnant to the Provisions of any Act of Parliament extending to the Colony to which such Law may relate, or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the Colony the Force and Effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the Extent of such Repugnancy, but not otherwise, be and remain absolutely void and inoperative.

Colonial Law when not void for Repugnancy.

3. No Colonial Law shall be or be deemed to have been void or inoperative on the Ground of Repugnancy to the Law of *England*, unless the same shall be repugnant to the Provisions of some such Act of Parliament, Order, or Regulation as aforesaid.

Colonial Law not void for Inconsistency with Instructions.

4. No Colonial Law, passed with the Concurrence of or assented to by the Governor of any Colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any Instructions with reference to such Law or the Subject thereof which may have been given to such Governor by or on behalf of Her Majesty, by any Instrument other than the Letters Patent or Instrument authorising such Governor to concur in passing or to assent to Laws for the Peace, Order, and good Government of such Colony, even though such Instructions may be referred to in such Letters Patent or last-mentioned Instrument.

Colonial Legislature may establish, &c. Courts of Law. Representative Legislature may alter Constitution.

5. Every Colonial Legislature shall have, and be deemed at all Times to have had, full Power within its Jurisdiction to establish Courts of Judicature, and to abolish and reconstitute the same, and to alter the Constitution thereof, and to make Provision for the Administration of Justice therein; and every Representative Legislature shall, in respect to the Colony under its jurisdiction, have, and be deemed at all Times to have had, full Power to make Laws respecting the Constitution, Powers, and Procedure of such Legislature; Provided that such Laws shall have been passed in such Manner

and Form as may from Time to Time be required by any Act of Parliament, Letters Patent, Order in Council, or Colonial Law for the Time being in force in the said Colony.

Certified copies of Laws to be Evidence that they are properly passed.

6. The Certificate of the Clerk or other proper Officer of a Legislative Body in any Colony to the Effect that the Document to which it is attached is a true Copy of any Colonial Law assented to by the Governor of such Colony, or of any Bill reserved for the Signification of Her Majesty's Pleasure by the said Governor, shall be *prima facie* Evidence that the Document so certified is a true Copy of such Law or Bill, and, as the Case may be, that such Law has been duly and properly passed and assented to, or that such Bill has been duly and properly passed and presented to the Governor; and any Proclamation purporting to be published by Authority of the Governor in any Newspaper in the Colony to which such Law or Bill shall relate, and signifying Her Majesty's Disallowance of any such Colonial Law, or Her Majesty's Assent to any such reserved Bill as aforesaid, shall be prima facie Evidence of such Disallowance or Assent.

Proclamation to be Evidence of Assent or Disallowance.

And whereas Doubts are entertained respecting the Validity of certain Acts enacted or reputed to be enacted by the Legislature of *South Australia:* Be it further enacted as follows:

Certain Acts enacted by Legislature of South Australia to be valid.

7. All Laws or reputed Laws enacted or purporting to have been enacted by the said Legislature, or by Persons or Bodies of Persons for the Time being acting as such Legislature which have received the Assent of Her Majesty in Council, or which have received the Assent of the Governor of the said Colony in the name and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the Date of such Assent for all Purposes whatever; Provided that nothing herein contained shall be deemed to give Effect to any Law or reputed Law which has been disallowed by Her Majesty, or has expired, or has been lawfully repealed, or to prevent the lawful Disallowance or Repeal of any Law.

LONDON:
Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty, 1865.

Exhibits.

H.—Unofficial Extract from Act of Imperial Parliament repealing certain Enactments.

H. Unofficial Extract from Act of Imperial Parliament repealing certain Enactments, 10th August, 1872.

STATUTE LAW REVISION. 1872. CH. 63.

An Act for further promoting the Revision of the Statute Law by repealing certain enactments which have ceased to be in force or have become unnecessary.

(10th August, 1872).

Provided that where any enactment not comprised in the schedule has been repealed, confirmed, revived, or perpetuated, by any enactment hereby repealed, such repeal confirmation, revivor or perpetuation shall not be affected by the repeal effected by this Act.

I. Unofficial Copy of Act of Imperial Parliament providing for the Government of Possessions acquired by Settlement, 16th September, 1887.

I.—Unofficial Copy of Act of Imperial Parliament providing for the Government of Possessions acquired by Settlement.

BRITISH SETTLEMENTS ACT, 1887.

CHAPTER 54.

An Act to enable Her Majesty to provide for the Government of Her Possessions acquired by Settlement.

(16th September, 1887).

Whereas divers of Her Majesty's subjects have resorted to and settled in, and may hereafter resort to and settle in, divers places where there is no civilised government, and such settlements have become or may hereafter become possessions of Her Majesty, and it is expedient to extend the power of Her Majesty to provide for the government of such settlements, and for that purpose to repeal and re-enact with amendments the existing Acts enabling Her Majesty to provide for such government:

Be it therefore enacted by the Queen'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:

Short title.

1. This Act may be cited as the British Settlements Act, 1887.

Power of the Queen in Council to make laws and establish Courts.

2. It shall be lawful for Her Majesty the Queen in Council from time to time to establish all such laws and institutions, and constitute such courts and officers, and make such provisions and regulations for the proceedings in the said courts and for the administration of justice, as may appear to Her Majesty in

Council to be necessary for the peace, order and good government of Her Majesty's subjects and others within any British settlement.

Delegation of power by the Queen.

3. It shall be lawful for Her Majesty the Queen from time to time, by any instrument passed under the Great Seal of the United Kingdom, or by any instructions under Her Majesty's Royal Sign Manual referred to in such instrument as made or to be made, as respects any British settlement, to delegate to any three or more persons within the settlement all or any of the powers conferred by this Act on Her Majesty in Council, either absolutely or subject to such conditions, provisions, and limitations as may be specified in such instrument or instructions.

Provided that, notwithstanding any such delegation, the Queen in Council may exercise all or any of the powers under this Act: Provided always, that every such instrument or instruction as aforesaid shall be laid before both Houses of Parliament as soon as conveniently may be after the making and enactment thereof respectively.

Power to the Queen in Council to confer jurisdiction on certain courts.

4. It shall be lawful for Her Majesty the Queen in Council to confer on any court in any British possession any such jurisdiction, civil or criminal, original or appellate, in respect of matters occurring or arising in any British settlement as might be conferred by virtue of this Act upon a Court in the settlement, and to make such provisions and regulations as Her Majesty in Council may think fit respecting the exercise of the jurisdiction conferred under this section on any court, and respecting the enforcement and execution of the judgments, decrees, orders, and sentences of such court, and respecting appeals therefrom; and every Order of Her Majesty in Council under this section shall be effectual to vest in the court the jurisdiction expressed to be thereby conferred, and the court shall exercise the same in accordance with and subject to the said provisions and regulations: Provided always, that every Order in Council made in pursuance of this Act shall be laid before both Houses of Parliament as soon as conveniently may be after the making thereof.

Making of Orders in Council, etc.

5. It shall be lawful for Her Majesty the Queen in Council from time to time to make, and when made to alter and revoke, Orders for the purposes of this Act.

Definitions.

6. For the purposes of this Act, the expression "British possession" means any part of Her Majesty's possessions out of the United Kingdom, and the expression "British Settlement" means any British possession which has not been acquired by cession or conquest, and is not for the time being within the jurisdiction of the Legislature, constituted otherwise

Exhibits.

I. Unofficial Copy of Act of Imperial Parliament providing for the Government of Possessions acquired by Settlement, 16th September, 1887 —*continued.*

than by virtue of this Act or of any Act repealed by this Act, of any British possession.

Repeal.

7. The Acts mentioned in the schedule to this Act are hereby repealed: Provided that—

(*a*) Such repeal shall not affect anything done or suffered previously to such repeal in pursuance of any such Act, or in pursuance of any Order in Council, commission, instructions, law, ordinance, or other thing made or done in pursuance of any such Act; and

(*b*) All Orders in Council, commissions and instructions purporting to be made or given in pursuance of the Acts hereby repealed, or either of them, shall continue in force in like manner as if they had been made and given in pursuance of this Act, and such commissions had originally been instruments authorised by this Act, and shall be subject to be revoked or recalled accordingly.

SCHEDULE.

Session and Chapter.	Title.
6 & 7 Vict. c. 13	An Act to enable Her Majesty to provide for the Government of Her Settlements on the Coast of Africa and in the Falkland Islands.
23 & 24 Vict. c. 121	An Act to amend an Act passed in the sixth year of Her Majesty Queen Victoria, intituled an Act to enable Her Majesty to provide for the Government of Her Settlements on the Coast of Africa and in the Falkland Islands.

J. Unofficial Extract from Hansard N.S. Vol. 319, p. 359, 12th August, 1887.

J.—Unofficial Extract from Hansard N.S. Vol. 319, p. 359.

BRITISH SETTLEMENTS BILL (LORDS)

(SIR HENRY HOLLAND)

(BILL 369) SECOND READING

Order for Second Reading read.

The SECRETARY of STATE for the COLONIES (Sir Henry Holland) (Hampstead): I beg also to move the second reading of this Bill. It is a very small Colonial measure, but is important in this respect, that, in the first place, it deals with a defect in former Acts arising from the word commission. It will enable a Court of Appeal to be established in one Colony, where appeals can be heard from another Colony. It will enable a Court of Appeal to be set up in Queensland, where appeals from New Guinea can be heard.

Motion made, and Question, "That the Bill be now read a second time,"—(Sir Henry Holland)—put, and *agreed to.*

Bill read a second time, and *committed* for *to-morrow.*

K.—Unofficial Report of House of Commons Debates on British Settlements Bill.

BRITISH SETTLEMENTS BILL (LORDS)

(SIR HENRY HOLLAND)

Order for Committee read.

Motion made, and Question proposed, "That Mr. Speaker do now leave the Chair."—(*Sir Henry Holland.*)

SIR GEORGE CAMPBELL (Kirkcaldy, etc.) said, he had to complain that the Bill was an enormous addition to the power of extending British laws by the mere act of the Executive over new territories, and sometimes over unexplored and unknown territories. He must raise an objection to the construction given to the phrase "British Settlement" in the 6th clause, declaring that any British possession not acquired by cession or conquest should be deemed a British settlement. He thought this was a fictitious meaning of the latter term, and was calculated to encourage the spread-eagle tendencies of annexation by the unauthorised planting of the British standard in distant territories. He had also to complain that the Bill, like a previous one, had been read a second time at a very early hour in the morning.

The SECRETARY of STATE for the COLONIES (Sir Henry Holland) (Hampstead) said, that with all the respect which he had for the opinion of the Hon. Member, he could not bring himself to set the opinion of the Hon. Member upon questions of law, and construction of an Act, above that of the Law Officers of the Crown. Now, as he (Sir Henry Holland) had said a few nights ago in reply to the hon. Member, they had advised that, if possession were acquired of New Guinea by the Proclamation of Sovereignty that territory, not having been acquired by cession or conquest, would be a British Settlement, and come within the Act 3 & 24 Vict. c. 121. So far, then, as New Guinea was concerned, it would come within existing Acts, and the Bill made no difference. But then the hon. Member contended that there was a dangerous extension of the existing law by the definition of "British Settlement," and that this Bill went beyond the 1st section of 23 and 24 Vict. c. 121. That contention he (Sir Henry Holland) entirely disputed. That section extended the provision of a former Act:—

> "To all possessions of Her Majesty not having been acquired by cession or conquest,"

and the 6th clause of the Bill, now under consideration, did nothing more than declare that a British Settlement meant a "British possession which has not been acquired by cession or conquest." It only defined the possession which was not acquired by cession or conquest as a settlement. The hon. Member appeared to have altogether overlooked the fact that the territory must have become a "possession" before the question whether it was a British Settlement within the Bill arose; but that really disposed of his argument about the Bill making vast unknown territories British Settlements

Exhibits.

K.
Unofficial Report of House of Commons Debates on British Settlements Bill, 9th September, 1887 —*continued.*

for the first time. He was afraid he could never hope to convince the hon. Member, and he must content himself by assuring the Committee that the Bill was exactly on the same lines as the earlier Act, and did not extend it, and that it was in accordance with the opinion of the Law Officers.

Question put, and *agreed to.*

Bill *considered* in Committee.

(In the Committee.)

Clauses 1 and 2 severally *agreed to.*

Clause 3 (Delegation of power by the Queen).

On the Motion of Mr. E. ROBERTSON (Dundee), the following amendment made :—In page 1, at the end of clause, to add the words :—

" Provided always that every such instrument of instruction as aforesaid shall be laid before both Houses of Parliament as soon as conveniently may be after the making and enactment thereof respectively."

Clause, as amended, *agreed to.*

Clause 4 (Power to the Queen in Council to confer jurisdiction in certain cases).

On the Motion of Mr. E. ROBERTSON, the following Amendment made :—At end of Clause, to add the words :—

" Provided always that every Order in Council made in pursuance of this Act shall be laid before both Houses of Parliament as soon as conveniently may be after the making thereof."

Clause, as amended, *agreed to.*

Clause 5 *agreed to.*

Clause 6 (British possession and settlement).

SIR GEORGE CAMPBELL (Kirkcaldy, &c.) : As to this clause, the right hon. Gentleman, the Secretary of State for the Colonies (Sir Henry Holland) says that I have not convinced him ; and I am certain that he has not convinced me. He relies on the opinion of the Law Officers. We have not seen that opinion in its entirety ; but, so far as we know anything about it, we know that it is an exceedingly cautious opinion. It amounts to this—that as New Guinea has not been ceded or conquered, if possession of it is taken it must be taken as a British settlement. Those are the words we have in print.

The SECRETARY OF STATE FOR THE COLONIES (Sir Henry Holland) (Hampstead) : If possession is taken it becomes a British possession.

Sir GEORGE CAMPBELL : The real difference between us is as to the word " possession." I say that " possession " means " possession," and that " occupied," in the old Act, means " occupied." The Secretary of State for the Colonies, on the other hand, uses the word " declared," and says that " possession " is anything that Her Majesty has " declared " to be possession, by the hoisting of a flag, or by some act of that nature. The right hon. Gentleman contends that declaring territory to be British

territory amounts to, or is equivalent to, taking possession or occupation. I rely on the English Language. I say that "possession" means "possession," and that "occupation" means "occupation," and that merely declaring unknown territory to be a British possession does not make it a British possession. The former Act only enabled you to deal with "possessions" occupied by British settlers. That is the plain meaning of the former Act. I cannot be satisfied with the opinion of the Law Officers. I think this clause is an enormous extension of the previous Act. It extends that Act by enabling Her Majesty to make rules and regulations not only for *bona fide* Settlements, but for vast territories of which no actual possession has been taken, but on some corner of which our flag has been hoisted. That is an enormous extension of the powers given to the Government by the former Act, and it is one against which I must protest.

Clause *agreed to.*

Remaining clauses and Schedule *agreed to.*

Bill *reported*; as amended, to be considered *To-morrow.*

L.—Unofficial Extract from "Cases in Constitutional Law," by D. L. Keir and F. H. Lawson.

L.
Unofficial Extract from "Cases in Constitutional Law," by D. L. Keir and F. H. Lawson.

B.—THE ESTABLISHMENT OF GOVERNMENT IN THE COLONIES.

In respect of public rights and duties, however, the distinction has tended to disappear. On the one hand, once a legislature has been granted to a conquered colony, the power of the Crown to legislate or impose taxation by Prerogative is irrevocably taken away. Constitutionally, it is henceforth in the same position as a settled colony (*Campbell* v. *Hall*, pp. 420–6, see Exhibit "M," page 118 of Record). On the other hand, the former practice of setting up in a settled colony a legislature conforming closely to the English type has since the eighteenth century been more and more abandoned. Either because such a form of government created difficult constitutional problems which it was hoped in future to avoid, or because in some circumstances it was obviously inapplicable, Parliament has intervened to grant the Crown statutory powers of government by passing special Acts applicable to this or that newly settled colony; and in 1887 a general Act, the British Settlements Act, was passed to provide for all subsequent cases. By this Act, the Crown is empowered to legislate for British settlements either directly or by delegation to a non-elective body within the colony. Acting under these powers, the Crown would in modern times set up such a form of government as the circumstances of the young colony seem to make advisable. For this and the further reason that certain colonies which once possessed representative institutions of the old type have come in process of time to surrender them, it is not unusual to find in the modern British Empire that settled colonies, old and new, are being governed by

Exhibits.

L. Unofficial Extract from "Cases in Constitutional Law," by D. L. Keir and F. H. Lawson—*continued.*

the Crown without the participation of any local representative assembly, or with an assembly only partly elective: while many colonies acquired by conquest—some very recently so acquired—have become, through the action of the Crown or of the Imperial Parliament, completely self-governing. In these circumstances, the old distinction between settled and conquered colonies ceases to be of significance outside the field of private law.

Page 410.

M. Unofficial Extract from "Cases in Constitutional Law," by D. L. Keir and F. H. Lawson.

M.—Unofficial Extract from "Cases in Constitutional Law," by D. L. Keir and F. H. Lawson, pp. 420–426.

Campbell v. *Hall.* (1774) 1 Coup. 204.

King's Bench.

The Plaintiff James Campbell, a natural-born British subject who on March 3rd, 1763, had purchased a plantation on the island of Grenada, brought this action for money had and received against the defendant William Hall, a collector of revenue for His Majesty in that Island, in order to recover back a sum of money paid as a duty of 4½% (per cent.) on sugars exported from Grenada by the plaintiff, on the ground that the money was paid to the defendant without any consideration; the duty in respect of which he received it not having been imposed by lawful or sufficient authority. With the consent of His Majesty's Attorney-General the money still remained in the defendant's hands, not paid over by him to the use of the King, for the express purpose of trying the question as to the validity of imposing this duty.

At the trial at Guildhall, a special verdict was found, which stated that the island of Grenada was taken by the British arms, in open war, from the French King, and that it surrendered upon capitulation. The special verdict then set out the following instruments.

1. Certain articles of the capitulation: the 5th, by which it is agreed that Grenada should continue to be governed by its present laws until His Majesty's further pleasure be known; the 6th, which replies to a demand of the inhabitants of Grenada that they shall be maintained in the enjoyment of their properties and privileges by stating that, being subjects of Great Britain they will enjoy their properties and privileges in like manner as the other His Majesty's subjects in the other British Leeward Islands; and the 7th, which replies in like terms to their demand that they shall pay no other duties or charges than what they before paid to the French King.

2. The Treaty of peace signed February 10th, 1763, including that part of the treaty by which the island of Grenada is ceded.

3. A proclamation under the Great Seal, dated October, 7th 1763, stating (inter alia) that "Whereas it will greatly contribute to the speedy settling our said governments, of which the island of Grenada is one, that our loving subjects should be informed of our paternal care for the security of the liberties and properties of those who are or shall become inhabitants of the same," His Majesty has empowered and directed the government of Grenada by the Letters Patent under the Great Seal by which his government is constituted to summon general assemblies of the representatives of the people of Grenada so soon as the circumstances of the colony allow, and with their consent to make laws for the public peace, welfare, and good government of the colony and its inhabitants.

4. A proclamation dated March 26th, 1764, in which the King recites a survey of the ceded islands and their division into allotments, as an invitation to purchasers to come in and take up properties on terms specified in the proclamation.

5. Letters Patent under the Great Seal, dated April 9th, 1764, commissioning General Melville as Governor of Grenada, with power to set up a legislature as specified in the proclamation of October 7th, 1763. (The Governor arrived in Grenada on December 14th, 1764, and before the end of 1765 an assembly actually met in Grenada).

6. Letters Patent under the Great Seal, dated July 20th, 1764, wherein the King imposes in virtue of the Royal Prerogative a duty of $4\frac{1}{2}$ per cent. on all sugars &c. exported from and after September 19th, 1764, from Grenada, as already paid in the other British Leeward Islands; this duty to take the place of all customs duties hitherto levied in Grenada by authority of His Most Christian Majesty.

7. Acts of Assemblies in the other British Leeward Islands relative to the duty of $4\frac{1}{2}\%$ (per cent.) on exported sugars &c. as paid in those Islands.

LORD MANSFIELD C.J. [after stating the facts continued]: The general question that arises out of all these facts found by the special verdict, is this; whether the Letters Patent under the Great Seal, bearing date the 20th July, 1764, are good and valid to abolish the French duties; and in lieu thereof to impose the four and half per cent. duty abovementioned, which is paid in all the British Leeward Islands?

It has been contended at the Bar, that the letters patent are void at two points; the first is, that although they had been made before the proclamation of the 7th October, 1763, yet the King could not exercise such a legislative power over a conquered country.

The second point is, that though the King had sufficient power and authority before the 7th October, 1763, to do such legislative act, yet before the letters patent of the 20th July, 1764, he had divested himself of that authority.

Exhibits.

M. Unofficial Extract from "Cases in Constitutional Law," by D. L. Keir and F. H. Lawson—*continued.*

A great deal has been said, and many authorities cited relative to propositions, in which both sides seem to be perfectly agreed; and which, indeed are too clear to be controverted. The stating some of those propositions which we think quite clear, will lead us to see with greater perspicuity, what is the question upon the first point, and upon what hinge it turns. I will state the propositions at large, and the first is this:

A country conquered by the British arms becomes a dominion of the King in the right of his Crown; and, therefore, necessarily subject to the Legislature, the Parliament of Great Britain.

The 2nd is, that the conquered inhabitants once received under the King's protection, become subjects, and are to be universally considered in that light, not as enemies or aliens.

The 3rd, that the articles of capitulation upon which the country is surrendered, and the articles of peace by which it is ceded, are sacred and inviolable according to their true intent and meaning.

The 4th, that the law and legislative government of every dominion, equally affects all persons and all property within the limits thereof; and is the rule of decision from all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privilege distinct from the natives.

The 5th, that the laws of a conquered country continue in force until they are altered by the conqueror; the absurd exception as to pagans, mentioned in Calvin's case, shews the universality and antiquity of the maxim. For that distinction could not exist before the Christian era; and in all probability arose from the mad enthusiasm of the Crusades. In the present case the capitulation expressly provides and agrees, that they shall continue to be governed by their own laws, until His Majesty's further pleasure be known.

The 6th, and last proposition is, that if the King (and when I say the King, I always mean the King without the concurrence of Parliament), has a power to alter the old and to introduce new laws in a conquered country, this legislation being subordinate, that is, subordinate to his own authority in Parliament, he cannot make any new change contrary to fundamental principles; he cannot exempt an inhabitant from that particular dominion; as for instance, from the laws of trade, or from the power of Parliament, or give him privileges exclusive of his other subjects; and so in many other instances which might be put.

But the present change, if it had been made before the 7th October, 1763, would have been made recently after the cession of Grenada by treaty, and is in itself most reasonable, equitable, and political; for it is putting Grenada, as to duties, on the same footing with all the British Leeward Islands. If Grenada paid more it would have been detrimental to her; if less, it must be detrimental to the other Leeward Islands; nay, it would have been carrying the capitulation into execution, which gave the people of Grenada hopes, that if any new tax was laid on, their case would be the same with their fellow subjects in the other Leeward Islands.

The only question then on this first point is, whether the King had a power to make such change between the 10th February, 1763, the day of the treaty of peace was signed, and the 7th October, 1763? Taking these propositions to be true which I have stated, the only question is, whether the King had of himself that power?

It is left by the constitution to the King's authority to grant or refuse a capitulation; if he refuses, and puts the inhabitants to the sword or exterminates them, all the lands belong to him. If he receives the inhabitants under his protection and grants them their property, he has a power to fix such terms and conditions as he thinks proper. He is intrusted with making the treaty of peace; he may yield up the conquest, or retain it upon what terms he pleases. These powers no man ever disputed, neither has it hitherto been controverted that the King might change part or the whole of the law or political form of government of a conquered dominion.

To go into the history of the conquests made by the Crown of England.

[His Lordship examined, with reference to this question, the history of the English conquests in Ireland, Wales, Gascony, and elsewhere, and continued]:

It is not to be wondered at that an adjudged case in point has not been produced. No question was ever started before, but that the King has a right to a legislative authority over a conquered country; it was never denied in Westminster-Hall; it never was questioned in Parliament. Coke's report of the arguments and resolutions of the Judges in Calvin's case, lays it down as clear. If a King (says the book) comes to a kingdom by conquest, he may change and alter the laws of that kingdom; but if he come to it by title and descent, he cannot change the laws of himself without the consent of Parliament—7 Rep. 17b. –. It is plain he alludes to his own country, because he alludes to a country where there is a Parliament.

The authority also of two great names have been cited, who take the proposition for granted. In the year 1722, the assembly of Jamaica being refractory, it was referred to Sir Philip Yorke and Sir Clement Wearge, to know "what could be done if the assembly should obstinately continue to withold all the usual supplies." They reported thus: "If Jamaica was still to be *considered as a conquered island, the King had a right to levy taxes upon the inhabitants*; but if it *was to be considered in the same light as the other colonies, no tax could be imposed on the inhabitants but by an assembly of the island, or by an Act of Parliament.*"

They considered the distinction in law as clear, and an indisputable consequence of the island being in the one State or in the other.

[His Lordship discussed the question whether Jamaica was in fact a conquered or a settled colony, and concluded that it was a settled colony.]

A maxim of constitutional law as declared by all the judges in Calvin's case, and which two such men, in modern times, as Sir Philip Yorke, and Sir Clement Wearge took for granted, will require some authorities to shake.

Exhibits.

M. Unofficial Extract from "Cases in Constitutional Law," by D. L. Keir and F. H. Lawson—*continued.*

But on the other side, no book, no saying, no opinion has been cited; no instance in any period of history produced, where a doubt has been raised concerning it. The counsel for the plaintiff no doubt laboured this point from a diffidence of what might be our opinion on the second question. But upon the second point after full consideration we are of opinion, that before the letters patent of the 20th July, 1764, the King had precluded himself from the exercise of a legislative authority over the island of Grenada.

The first and material instrument is the proclamation of the 7th October, 1763. See what it is that the King there says, with what view, and how he engages himself and pledges his word.

"For the better security of the liberty and property of those who are or shall become inhabitants of our island of Grenada, we have declared by this our proclamation, that we have commissioned our Governor (as soon as the state and circumstances of the colony will admit) to call an assembly to enact laws, etc." With what view is this made? It is to invite settlers and subjects: and why to invite? That they might think their properties, etc., more secure if the legislation was vested in an assembly, than under a governor and council only.

Next, having established the constitution, the proclamation of the 20th March, 1764, invites them to come in as purchasers: in further confirmation of all this, on the 9th of April, 1764, three months before July, an actual commission is made out to the governor to call an assembly as soon as the state of the island would admit thereof. You observe, there is no reservation in the proclamation of any legislature to be exercised by the King, or by the governor and council under his authority in any manner, until the assembly should meet; but rather the contrary: for whatever the construction is to be put upon it, which, perhaps, may be very difficult through all the cases to which it may be applied, it alludes to a government by laws in being, and by Courts of Justice, not by a legislative authority, until an assembly should be called. There does not appear from the special verdict, any impediment to the calling an assembly immediately on the arrival of the governor, which was in December, 1764. But no assembly was called then or at any time afterwards, till the end of the year 1765.

We therefore think, that by the two proclamations and the commission to Governor Melville, the King had immediately and irrecoverably granted to all who were or should become inhabitants, or who had, or should acquire property in the island of Grenada, or more generally to all whom it might concern, that the subordinate legislation over the island should be exercised by an assembly with the consent of the governor and council, in like manner as the other islands belonging to the King.

Therefore though the abolishing the duties of the French King and the substituting this tax in its stead, which according to the finding in this special verdict is paid in all the British Leeward Islands, yet, through the

inattention of the King's servants, in inadverting the order in which the instruments should have passed, and been notoriously published, the last Act is contradictory to and a violation of the first, and is, therefore, void. How proper soever it may be in respect to the object of the Letters Patent of the 20th July, 1764, to use the words of Sir Philip Yorke and Sir Clement Wearge: "It can only now be done, by the assembly of the island, or by an Act of the Parliament of Great Britain."

The consequence is, judgment must be given for the Plaintiff.

N.—Unofficial Extract from Coke's Reports (Vol. IV).

And upon this ground there is a diversity between a conquest of a kingdom of a Christian King, and the conquest of a kingdom of an infidel; for, if a King come to a Christian kingdom by conquest, seeing that he hath *vitae et necis potestatem*, he may at his pleasure alter and change the laws of that kingdom: but until he doth make an alteration of those laws the ancient laws of that kingdom remain.* But if a Christian King should conquer a kingdom of an infidel, and bring them under his subjection, there *ipso facto* the laws of the infidel are abrogated, for that they be not only against Christianity, but against the law of God and of Nature, contained in the decalogue; and in that case, until certain laws be established amongst them, the King by himself, and such judges as he shall appoint, shall judge them and their causes according to natural equity, in such sort as Kings in ancient time did with their kingdoms, before any certain municipal laws were given, as before hath been said.

But if a king hath a kingdom by title of descent, there seeing by the laws of that kingdom, he doth inherit the kingdom, he cannot change

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* Memorandum 9th of August, 1722, it was said by the Master of the Rolls to have been determined by the Lords of the Privy Council, upon an appeal to the King in Council from the foreign plantations—

1st. That if there be a new and uninhabited country found out by British subjects, as the law is the birthright of every subject, so wherever they go, they carry their law with them, and therefore such new found country is to be governed by the Laws of England, though after such country is inhabited by the English, Acts of Parliament made in England, without naming the foreign plantations, will not bind them; for which reason it has been determined that the statute of Frauds and Perjuries, which requires three witnesses, and that these should subscribe in the testator's presence in the case of a devise of a land, does not bind Barbadoes; but that

2ndly. Where the King of England conquers a country, it is a different consideration; for there the conqueror, by saving the lives of the people conquered, gains a right and property in such people, in consequence of which he may impose upon them what law he pleases: but

3rdly. Until such laws given by the conquering prince, the laws and customs of the conquered country shall hold place, unless where these are contrary to our religion, or enact anything that is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail. 2. Peere Williams, 75 *et vid. Collet* v. *Lord Keith*. 2 East 260. *Blankard* v. *Galdy*, 4 Mod. 225 S.C. 2 Salk. 411. *Attorney General* v. *Stewart*, 2 Meriv. 159.

Exhibits.

N. Unofficial extract from Coke's Reports (Vol. IV)—*continued.*

those laws of himself, without consent of Parliament. Also if a King hath a Christian kingdom by conquest, as King Henry the Second had Ireland, after King John had given unto them, being under his obedience and subjection, the laws of England for the government of that country, no succeeding King could alter the same without Parliament. And in that case, while the realm of England, and that of Ireland were governed by several laws, any that was born in Ireland was no alien to the realm of England. In which precedent of Ireland three things are to be observed. 1. That then there had been two descents, one from Henry the Second to King Richard the First, and from Richard to King John, before the alteration of the laws. 2. That albeit Ireland was a distinct dominion, yet the title thereof being by conquest, the same by judgment of law might by express words be bound by act of the Parliament of England. ø (18a) 3. That albeit no (ø) reservation were in King John's charter, yet by judgment of law a writ of error did lie in the King's Bench in England of an erroneous judgment in the King's Bench of Ireland. Furthermore, in the case of a conquest of a Christian kingdom as well those that served in wars at the conquest as those that remained at home for the safety and peace of their country, and other the King's subjects, as well *antenati* as *postnati*, are capable of lands in the kingdom or country conquered, and may maintain any real action, and have the like privileges and benefits there, as they may have in England.

O. Custom House Receipt, 14th April, 1937.

O.—Custom House Receipt.

No. 238436

CUSTOM HOUSE, MALTA.

Stamp ½D

No. of Parcels	Origin	Contents	Value	Duty
7 113	Up INVOICE SEEN	2 Cigarette Cases (Made in Japan) Duty paid under protest	— 3 9	— 2 9

By whom paid.....The Hon. Mabel Strickland
(Signature Illegible)
14.4.37.

P.—Invoice.

Exhibits.

P.
Invoice,
1st April,
1937.

6 Bevis Marks,
London, E.C.3.
1st April 1937.

LORD STRICKLAND
5 Holland Park.

Bought of

JAPAN TRADERS LIMITED

1058/25258	1 Only Cigarette Case	10		(in pencil)
„ /25259	1 „ „ „	1 –.		1/10
				1/-
		1.10		
	Extra Duty on Coronation Goods	11		
		2. 9.		10
	Postage	1. –.	20 %	—
				7
		3. 9d.		2/-
			Total	2/7

MADE IN JAPAN

Stamp:— CUSTOMS MALTA
14 April 1937
Post Office Branch

Stamp ½d.
19.4.37.

Exhibits.

Q. Parliamentary Debates, House of Lords. Malta (Letters Patent) Bill, 5th May, 1936.

Q.—Parliamentary Debates, House of Lords, Malta (Letters Patent) Bill.

Order of the Day for the Second Reading read.

THE PARLIAMENTARY UNDER-SECRETARY OF STATE FOR THE COLONIES (THE EARL OF PLYMOUTH): My Lords, I rise to move the Second Reading of a Bill to remove the limitation of His Majesty's power to revoke or amend the Malta Constitution Letters Patent and to declare the validity of certain Ordinances of the Governor of Malta. The affairs of Malta come not infrequently before your Lordships' House. They are, however, on this occasion brought before the House in circumstances which differ somewhat from those which have usually prompted their discussion. Your Lordships are accustomed to Motions relating to Malta which are put forward in the name of that member of your Lordships' House who is particularly associated with the Island. But upon this occasion the initiative has been taken by His Majesty's Government who seek for powers from Parliament to enable them to place the constitutional position in the Island upon a regular and permanent basis.

The Bill is a simple measure of three clauses, and it at least has the virtue of brevity to commend it. I trust that I shall not have to trespass overlong on your Lordships' time in explaining it to you. Its technical purpose is as follows. The effect of its first and principal clause is to remove the existing limitation upon the power of His Majesty to revoke or amend by further Letters Patent the provisions of the Malta Constitution Letters Patent. When a measure of responsible government was granted to Malta in 1921 the Letters Patent under which the grant was made contained a provision which, in effect, largely surrendered the right of His Majesty in Council to legislate for the Island by Letters Patent. This right was reserved with regard to certain matters, but only in a limited degree. There was a wide area over which the Crown reserved no power to legislate, and, in particular, it reserved no power to revoke the Constitution as a whole. It is primarily in order to remove this limitation that this Bill is brought forward. When it becomes law and the limitation is removed the Crown will be restored to the position which it held prior to 1921, and will have a full and undoubted right to legislate for Malta by virtue of the Prerogative. The second clause of the Bill declares that all Ordinances enacted by the Governor of Malta between the commencement of the Malta Constitution Act of 1932 and the commencement of the proposed new Act were validly enacted. This clause is in effect a provision for the removal of doubts, and I shall have more to say on this point later on in my speech. Clause 3 provides that the Act shall come into operation on the 15th July next, and also repeals Sections 1 to 4 of the Malta Constitution Act of 1932.

That, briefly, is the technical scope of the Bill, but what I am sure will be of more interest to your Lordships is the question of the policy which lies behind it. On that I would just say at this point, what is, I think,

already fully obvious to those who have followed the recent history of Malta, that as soon as the Bill is passed the Government intend to submit to His Majesty the proposal that the new powers derived from it should be utilised to effect some modifications in the existing constitutional position which, in their view, conditions in the Island demand. Before I explain the details of the proposed constitutional changes the House may well desire to know something of the history of the present Constitution. The present Constitution was established in 1921, and it was admittedly of a novel and experimental character. Perhaps the salient feature of that Constitution was the dyarchical principle on which it was based. The object in view was to give the Maltese real responsibility for the conduct of local affairs while at the same time, in view of Malta's strategical position, matters of Imperial concern were reserved to the Imperial Government. Consequently two distinct Governments were set up each endowed with legislative and executive powers in its defined sphere.

There was on the one hand the Maltese Government responsible to the Legislature, consisting of an Assembly and a Senate constituted on a representative basis, and, on the other hand, you had the Maltese Imperial Government which dealt legislatively and executively with reserved matters vested in the Governor, subject, of course, to instructions from His Majesty's Government at home. The Constitution was a written one embodied in Letters Patent, and I think, therefore, it will be evident that the existence of two complete Governments and the necessity for defining the line of demarcation between them has resulted in extremely technical and complicated constitutional documents. To show what an extremely complicated structure we have been dealing with, I think it is only necessary for me to point out that there were no fewer than five Councils in connection with it. There was the Executive Council, the Nominated Council, the Privy Council, the Legislative Assembly and the Senate—obviously a top-heavy system for a country which, in the words of the Royal Commission, is

> " about the size of the Isle of Wight, with a population nearly the same of that of Portsmouth and Southsea, or Catania in Sicily."

I think there can be little doubt that even if local conditions had been favourable such a Constitution had so many inherent mechanical defects that it would have been surprising if it had worked successfully.

It first broke down in the year 1930. Your Lordships will recollect that unfortunate difficulties arose between the local ecclesiastical authorities and the local Ministry which made it necessary for the then Labour Government to intervene and suspend the Constitution. After that came the Royal Commission under the Chairmanship of my noble friend Lord Askwith. It was appointed to examine the very difficult and delicate situation which at that time obtained. The Commission reported early in 1932, and so far as the main point which was then before them was concerned—namely, the settlement of the difficulties between the Church and the State—the outcome of their labours was completely successful. I should like to take

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this opportunity of paying a high tribute to Lord Askwith's chairmanship on that occasion. He dealt with an extremely difficult and delicate task with consummate skill and consummate success. He arrived there already with a high reputation as an eminent conciliator, and his work for Malta merely added one more distinguished act of service to those which he had already rendered to the State.

On the constitutional side of the issue before them the Commission took the same moderate and conciliatory view as they did with regard to the difficulties that had arisen between the Church and the State. Their attitude may be said to be that, although they recognised the defects of the Constitution and the difficulties of Parliamentary government in a small island, it had not been finally proved that the 1921 Constitution had failed. They therefore recommended that it should be given a further trial. At the same time they fully realised the dangers that might be found in the future. I think I can best illustrate the point by quoting a passage from the Report which runs as follows:

> " It may be true to say that it [the Constitution] has not worked well and that friction has arisen from time to time with the Imperial side of the dyarchy, and also much friction as between the political parties and with reference to the Church. . . . Valetta is a small place and rumour spreads very quickly. Politics are discussed in an energetic and often in an acrimonious manner; and this naturally has great effect in a city, where most of the politicians are lawyers accustomed to disputes and all know each other's history and family relationships, on which both politicians and the Press frequently comment in highly satirical terms."

His Majesty's Government therefore accepted the recommendation that the Constitution should be given a further trial.

It was actually restored in the summer of 1932. His Majesty's Government had every desire to give responsible government a reasonable chance, and I can assure your Lordships that the conclusions at which they have now arrived as to its impracticability have not been reached without trial, patience and deliberation. In other words the hopes of the Government have not been fulfilled. Like the Labour Government in 1930, the present Government felt obliged to suspend the Constitution once again in the autumn of 1933. The reasons for that suspension are probably well known to your Lordships. They were briefly these. Restoration of responsible government in 1932 had been made subject to certain provisions with regard to the language question and particularly to the teaching of languages in the schools. These provisions had the full approval of both Houses of Parliament here at home. As time went on it became apparent that the local Nationalist Ministry had embarked on measures, the object of which was in effect deliberately to evade that policy. Ministers were given opportunity to modify their policy, but declined to do so. They were therefore dismissed and direct administration was taken over by the Governor.

The suspension of Parliamentary government was effected in virtue of a provision in the Constitution empowering the Governor to take over the administration upon the Secretary of State for the Colonies declaring that he was satisfied that a grave emergency had arisen in the Island. The then Secretary of State made a declaration that he was satisfied to that effect, as he was undoubtedly entitled to do in the circumstances then prevailing in Malta. With regard to the legal basis of that action, His Majesty's Government entertained at the time, and they entertain now, no doubt that it was as well-founded in law as it was clearly right in policy. The provision of the Constitution which was invoked was, however, intended only to be used in times of emergency. It was never contemplated that the Government of the country could be permanently based upon it. His Majesty's Government have no wish to take advantage of a legal technicality to support a position which is not in accord with the ideas of the framers of the Constitution. Their intention therefore is to place the Government of the Island upon a permanent and more regular basis: and the powers which they now seek from Parliament will be used for this purpose.

I have no doubt that the House will ask in what particular manner these powers are to be used. I shall now endeavour to answer that question. It is intended that the form of government to be set up in Malta will be on Crown Colony lines. I should explain that Crown Colony government is a somewhat inexact piece of nomenclature which is used to describe various forms of government. It is sometimes used to mean a somewhat narrow and autocratic method of governing a Colony: but this is not its only sense—and it is not the sense in which I use it now. Many forms of Colonial government which fall short of responsible government are described as a Crown Colony government. Responsible government is, of course, the fully-fledged Parliamentary system with an Executive composed of Ministers who are responsible to Parliament. But between that and the one-man type of autocracy there are many varieties of constitutional growth of which examples may be found in the Colonial Empire.

The present system in Malta is of the strictest Crown Colony variety. All power is placed in the Governor who, subject to the instructions of His Majesty's Government, exercises it within his unfettered discretion. This system, although it has been justified by circumstances and by its recent results, is admittedly a somewhat drastic form of government for a people who have attained the point of political evolution which has been reached by the Maltese. His Majesty's Government are anxious as soon as possible to introduce a more liberal system and to establish channels through which the people of the Island will be in a greater measure associated with the conduct of their own affairs. It is felt that, even in existing conditions, some step in that direction can now wisely be taken. But the progress towards a more liberal system must be made by stages if we are to learn the lesson of the past. Advance must be gradual if it is to be successful. His Majesty's Government therefore propose as soon as the Bill becomes law to take the first step by establishing an Executive Council comprising, together with officials, a number of nominated unofficials. It is hoped in

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this way that it will be possible to associate with the Government a number of Maltese of standing and experience whose knowledge of local affairs should be of great assistance to the Governor. Such a Council will afford the Governor a regular method by which he may make contact with and consult with unofficial opinion. It will provide a proper and regular channel through which unofficial opinion may be expressed upon the day-to-day business of the Administration. I cannot commit myself as to the detailed constitution of the Council, but it will be an advisory body and the unofficial element will be nominated by the Governor.

The present intention of His Majesty's Government is that this Constitution should not be of more than an interim and provisional character. They feel that, after the vicissitudes of the last few years, the Island's greatest need is a rest from Elections and political dissensions. But they hope that it will in course of time be possible to go further in the direction of associating unofficial opinion with the Government. I can naturally give no pledge now upon the matter and it is not possible to foresee circumstances which may arise in the future. But His Majesty's Government feel that the Maltese people are entitled to look forward to the eventual establishment of some form of representative government. By representative institutions I mean not responsible Government with Ministers but a Legislative Council comprising, in addition to official members, a number of unofficial representatives chosen by popular election. There seems reason to hope that these proposals will find wide measure of local acceptance. The Provisional Government, though, of course, like any other Government it may be open to criticism on a number of points of detail, has, broadly speaking, proved an undoubted success. It has relieved the Island of the acrimony of Party politics and bitterness which has in our view done so much harm in the past. The Island was tired of the squabbles of the politicians and wanted a form of progressive administration in the interests of the people as a whole. The Provisional Government has made a good beginning in this direction, and in this connection I want to pay tribute to the work of the late Sir David Campbell, whose death we all so deeply regret, and also to that of Sir Harry Luke, the Lieutenant-Governor.

May I quite shortly tell your Lordships of some of the achievements of the present administration? In the first place it has entirely restored the financial position, which had seriously deteriorated while the Nationalist Ministry was in office. Then it has carried through a number of judicial reforms of a very important character indeed, with which no previous administration had ventured to deal. The Maltese language has now taken the place of Italian as the language of the courts. The procedure of the courts has been reformed, with the result that the number of cases pending before the Civil Court was reduced from 1,043 in October, 1934, to 434 in July, 1935. Then, in 1935, a system of radio distribution was established in the Island, and by March of this year already 1,000 subscribers had been connected. In the social and economic spheres great progress has been made. Many of the public health services have been greatly improved,

and a really great improvement is that the problem of undulant fever has at last been tackled.

Anybody who knows Malta at all is aware that the ravages of this disease are one of the curses of the Island. As your Lordships know, it is caused by goat's milk. The goats are driven through the streets of the town and milked at the doors of the houses, and they transmit germs and contaminate the streets. No Government so far has attempted to interfere with this age-long custom. I will not go into details, but two proposals have been made: first, to render goats immune by inoculation; and secondly, to pasteurise the milk at Government-controlled stations. I venture to say that if this problem is solved an immense service will have been rendered to the Island as a whole. There are other matters, like the question of refuse disposal, which is also being dealt with. The present system of collection is a real menace and disgrace to the public health of the Island and it is hoped that a scheme will shortly be introduced to deal with the problem. In education and public works great strides have been made. I will not trouble your Lordships with details now, though there is a great deal I could say on these two subjects.

Agriculture, is of course, the principal industry of the Island and it occupies some 50,000 of the inhabitants. We are doing everything we possibly can to foster and improve the different forms of agriculture which are practised there, and for these purposes free grants of £30,000 have been made from the Colonial Development Fund. The important industry of fishing, which has been badly neglected up till now, is also being helped in various ways. Again, the commercial and industrial possiblities of the Island have also been taken up, and a special officer from the United Kingdom with wide experience of trade has recently been appointed as Trade Development Officer. I think it will interest the House to know that for the first time this year Malta participated in the British Industries Fair at Olympia, and the success which attended its exhibit far exceeded expectations. Finally, the Island is being developed from the tourist industry point of view, and it is hoped that the construction of a first-class modern hotel will shortly be undertaken. I think that what I have just said definitely proves that the interests of Malta and all its inhabitants have not been neglected in the past two or three years, and therefore are not likely to be neglected in the future under the new system of government which we intend to introduce.

I now pass for a moment to Clause 2 of the Bill. Clause 2 declares the validity of all Ordinances of the Governor enacted between the commencement of the Malta Constitution Act, 1932, and the commencement of the new Act now proposed. The House will no doubt want some explanation of this, particularly as a case is now pending on appeal before the Privy Council which impugns the validity of a certain Ordinance passed by the Governor. The object of the clause is to remove any doubt which may exist as to the legality of the laws passed during the provisional *régime*. The Government are not prepared to admit that there can be any real question of the validity of anything which has been done. They are

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advised that the action taken has been within the powers conferred by the Letters Patent, and their view has been upheld by the decision of the Maltese Courts of First Instance and of Appeal in the case to which I have already referred.

But, my Lords, as legislation by Parliament is necessary to deal with the Constitution, it seems desirable to take the opportunity to put this matter beyond any question. It may be felt—I dare say it will be felt—that there are objections to validating while the case is pending. His Majesty's Government appreciate that point of view, but do not consider that in this case the objections can be sustained. If the Government had taken no action and the present appellants before the Privy Council were to secure a reversal of the decision already given by the two Courts, then His Majesty's Government would immediately have to propose legislation to cure the position by declaring that the legislation of the Provisional Government was valid. This would obviously be essential, as otherwise the whole administration of Malta would be in a state of legal chaos. In these circumstances I venture to say that there is much to be said for validating now and saving the litigants from a long an expensive action from which, even if they were successful, they could derive no practical benefit——

LORD MORRIS: They could.

THE EARL OF PLYMOUTH: If it were an action in which personal liberty or property were involved, the objections to legislation would be undoubted, but this case does not raise any personal matters of this sort.

LORD MORRIS: It does.

THE EARL OF PLYMOUTH: It raises only a question of broad public policy with which His Majesty's Government in the public interest feel bound to deal without further delay.

LORD STRABOLGI: My Lords, before the noble Earl concludes, may I ask him whether it is possible for him to give the House, briefly, an outline of this case, to say what it is?

THE EARL OF PLYMOUTH: I do not think that the House would expect that from me now. If your Lordships really wish, I will deal with it in my reply, but I do not think that your Lordships will want it at this stage. In conclusion, I want to say that it is only after the fullest consideration that His Majesty's Government have come to the decision they have reached. They have approached this subject in no narrow or carping spirit. They intend, as I have said, to use the new form of government for the good of the Island on progressive and liberal lines. They have no intention of allowing the Crown Colony *régime* to become stagnant and reactionary. Its performances in the last two years are an earnest of their intention of showing an active spirit in the future. I am sure that all of us must realise that the Maltese people, with their long and honourable history, have ideals and aspirations which we not only respect but which actually appeal to us. I had the pleasure of spending over a year in Malta at the beginning of the

War, and I should like to pay a warm tribute to the unswerving loyalty of the Maltese people in those times; and indeed they have given a further example of their admirable temper during the recent period of tension in the Mediterranean.

The association between Great Britain and Malta has already been a long and, I believe, a happy one. A firm Government must clearly be maintained in the Island—that is essential. Malta is a fortress, and a naval base of immense importance in the scheme of Imperial defence. Recent events in the Mediterranean have made only too clear the necessity for the Imperial authorities to retain control of the administration; but it will be a Government with the minimum of interference with personal liberties—a Government ready and anxious to recognise the special traditions and culture of the Maltese people. May I emphasise in particular that there is no intention whatever to interfere with the religious liberties of the people, or the position of the Roman Catholic religion as the religion of the Island as established by law. It is in such a spirit of good will and co-operation that we want to see this measure accepted, and I hope that it may usher in a new period of progress and prosperity for the Island. I beg to move.

Moved, that the Bill be now read 2ª.—(*The Earl of Plymouth.*)

LORD STRICKLAND, who had given Notice that on the Motion for the Second Reading he would move, That the Bill be read 2ª this day six months, said: My Lords, it would be ungrateful not to recognise that the noble Earl who has just sat down has offered a crumb of comfort to the people of Malta, some of whom—those who represent the pro-British section of the population—would have been satisfied with half a loaf, while others are demanding the whole loaf. The Bill as it stands offers nothing at once, and the tone of the speech of the noble Earl clearly indicates that very little is to be expected in the near future—so little that there is no recognition—apart from a few kind words that have no effect in substance—of Malta in the Imperial scheme under the Crown.

The last remarks of the noble Earl give the key to the position. This is panic legislation, notwithstanding that the apprehension of war has recently passed away. The real question before your Lordships' House is whether there are sufficient grounds to sabotage the Constitution of Malta that was passed by your Lordships' House and this Imperial Parliament so recently as 1932. That Constitution has not had a fair chance. Four years of trial: can that be held seriously to be a fair trial for a Constitution? No! my Lords. However easy it may be to find reasons for sweeping it away there is no reason to assert that that Constitution has had a fair chance. Just the opposite has occurred. The noble Earl has paid a compliment to the acumen of the Maltese loyalists. That acumen transpires in the structure of this Bill. On the other hand, while the noble Earl, in laying this Bill before your Lordships' House, has done so with the simplicity of a dove, behind it there has been the guile of a serpent. This is, in fact, whitewashing legislation of a nature that has no examples in our legislation since Tudor times, when Acts of Parliament asserted as facts incidents which could not

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bear investigation and when, afterwards, Bill were passed to say that black was white.

To assert that all Ordinances passed by the late Government are valid is to assume judicial functions. The validity of laws is a matter for our tribunals to deal with. There are now before His Majesty's Privy Council questions from our Colonies as to legislation having been passed *ultra vires* in other parts of the Empire besides Malta. I ask your Lordships why in the case of Malta is this House invited to usurp the functions of the King's Privy Council—functions which the Privy Council are exercising with regard to other parts of the Empire, and as to which any subject of His Majesty, under the rights granted by Magna Charta, has a right to appeal to the Privy Council, to obtain justice and obtain the opinion as to the law of the Judicial Committee and not of the noble Earl, and even less of the lawyers who have drafted this Bill for him. I will proceed to explain that and your Lordships may have new light thrown upon this subject.

When your Lordships' House undertakes judicial functions it is differently constituted. Counsel are heard at the Bar. The rules of evidence are respected. The efforts made by suitors to obtain justice are dealt with according to custom. All that has been swept away. If this Bill is to have the effect of justifying this usurpation very strong grounds have to be shown for such a step, and the Bill has to be greatly amended. It is admitted as part of the law of England that no dealing with the Prerogative of the King, either to take away from it or add thereto, is to be assumed by Parliament. What has been done? The Preamble of the Bill uses the words " and for purposes connected with the matters aforesaid "; but as I understand the Common Law of England that is not sufficient indication. I am not questioning the omnipotence of Parliament. I am only suggesting that the draftsman has perpetrated what he was forbidden to draft. Parliament is omnipotent. Parliament cut off the head of Charles I. No doubt Parliament might pass a Bill to say that it never was cut off, but there are limits to what your Lordships should be asked to do. We may remember the axiom, *Summus jus sœpe summa injuria est;* and we should remember

> " Est modus in rebus; sunt certi denique fines,
> Quos ultra citraque nequit consistere rectum."

New clauses will be necessary if this Bill is likely to obtain the acquiescence of those who are members of the Bar in this House or in another place to the constitution of a special tribunal in this devious, surprising manner.

It is also surprising that such legislation should have been proposed so soon after the arrival of a new Governor, with every hope and expectation that he would have the sympathy and support of all Parties in making a success of his very difficult duty of defending the fortress of Malta. But the Bill has been sprung suddenly, and without any justification for haste, before the new Governor has any possibility of making a report. Why has this been done? To prevent him from reporting, to nail him down to what has happened before, to tie his hands behind his back in his effort to remedy grievances and departures from

the law that are likely in his opinion to be indefensible, and as to which, if he had a free hand to report, he might differ very considerably from his predecessor and from the policy of the Colonial Office, in view of the ability and earnestness with which we are all confident that he will approach his duties. Military reasons for what appears to be hasty panic legislation also obtain in India. There self-government has been granted by an interpretation of a Preamble of an Act, for a vast sub-continent with 215 languages and a very small percentage of educated people. In that Government of India Act there are two whole chapters giving authority to Governors from the Central Government and the Provinces to suspend representative government. The Government tell us that everything is quite simple, that everything has been done quite legally. It has not been done in two chapters, not even in two whole clauses, but on the interpretation of a few words, which were put into the Bill, as the clause itself states, to protect self-government from detriment. And the very clause put in for that purpose is now distorted to satisfy lawyers. It has satisfied very few, if any, lawyers that I have met, except such as have been feed as special pleaders.

India was a conquered country; not so Malta. The rights of the Maltese cannot, with any knowledge of the circumstances, be dealt with in the airy, sketchy manner that you have heard to-day. The rights of the Maltese to no interruption of representative government are unassailable. The proposals of the noble Earl confess to an interruption. There is to be a period of government by a nominated body without any right to popular representation. This is quite unjustifiable. It is a repudiation of solemn covenants and treaties entered into in the name of the King of England at the time of the annexation of the Island. And there is something stronger than covenants and treaties : there is the position established by International Law. The English, the Maltese and the Portuguese were co-belligerents against the French, and, as victorious co-belligerents, they acquired a title of sovereignty over Malta. The part that England has in that title is limited. The King of England was one of several conquerors. The terms of the partition were afterwards settled at the Congress of Vienna and in the Treaty of Paris. The Maltese had rebelled against the French and the rebellion had become a successful revolution. A Government had been established which was representative, and that Government was based on the rehabilitation of representative institutions granted to Malta by a Norman King at the time when Norman Kings governed England. I admit—and I have said so repeatedly—that that form of government was representative without being responsible, and it is open to His Majesty's Government to deny responsible government on strict legal terms. But it is not open to His Majesty's Government to deny representative institutions for a single day. Such is the policy of His Majesty's Government.

What is being done is going to endanger the defence of Malta. The cry that England is not keeping her promises will be universally accepted; it will be accepted by the loyalists because no contradiction can be found

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against it. It is the truth, if we do not have some form of representative institutions immediately established. The great objection to this Bill is that it challenges the Common Law of England as set out by Lord Mansfield in the Grenada case, *Campbell* v. *Hall.* To the Island of Grenada there was made a promise of representative institutions. Before the Constitution was enacted, when it was only promised, the Governor attempted to pass an Ordinance to collect taxes. A merchant of the name of Hall refused to pay. The case came before that great lawyer, the Earl of Mansfield, and his brother Judges, and they formulated and explained the Common Law of England in the sense that once a Constitution had been promised —only promised—there could be no taxation without representation. That is the Common Law of England, and that is what this Bill assails, apart from the Bill's incongruity as being irreconcilable with the principles of International Law, Malta not being a ceded territory, not being an unoccupied territory turned into a Colony, but a sister nation of the great Commonwealth under the Crown of England.

You cannot expect a nation with our history in Malta, an educated people, a loyal people, to put up with this interpretation of the most cherished points of our history. May I ask the noble Earl whether he is aware that the Executive, in the days of the Earl of Mansfield, did not propose a Bill to this House to declare the Government's Ordinance valid; It was alive to the monstrosity of such an action as a denial of justice under Magna Charta. We in Malta could test the suspension of the Constitution by a misinterpretation of an amendment to a clause put in to protect religious toleration, to protect the Constitution. We have followed the example of Grenada. We had to wait a year before there was a violation of a clause that could not be altered by Act of Parliament. The Governor had the right to keep Parliament shut for a year. We had to wait a year before we could bring the matter before the Courts, and we had to take care that that matter dealt with private property, that there could be no claim whatever that it was a subject of general interest affecting all the population. It was hardly a matter of municipal interest. Certain newspaper posters were put up on private property. Some people thought they were not beautiful, that they were ugly, and an æsthetic Ordinance was passed under which regulations were enacted to take them down. They were posters put up on the property of the present editor of *The Times of Malta.*

That legislation was so outlandish that, pending this appeal before the Privy Council, the Government of Malta itself passed an Ordinance revoking it. They " queered the pitch " of the Privy Council in a most unjustifiable manner, even more unjustifiable than is the present Bill. The noble Earl says that his legal advisers are quite confident that they have the right to go before the Privy Council. If they are so very confident, why do they not go on with the case? They do not go on with it because they have not the slightest hope of success. I should imagine that nothing would be more in the interests of the Crown, and of those who commit these blunders, than to wipe the floor with the suitors before the Privy Council;

but they have fixed the date for this Bill coming into operation so close that it is impossible to get a judgment before that date. Everything has been done to push this case with the utmost rapidity, but even the Solicitor-General has been producing delays. Is that the attitude of legal advisers confident that they are in the right?

But there is more to be said on this point. On the face of the record there are reasons why no English lawyer would want to risk his reputation defending such a case. It has already been before the Judicial Committee on a point of procedure, and the Judicial Committee administered a most severe reprimand to one of the Judges sitting on the case because he had written an article about the case before him in a newspaper in which he is one of several limited partners. Notwithstanding that his continuing in the case was challenged, he determined to go on sitting, and his colleagues allowed him to go on sitting. That was objected to before the Privy Council. The judgment of the Privy Council was read in Court. That judgment asserts that the Maltese are entitled to representative institutions by virtue of the Covenants under which Malta was annexed to the Empire, and that judgment reversed that part of the judgment in the first Court which asserted that Malta had been acquired by cession.

The noble Earl on two occasions came to an agreement in this House on behalf of the Government that legal points were not to be discussed until we had obtained a judgment from His Majesty's Privy Council. That will be found on record in the OFFICIAL REPORT on two occasions. Why has the noble Earl departed from that agreement? It is obvious. The reason is that no English lawyer could object to a new decision being obtained from the Privy Council when one of the Judges sitting on the Bench wrote an article on the subject in the newspapers. That is the reason why this Bill is being passed. That is where the guile of the serpent comes in. There is worse still to put before your Lordships. Pending this Bill the Colonial Department has agreed to increase the salaries of the Judges. Yes, my Lords, that has been done. An increase in the salaries of the Judges has been repeatedly denied by the leaders of both Parties in Malta. Your Lordships have had no explanation of this feat of model statesmanship. When this litigation was first started I put it to your Lordships that if the Governor lost the case the next constitutional step would be an Address to the King for his removal. I am surprised that the noble Earl has been a party to increasing the salaries of the Judges *pendente lite*, when there have been all these imputations and other imputations, and when the Court was attempting to call lawyers to account for contempt of court.

Why deprive servants of the Crown of an opportunity of clearing their character before the Privy Council? Is it because the Colonial Department has supported them right or wrong that the Government is reluctant to face a date in December, or some date when there is some hope of obtaining a decision before this Bill comes into force? Where is the hurry, and where is the need of denying justice before the Privy Council? Where is the hurry when no representative Government is being

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given? No responsible Government has been asked for by the loyalists in Malta. We waited patiently when the Constitution was taken away and we were degraded from the position of Dominion *status* to the level of St. Helena. We promised that we would raise no trouble. We raised no trouble. We said that we would follow, constitutionally and loyally, constitutional means. We appealed to the Court in order to get the decision of the Privy Council, not the decision of legal tribunals. That liberty has been taken from us, the liberty to which we are entitled by the solemn promises of the King of England when Malta was annexed, and the liberty to which we are entitled by Magna Charta, to which all British subjects are entitled.

We did not expect to have a special tribunal established as is to be done to-day behind the scenes and behind the words of this Bill, subject, of course, to discussion in Committee and the consideration of Amendments by which alone this transfer of the Prerogative would be a credit to an Assembly holding any single member of the Bar among its members. The meaning of these promises and compacts has been continuously attacked, as I have shown your Lordships on previous occasions. A century ago there was a speech by Lord Glenelg, to which I referred in this House last year. Half a century ago, when the Constitution of 1887 was granted, we had speeches from the then Lord Derby, the then Earl of Onslow, Reginald Earl De La Warr, and from other noble Lords all based on the so far uncontradicted meaning of these promises. The Constitution of 1887 was, therefore, granted. The Bill of 1932 was based on those promises. There was a recent confirmation in another place. Mr. Chamberlain and Mr. Amery, two outstanding statesmen of this generation, accepted the promises in the same light.

To-day there are a few compliments and a few references to the attachment of the Maltese people to their history, but what does it all mean when you squeeze the sponge? An indefinite period of no representation. There is where the breach of treaty comes in, and I warn your Lordships' House and His Majesty's Government that you are impairing the defence of Malta and depriving the Governor of a legitimate opportunity of making a success of his Administration; you are estranging your friends, and you are giving a weapon to an enemy against which there is no defence except the expression of a hope that the time may come when you may have another Secretary of State. That is not much of a consolation, not much of a defence. The Constitution of 1887, which is a substantial compromise, you have compromised to-day, or will have compromised before the Bill reaches a Third Reading in another place. That Constitution had the advantage of leaving all power to the Governor. What the noble Earl offers was in that Constitution—contact of the Executive Council with local opinion. But the Executive Councillors, under that Constitution, had to be elected, and if public opinion changed and they lost their election others came in their place. That is reasonable.

Those of us who want to strengthen English rule say: "Put an honest interpretation on the promises by which England acquired Malta.

Limit them as far as you can. Limit them merely to representative Government. Do not claim responsible Government and then you will have everybody with you who is worth having, but otherwise you will have only a solemn indication of the inferiority complex which has again been put over Malta." One Governor after another has worked with that inferiority complex. They see all their life's work gone to protect an unintelligent Administration, an Administration concerning which other words might be used.

I could not sit down open to the challenge of proofs for what I have been saying as to pacts and covenants, as to what is the International Law protecting the rights of the people of Malta. We must not set aside International Law when we are accusing other authorities of breaking covenants and pacts. I have avoided using the word " treaty," because the noble Earl on another occasion said there was no treaty with the Maltese. I use the word " covenants " because we now talk of covenants, of the Geneva Covenants, the Covenant against poison gas, and so on. The whole of this Bill is poison gas. I will quote to your Lordships what Lord Nelson said on October 25, 1798. Nelson blockaded Malta with the aid of the Portuguese, and summoned the French in Valette to surrender. He said this :

" The situation is such that the inhabitants are in possession of the whole Island, except the City of Valette. The people of the Island are under arms against you. My object is to aid the good people of Malta."

This is a declaration of the position of an ally, no more and no less.

After the surrender the promises of the King of England were in those terms. These terms are carefully copied to fit in with the terms that were extracted from the First Grand Master who was Sovereign of Malta—a recognition of the Constitution granted by the normal King of Malta, Roger of Sicily, who established a form of Government similar to that to-day in the Channel Islands. I have been to the Channel Islands to see how it is administered, and it is administered in accordance with what happened under ancient history in Malta. The promise of the King of England was conveyed by Civil Commissioner Cameron on July 15, 1801. These words were then addressed to " the Maltese Nation " :

" Charged by His Majesty the King of Great Britain to conduct all the affairs (except the military) of these Islands of Malta and Gozo, with the title of His Majesty's Civil Commissioner, I avail myself, with the highest satisfaction, of this opportunity to assure you of the paternal care and affection of the King towards you; and that His Majesty grants you full protection and the enjoyment of all your dearest rights. He will protect your churches, your holy religion, your persons and your property." The phrases are somewhat irregular, but they are similar to what were used in the Treaty of Quebec.

Before concluding I cannot be silent under the challenge behind the noble Earl's words on the subject of religious toleration. The noble Earl has not seen through the memorandum prepared for him. The Act of

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1932 that we are about to sabotage provided safeguards for religious toleration under an Act of the British Parliament. Your Lordships are now invited to sweep away those safeguards under an Imperial Act, and to substitute safeguards that will have nothing more behind them than legislation that can be changed from day to day. Religious toleration is not wanted merely for Roman Catholics or ultra-clericals. Religious toleration under this Act of the British Parliament is extended to every form of belief, including Asiatic religions, Paganism and Atheism. Religious toleration is the bright flame of English rule all over the world. If there is religious intolerance, Governments will be swept away and those who pull the strings will be destroyed with them. I claim that the Roman Catholics educated in England who understand their religion and practise it in the way it is practised in England have a right to be protected in Malta against the religious intolerance of ultra-clericals whose views are not far removed from those of the Spanish Inquisition. That protection will be taken from us by this Bill, and in place of an Act of the British Parliament there will be Orders in Council.

Let this Bill be referred to a Select Committee. Let lawyers who are impartial consider whether this Bill is not a challenge to the jurisdiction of His Majesty's Privy Council. In the Colonies we rely upon His Majesty's Privy Council for justice when, because of local prejudice, it has been denied to us. What will the other Colonies think if this Bill to deny justice and to whitewash the doings of certain officials in Malta is passed? It will mean the destruction of what is most precious in the Empire. I hope that if this Bill is to be read a second time it will not be given a Second Reading in a hurry, and that it will not be read a second time to-day. I think I am entitled by my long experience in Malta and my long service under the Crown in other parts of the Empire to say what will be the effect in Malta of passing this Bill. I have seen through the tricks in Malta even if the noble Earl cannot see through half of them. I beg to move.

Amendment moved—

Leave out (" now ") and at the end of the Motion insert (" this day six months ").—(*Lord Strickland.*)

LORD STRABOLGI: My Lords, my noble friends and my friends in another place have examined this Bill and I am desired to offer our opposition to it on grounds which I shall state very briefly. We consider that after only twelve years' trial of the present Constitution it is too soon to pass judgment and to take this very retrograde step of taking away all popular representation in this island. The noble Earl in his speech in introducing the Bill again paid a tribute to the loyalty of the Maltese people. I notice that on November 1, 1934, the noble Earl, speaking for the Government, said:

" His Majesty's Government not only believe—they know—that the vast majority of people in Malta are absolutely loyal to the Crown and to the Empire, to whatever Party they belong."

After the noble Earl's declarations to-day and in November, 1934, I think we should be given further reasons why this step should be taken.

As for Clause 2, I must express my personal dissatisfaction with the explanation given by the noble Earl. I do not see why your Lordships should not have been given some reference to the case so that we should know what it was about. I knew nothing about it, and I am indebted to the noble Lord who moved the rejection of the Bill for telling us something about it. It seems to me certainly very questionable that when a case is *sub judice* before His Majesty's Privy Council a Bill should be brought in to deny justice to His Majesty's subjects. When I read Clause 2 I thought it was an ordinary case of indemnity for possible illegal acts, but the noble Earl has said that the Colonial Office and His Majesty's Government and everyone else concerned—if I understood him aright—are perfectly satisfied that they have committed nothing illegal during the abnormal period. If that is the case, why should there be an indemnity?

If the Government are afraid of discontent or subversive movements or have any other reason for this extreme step, this backward step, surely the worst way in which to proceed is to abolish the Constitution or to amend it in the direction of Crown Colony Government. You give a handle to every agitator and every illwisher of the British connection in Malta. We know there is agitation going on, and that there are subversive movements, espionage and so on. You will play right into the hands of these people if you give them this weapon to use against us. For these reasons I have been asked to offer opposition to the Second Reading of the Bill.

LORD ASKWITH: My Lords, I cannot claim in the same way as the noble Lord who moved the rejection of this Bill, by lineage or position or by work for so many years in and about Malta, the intimate knowledge which he has of that Island, but, as the noble Earl who introduced the Bill was kind enough to mention, I was Chairman of the Royal Commission of 1931. Therefore I had an opportunity of an intensive study during some months of the disputes that were then going on in the Island, and for some months afterwards I was engaged in going through a vast mass of documents in order to produce the Report which was accepted by Parliament and on which many changes were based. I agree that the chief and principal duty of that Commission was to do their best to settle the serious difficulties that had arisen between the Catholic Church and the Government of Malta, and to find a way by which what threatened to be a most dangerous dispute of an Imperial character might be obviated as far as possible. It may be said that in the long run that difficulty has largely, if not entirely, ceased.

With regard to the other parts of the Report we recommended, as the noble Lord said, that a trial should again be given to a Constitution which had many doubtful clauses in it and was extremely obscure and many parts of which gave no powers of interference by the Imperial Parliament without an Act, in many small matters where the parties entered into very violent quarrels. That was the condition of affairs,

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and there had been breaches of what was then the reserved power of the Crown by the Parliament from time to time. Certainly education, to which the noble Earl alluded, was a reserved matter. Following upon the Report of the Royal Commission changes were made in the education in the primary schools and in the first class of the secondary schools, and at a later date still further changes. Those changes were certainly drastic. Then the Government—not under the noble Lord who spoke in this House —by means of the Minister of Education, backed up by his Government, certainly put every possible spoke in the wheel to prevent the wish of the Parliament here, the Colonial Office here, from being carried out. In consequence, the state of emergency was proclaimed, and it may be said that the Government of the day was stung by the attitude of the Government in Malta. Since that date emergency after emergency has come forward, and I do not think that anyone can seriously say that there has not been emergency during the last months. But at this period, and if it occurred again at any other period, with a big and vital fortress, it would become necessary for supreme power to be put into the hands of the Governor and the naval and military forces, who should not be obstructed by debates in a rather quarrelsome national assembly.

Malta is much attached to Europe; she does not want to be thought to be a " black " country, as it were, or to be connected with Africa, but to adhere to Europe. Of her own free will she came in and joined the British nation more than a century ago, and allied herself with what she conceived to be the most powerful nation in the Mediterranean. She had, through the long years of her civilisation, many rulers; some of them left some traces behind, others left practically none. Of those rulers, prior to the junction of the Maltese and the English, there were the Grand Masters of the Knights of Malta, men coming from all nations of Europe with the exception of this country. Sometimes a representative of one nation succeeded the representative of the same nation in a small succession, and then another nation got in. Each of those Grand Masters, according to his national upbringing, would probably endeavour to make some impression upon the more cultured people of Malta. There was a suzerainty, too, of the Sicilian Kings. Being so close to Italy, not knowing anything of England before that, it is not to be wondered at that there is still a considerable affinity among certain classes in Malta towards Italy. When, however, that is magnified too much, and we are dealing with a country with which we have found such difficulty in dealing, it is and, I think, always will be a matter of importance that it should be possible for a state of emergency to be declared in Malta.

This Bill is a short Bill, and what it does is to put back under the power of the British Government the matters that were given up by the Prerogative of the Crown in 1921. It also sweeps away two small clauses of an Act of Parliament, so that the Colonial Office should not have to come to Parliament again to get rid of them. It repeats many things by implication which are already contained in Ordinances of the Governor, Ordinances which are justified by a clause in the Bill. It allows the Crown

to legislate in the future and gradually to give back, as the noble Earl said, by degrees a form of government which will be less unwieldy, less impossible to work, and less difficult from many legal points of view, for the benefit of the Island.

I was struck by the tribute paid to the government of Sir David Campbell and to the many improvements which had been made in Malta. I hope those will continue. Apart from this, and the question of whether a representative Government could have been given them or not, there has been great improvement. There is a promise of more improvement, and there is more than a strong indication by the noble Earl that the Government propose—quickly, it may be, if the present emergency ends, or slowly if it continues—to bring in a system in which the Maltese shall be consulted about their own affairs and have some say in the Government of their own Island. I personally formed a very high opinion of the ability, the quickness, the loyalty, and the energy in many ways of the Maltese. They have had but a short time during which to learn representative government. It may be said that it was the fault of the few that they threw away their chances and that they must be educated and ought to have a greater chance in the future. That can come in the future years more gradually than it did in the past, and that the previous failure will be borne in mind is pretty certain. I trust that when changes are made, pressure will not be brought to bear over and over again for more and more improvement, but that instead of that the Maltese will try to work at the Government in their Island and show that they are worthy of doing it.

There are one or two questions I would like to ask the noble Earl. I notice that in the last clause of this Bill there are repealed certain provisions dealing with the Judges and the trade unions.

LORD STRICKLAND: Hear, hear.

LORD ASKWITH: The question of the trade unions would be a matter which would be dealt with if any representative Government were established in the future, but with regard to the Judges, I regard that as a very serious matter. The Maltese like the law. I am not sure that the noble Lord, Lord Strickland, has not given indications that he also likes it, particularly the Privy Council, which the rest of the Maltese do not like because it is a rather expensive proceeding. The Judges thoroughly deserved an increase of pay. They were very badly paid. They have, on the whole, proved themselves to be men of great ability, and I think that with the feeling for the law which there is in Malta, it would be a very serious thing if it were thought that the position of the Judges was imperilled by this new form of government. The position of the Judges has been often laid down. It was very much altered by the Royal Commission, and there is an Ordinance of 1932, I see, which deals with their tenure, their qualifications, their remuneration, their length of office, and how and when they can be turned out. There is also a similar code, not of such a drastic kind, with regard to the magistrates, from whom some of the Judges may be recruited. I should like to ask the noble Earl, particularly in view of what was said by

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the noble Viscount, Lord Sankey, as late as 1932, that there was no intention of interfering with the position of the Judges, whether that would not hold now, or whether His Majesty's Government cannot give out some hint that the Judges need not consider their position at all imperilled, and that the people of Malta should not have a feeling that justice was not being adhered to.

I cannot say that the noble Lord who objected to this Bill has been very mild in his language. I cannot really suggest that he " cooed like a dove," and I do not like to suggest that he is a " serpent," but really on a Bill of this character, to suggest that there was interference with the Prerogative of the Crown, the jurisdiction of the Courts and the integrity of a draftsman; the muzzling of a Governor; a breach of the promise of a Norman King, and a breach of the undertakings given to the Maltese; intentional delays on the part of the Law Officers of the Crown; an improper increase of the salaries of Judges; and an interference with the judgment of Lord Mansfield in *Campbell* versus *Hall*, with which this Bill has nothing whatever to do—in vulgar phrase, I would call that " a bit thick." I really think that the exaggeration which has taken place must, in his cooler moments, seem rather absurd to the noble Lord himself. He is very sincere, but he does carry things to a length in his denunciation, which I feel the noble Earl does not deserve, after the speech which he made to this House. I understand that the Government are going by steps, and if the noble Earl, Lord Plymouth, could reiterate the idea that there is no notion of excluding the Maltese entirely from having any say in what is the business of their own Island and the business of themselves; that the British Government intend to use the abilities of the Maltese, so that they may be able to have not necessarily a dyarchy but, at any rate, that cohesion between the minds of the two sets of people of which there has been better signs during the last few years, and which is so vital to the happiness and success of Malta—if he could say this I should be glad.

VISCOUNT FITZALAN OF DERWENT: My Lords, I am sure the House is ready to come to a decision, and therefore I do not intend to take up your Lordships' time for more than a few moments, but I notice that in his speech, moving the Second Reading of this Bill, my noble friend used the expression " fortress " as applicable to Malta. That reminds me of the same expression being used by one even greater than my noble friend. I remember an occasion when the late Mr. Joseph Chamberlain was Secretary of State for the Colonies, and I was present at a conversation in which the subject of Malta turned up. On what particular point it arose I cannot now remember, but I do remember that Mr. Chamberlain said:

> " Remember that Malta is a fortress and must be regarded and treated as such."

Those words, made a very great impression on me at the time, and I have never forgotten them. Personally I cannot help thinking that if the late Mr. Chamberlain had been a member of the Government when the Constitution of Malta was started, in 1921, it probably would never have been

carried out. Anyhow, in the few years of its existence it has twice had to be suspended, and if Mr. Chamberlain in those days was so keen to regard Malta as a fortress, I venture to submit to your Lordships that under present conditions, when the question of Imperial defence becomes of such vast importance, we ought to be very careful and remember his views on that point.

I should only like to add that I do not share the apprehensions of my noble friend beside me on the question of the effect of this Bill on religious toleration in Malta. I am quite prepared, I am sure we all are, to accept my noble friend as an expert on matters connected with Malta, but he will forgive me if I say that when I use the word " expert " I use it in the sense that I believe the late Lord Salisbury used it—namely, that an expert was a good witness but a very bad judge.

LORD LAMINGTON : My Lords, before I came down to this House I had some doubt as to whether I really approved of the passing of this Bill, but, having listened to the speech of the noble Earl who introduced it, I thought he gave such satisfactory assurances as to the intentions of the Government as regards the Maltese Constitution that I am rather surprised at the attitude taken by the noble Lord, Lord Strickland. The noble Lord's chief objection was the possibility that the Maltese should be deprived of representative government, but the noble Earl gave full assurances that representative government was given to the people of Malta. Lord Strickland asked what would the attitude of the people of Malta be in time of war if this Bill were passed. I quite agree that everything has been done to give confidence in our rule, though Italian propaganda, ever since the famous speech of Signor Mussolini in which he talked about *nostra Malta*, has been intense in Malta, and also in Egypt. It is desirable that there should be no doubt in the minds of the people of Malta that, without due consideration, they will not be deprived of their rights to conduct their own affairs, and therefore I heard with satisfaction the speech made by the noble Earl. Malta is in a very peculiar position. As the noble Viscount, Lord FitzAlan, said, it is a fortress, and has been regarded as a fortress. At the same time the Maltese have their own national feeling, their intense belief in their own history, and in the charm of their Island. Therefore everything must be done to give them satisfaction, consistently with the fact that Malta is a fortress. Having listened to the debate, I am quite convinced of the desirability of supporting this measure.

LORD MORRIS : My Lords, this Bill interests me both as a Colonial and as a lawyer. I am particularly happy to see that the noble and learned Viscount the Lord Chancellor has returned to the House, and I hope he will correct me if I am wrong in saying that it is entirely contrary to practice, precedent, and the laws of natural justice for the Legislature to intervene in matters which are *sub judice*. That, to my mind at any rate, is the kernel of this case, and your Lordships may or may not have noticed that when the noble Earl, Lord Plymouth, dwelt on that aspect of this Bill he skated as quickly as he could over what he, no doubt very wisely and very

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rightly, regarded as particularly thin ice. If this Bill becomes law, Malta, I suggest, will be a country whose liberty will be a thing by stealth, its trade a thing by permission, and whose only hope of freedom will lie in the chance that some future British Government may have a higher conception of stewardship than that evinced by the present Government.

As I walked across the Park this afternoon, people were lolling in the sunshine, enjoying not only the sun but liberty. If this Bill becomes law, you will take away the liberty of the Maltese, and in my submission you will add insult to injury. I do not think I should be revealing any State secret if I reminded your Lordships that the maladministration of Maltese affairs during the last two or three years has become quite notorious, and this Bill was described by the noble Lord, Lord Strickland, as a whitewashing measure. That of course it is, nothing more nor less. Lord Strickland has been taken to task by one noble Lord for his language. I would rather compliment him on his restraint, and in that connection I would remind your Lordships that Lord Strickland is a man who has been Governor of the Leeward Islands, Governor of Western Australia, Governor of Tasmania, and Governor of New South Wales. In addition to that he is a constitutional lawyer of no mean repute, and I imagine it would be common ground that he has forgotten more about Malta than anyone in the Colonial Office is ever likely to know. That being the case, I think we may assume from his years that he has got tired of fighting for fighting's sake, and that he has come here to-day to oppose this Bill in all sincerity and because he recognises it for what it is, a piece of gross injustice. It must be a sad and bitter day to come here in this Parliament, whose long history has been nothing but a struggle for liberty, and listen to us debating whether we are going to deprive the Maltese of their liberty.

I am very gratified to see here this evening the noble Viscount who was at all material times Secretary of State for the Colonies, and upon whose shoulders rests the primary responsibility for the trouble which has occurred in Malta of recent years. He has this evening the opportunity, of which I trust he will avail himself, of lifting at least a corner of the veil of mystery which has enshrouded Maltese affairs for some time. I hope that in doing so he will also explain to your Lordships why it is that he was engaged in suspending the Constitutions of those Colonies he administered, whilst almost in the same breath urging Parliament to grant a new and quite unnecessary Constitution to a territory administered by a colleague. This is rather a serious matter we are debating this afternoon, which may have repercussions all over the Empire. It hardly seems to me to be a fit subject for playing the game of follow-my-leader in the Government Lobby. I speak from the Cross Benches, and it matters little to me whether the Government succeed or fail in most cases; but I think in this particular case it would be very unfortunate if this Bill were given a Second Reading after what we have heard about it from the noble Lord who moved its rejection this afternoon.

LORD STRICKLAND: My Lords, I will not long detain your Lordships in exercising the privilege of replying. My remarks will be restricted to salient

points. In the first place the noble Viscount, Lord FitzAlan, said that Mr. Chamberlain would not have approved of the Constitution of 1921. I agree that Mr. Chamberlain would not have approved of full responsible government for Malta, if it had then been known that a Lateran Treaty would have followed and that under the Lateran Treaty it might be possible for the Bishops of Malta to be scheduled with the Bishops of Italy. The remarks of Lord Askwith were out of place when he said that this Bill restores to the Crown powers to pass Letters Patent that were previously taken away from the Crown. The Crown never had power to pass Letters Patent for depriving the Maltese of representative institutions even for a day. We have appealed to the Privy Council and we have the judgment of Lord Mansfield establishing what we submit is the Common Law of England. Perhaps the noble Lord has forgotten, or has never heard of, the accepted comments on the case of *Campbell* versus *Hall*, but he must know what is an accepted point of Common Law—namely, that once representative institutions are granted there can be no taxation without representation even in a conquered country, unless an Act of Parliament is passed for the purpose.

LORD ASKWITH : What Campbell *versus* Hall did was this. It said that the Crown could not take back such powers of the Crown's Prerogative as the Crown had already parted with.

LORD STRICKLAND : That case laid down exactly what I submitted to your Lordships it does say in explaining the present question before the Privy Council. Another consequence which would follow from the views of the noble Lord who has just sat down, is that the clause in the Bill which he commented on is a clause that gives the Crown the right to repudiate solemn treaties with the Maltese that have been acknowledged and confirmed for more than a century. That is in fact what this Bill does. On the part of the Government there could be no contradiction, and there has been no contradiction to-day, of the fact that Malta was acquired from the French by the Maltese and the English as victorious co-belligerents, and therefore the Maltese have a right to the representative institutions which they had set up when they had conquered Malta from the French. The Maltese have the right accruing from the confirmation of the privilege of representation which they had confirmed to them from the time of the Norman rule over Malta. It is a very serious responsibility to set these claims aside by assuming the attitude of not having read about them or of not remembering them.

The noble Lord, Lord Askwith, expressed himself very satisfied with the conciliatory manner in which, in the Report of his Commission, he had dealt with everything when dealing with Maltese affairs. That Report is nevertheless altogether too conciliatory and not always accurate. All the mischief in Malta has come from excessive anxiety to please. There is such a thing as pushing tact to the point where it is the reverse of courageous or wise. As an instance, the Askwith Report went so far as to gloss over facts to the extent that it depicts a convicted criminal who attempted a political

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assassination as a person of doubtful responsibility and a suitable subject for a charitable institution, as if he were not responsible. He was not in such an institution, he was in prison. Miller was tried before a Maltese jury and condemned to 14 years of imprisonment, and the first remark Sir David Campbell made on reading the Report of the Royal Commission was that, contrary to what was then said, he had seen this person in prison and could not understand much that was in the Report. I congratulate Lord Askwith for having pointed out that this Bill revokes four clauses which contain recommendations and concessions which the Askwith Report gave to the Maltese. From the evidence before the Commission it was decided to redress certain grievances. These four clauses redress four grievances that were remedied by the adoption in the Act of 1932 of the Report of the Commission. These remedies were embodied in the Bill of 1932. These remedies are to be abolished by the new Bill if I have rightly understood Lord Askwith. I may also note that the Bill passed on Lord Askwith's Report contained schedules showing the Ordinances to be retained and detailing the Ordinances not to be declared legally enacted. This Bill is ambiguous and contains nothing in the way of schedules.

The question still is what will be the effect of this Bill on the mentality of the people of Malta. If the language I have used, which has been very carefully chosen to be moderate as well as accurate, has surprised the noble Lord, he will be much more surprised if he hears what has already been said in Malta in anticipation of measures suspending Parliamentary institutions even for a day. What will be said afterwards will be much stronger. The use of this clear and precise language is not for any other purpose than to be helpful and to warn the Government what to expect in Malta. There is no reason for exaggeration. There is agreement that responsible government is at present inadvisable in Malta; but I do not agree that a Bill of this description, which does not respect and acknowledge the treaty rights and covenanted rights and the royal promises made to the Maltese is one that should become law. I must remind the noble Lord, Lord Askwith, that according to the Letters Patent an emergency must arise and continue in Malta. International affairs to which he has referred do not arise in Malta. I beg leave to assure your Lordships' House that in time of war, if Malta is to be defended successfully, there should be an attempt to put in force the security clauses which form part of the Milner-Amery Constitution of 1921. These have never been tried out in an emergency and I doubt whether they were studied or understood by those responsible for suspending the Constitution in 1933. To govern Malta in time of war without suitable enlightened and sympathetic contact with the civil population is following the bad example of the great Napoleon, who ignored Maltese rights, with the consequence that he lost Malta.

THE EARL OF PLYMOUTH: My Lords, I shall attempt very briefly to deal with some of the points that have been raised during the course of the debate. The noble Lord who moved the rejection of the Bill began by saying that in my speech there was no recognition of Malta in the Imperial scheme, and he went on to say that I had paid a lukewarm tribute to the

inhabitants of the Island. I paid—I certainly meant to pay—a whole-hearted tribute to the people of Malta, but the fact of the matter is that the noble Lord always twists what I say to mean something which I never intended at all. The noble Lord is the politician *par excellence.* I listened very carefully to both his speeches, and I am still left in complete doubt as to what he thinks would be the proper course for the Government to take in the circumstances which obtain in Malta.

The argument which he has been putting forward is that there appears to be some definite obligation on the part of the United Kingdom to maintain representative institutions in Malta, though not responsible institutions. I have read all the documents that I can find with regard to this particular point, and nothing I have read and nothing I have heard this afternoon has led me to change my opinion on this matter that there is nowhere an intrinsic obligation on the Government of this country permanently to maintain representative institutions in Malta. I have made the Government's view perfectly clear on this subject. A number of noble Lords, including my noble friend Lord Askwith, have shown some uneasiness on the point, but I have explained that in view of present circumstances the intention of the Government was to establish a Crown Colony Government with an Executive Council, and advisory body comprising, amongst others, nominated unofficial members. I also went on to say quite plainly that it was not the intention of the Government to withhold permanently representative institutions from the Maltese people. On the other hand, they felt they were quite entitled to look forward to the re-establishment of representative government, though not responsible government, in the course of time. I hope that that reassurance will satisfy some of the noble Lords who sit behind me.

The noble Lord, Lord Askwith, dealt so faithfully with some of Lord Strickland's remarks—remarks which were really so grotesque in their character, containing suggestions with regard to the Judges' salaries and attempts to prevent the new Governor from expressing his views about the situation, that I feel I really need say nothing more about them. But a question was raised, not only by the noble Lord who sits behind me (Lord Strickland) but also by the noble Lord, Lord Strabolgi, who sits opposite, in connection with the second clause of this Bill, that which we term the validity clause. I have been asked why, if we are satisfied with everything the Government has done, we have not left the position as it is. The point is this, that the position has been questioned. I have explained what kind of a situation would arise in the event of an appeal to the Privy Council succeeding on a matter of this kind. I have explained that the position in Malta from the legal point of view would become absolutely chaotic, and it seems to me that it is not only reasonable but sensible, when dealing generally with the Constitution of Malta, to take the opportunity of removing any doubts which may exist. I can assure the noble Lord, that there is no desire to interfere with any matters of personal property or anything of that kind, but if any injustices have occurred, the Government, I feel certain,

Exhibits.

Q. Parliamentary Debates, House of Lords, Malta (Letters Patent) Bill, 5th May, 1936—*continued.*

will be prepared to consider the matter from a sympathetic point of view when this Bill has become law.

I do not wish to detain your Lordships any longer, but there is one matter to which I feel I must refer, and that is the matter raised by my noble friend Lord Askwith with regard to the position of the Judges in the future when this Bill is passed. The position is slightly complicated, but I will not take more than a minute or two in explaining it. Section 3 of the Bill when enacted will repeal, as my noble friend said, Sections 1 to 4 of the Malta Constitution Act, 1932. Among those sections which are to be repealed is a section which deals with matters of great importance to the Judiciary—that is, the qualifications for appointment to the Bench of the Superior Courts, remuneration, tenure of office, and so on. I want to explain that when this section of the 1932 Act is repealed, the provisions which it contains will still remain law as, in accordance with Section 6 of that Act, they have been passed into the Malta Constitution Letters Patent, and that reference to that document will show that they are embodied in Section 55 of it.

LORD STRICKLAND: Will you allow me to interrupt? That does not mean that they are not repealed.

THE EARL OF PLYMOUTH: I am advised it does mean that they are not repealed. They are still the law. That is as I am at present informed. It is essential, in the view of His Majesty's Government, to repeal the provision in the 1932 Act because the whole purpose of the proposed Bill is to put the Crown back into a position where it possesses a full and unrestricted Prerogative right to legislate for Malta. It is true that when the proposed Bill is passed the Crown will have perfect liberty to vary by Letters Patent the conditions regarding the appointment and tenure of Judges which are now laid down by Act of Parliament. We quite appreciate this position, and the Government might very well accept Lord Askwith's argument on this matter. I, therefore, can say this, that while His Majesty's Government naturally cannot bind any future Government, they, for their part, have no intention of taking any action which would derogate from the position of the Judges as established by the provisions of the 1932 Act, or in any way to vary the qualifications for appointment there laid down. I can, accordingly, give Lord Askwith an assurance that similar provisions to those contained in Section 55 of the existing Letters Patent regarding these matters will be re-embodied in the new Letters Patent which will be issued when the Bill becomes Law. I have every hope that that will satisfy my noble friend, and I think your Lordships will now be prepared to give a Second Reading to this Bill.

On Question, Amendment disagreed to: Bill read 2ª accordingly, and committed to a Committee of the Whole House.

R.—Malta Government Gazette.

Exhibits.

R.
Malta Government Gazette, 6th March, 1896.

THE MALTA GOVERNMENT GAZETTE

No. 3809. Friday, 6th March, 1896.

All public acts appearing in this Gazette, signed by the proper Authorities, are to be considered as Official and obeyed as such.

By Command,

G. STRICKLAND,

Chief Secretary to Government.

L.S. No. 43.

GOVERNMENT NOTICE

HIS EXCELLENCY THE GOVERNOR has been pleased to direct that the following Order in Council, together with the Report of the Judicial Committee of the Privy Council on the subject, which His Excellency received yesterday, be published for general information.

By command,

G. STRICKLAND,

Chief Secretary to Government.

Palace, Valetta.
March 6th, 1896.

L.S.

AT THE COURT AT OSBORNE HOUSE, ISLE OF WIGHT

The 13th day of August, 1895

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT. MARQUESS OF LANSDOWNE.
LORD PRIVY SEAL. LORD ARTHUR HILL.

WHEREAS there was this day read at the Board a Report from the the Judicial Committee of the Privy Council dated the 18th July, 1895, in the words following, viz. :—

" YOUR MAJESTY having been pleased by Your Order in Council of the 28th June, 1892 to refer unto this Committee certain Cases and Appendices prepared on behalf of the Crown Advocate of Malta and the Protestant Communities of Malta respectively in the matter of the validity of unmixed and mixed marriages in Malta and to order that the said Committee should be at liberty to admit or to order the production of such further proofs or further evidence as might appear to them to be necessary.

" AND THE LORDS OF THE COMMITTEE having by their Order of the 23rd January 1894 admitted certain further evidence.

Exhibits.

R.
Malta Government Gazette, 6th March, 1896—*continued.*

"THE LORDS OF THE COMMITTEE in obedience to Your Majesty's said Order of Reference have taken the said matter into consideration and having heard the Crown Advocate of Malta and Counsel on behalf of the Protestant Communities of Malta their Lordships do this day agree humbly to report to your Majesty as follows :—

"The questions raised by these cases to which the arguments of Counsel were directed are three in number :—

"I. Whether the unmixed marriages which have been celebrated in Malta (a) by English Clergy (b) by Presbyterian Ministers and (c) by Wesleyan Ministers are valid ?

"II. Whether the mixed marriages which have been celebrated in Malta by Ministers other than those of the Roman Catholic Church are valid ?

"III. Whether it is expedient that there should be legislation validating retrospectively all marriages hitherto celebrated in Malta by non-Catholic Ministers and also regulating the mode in which marriages whether unmixed or mixed are to be contracted or celebrated in future and if so whether such legislation ought to be by the Imperial Parliament or by the Government Council of Malta ?

"Upon the information and arguments submitted to them, their Lordships answer the first and second of these questions in the affirmative.

"Their Lordships think it right to add with reference to the first question that whilst unmixed marriages by the Clergy of the English Church appear to them to be fully sanctioned by inveterate usage the grounds upon which the validity of unmixed marriages by Presbyterian and Wesleyan Ministers was maintained though not so clear were in their Lordships' opinion sufficient.

"The second question involves many considerations attended with great difficulty. Their Lordships are conscious that notwithstanding the elaborate character of the argument addressed to them it is possible that in the event of the question coming before them judicially additional information and authorities might be produced tending to shake the conclusion which they have derived from the materials before them.

"In reply to the third question their Lordships have only to observe that in their opinion where persons have contracted marriage in good faith and in a mode sanctioned by a British Governor but in such circumstances that the validity of the ceremony may be open to question it is expedient that the matter should be set at rest by legislative declaration. Their Lordships are not in a position to make any suggestions with respect to the Legislature by which that object ought to be accomplished."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and of what is contained therein. Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

C. L. PEEL.

To the Lords of the Judicial Committee of the Privy Council in the matter of a Special Reference relating to the validity of unmixed and mixed marriages in Malta, dated the 18th July, 1895.

PRESENT

THE LORD CHANCELLOR (LORD HERSHELL)
LORD WATSON
LORD HALSBURY
LORD MACNAGHTEN
LORD MORRIS
SIR RICHARD COUCH.

The Lords of the Committee having, in obedience to Your Majesty's Special Order of Reference of the 28th of June 1892, taken into consideration the Cases and relative Appendices on behalf of the Crown Advocate of Malta, and the Protestant Communities of Malta, and having heard the Crown Advocate, and also Counsel instructed by the Protestant Communities, do agree humbly to report to Your Majesty as follows :—

The questions raised by these cases, to which the arguments of Counsel were directed, are three in number :—

I. Whether the unmixed marriages which have been celebrated in Malta (*a*) by English Clergy, (*b*) by Presbyterian Ministers, and (*c*) by Wesleyan Ministers, are valid?

II. Whether the mixed marriages which have been celebrated in Malta, by ministers other than those of the Roman Catholic Church, are valid?

III. Whether it is expedient that there should be legislation, validating retrospectively all marriages hitherto celebrated in Malta by non-Catholic ministers, and also regulating the mode in which marriages, whether unmixed or mixed, are to be contracted or celebrated in future; and, if so, whether such legislation ought to be by the Imperial Parliament, or by the Government Council of Malta?

Upon the information and arguments submitted to them, their Lordships answer the first and second of these questions in the affirmative.

Their Lordships think it right to add, with reference to the first question, that, whilst unmixed marriages by the clergy of the English Church appear to them to be fully sanctioned by inveterate usage, the grounds upon which the validity of unmixed marriages by Presbyterian and Wesleyan ministers was maintained, though not so clear, were in their Lordships' opinion sufficient.

The second question involves many considerations attended with great difficulty. Their Lordships are conscious that, notwithstanding the elaborate character of the argument addressed to them, it is possible that,

Exhibits.

R.
Malta Government Gazette, 6th March, 1896—*continued.*

in the event of the question coming before them judicially additional information and authorities might be produced, tending to shake the conclusion which they have derived from the materials before them.

In reply to the third question, their Lordships have only to observe that, in their opinion, where persons have contracted marriage in good faith, and in a mode sanctioned by a British Governor, but under such circumstances, that the validity of the ceremony may be open to question it is expedient that the matter should be set at rest by legislative declaration. Their Lordships are not in a position to make any suggestion with respect to the legislature by which that object ought to be accomplished.

In the Privy Council.

No. 31 of 1938.

ON APPEAL FROM THE COURT OF APPEAL, MALTA.

BETWEEN

EDGAR SAMMUT and OTHERS
(Defendants) Appellants

AND

THE HONOURABLE MABEL STRICKLAND
(Plaintiff) Respondent.

RECORD OF PROCEEDINGS.

BURCHELLS,
5, The Sanctuary,
Westminster, S.W.1.
Solicitors for the Appellants.

BLOUNT, PETRE & CO.,
8, Carlos Place,
Grosvenor Square, W.1.
Solicitors for the Respondent.

EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.4.