Privy Council Appeal No. 31 *of* 1938

Edgar Sammut and another - - - - *Appellants*

v.

Strickland - - - - - - - *Respondent*

FROM

THE COURT OF APPEAL, MALTA

REASONS FOR THE JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JUNE 1938

Present at the Hearing:

THE LORD CHANCELLOR
(LORD MAUGHAM)
VISCOUNT SANKEY
LORD ATKIN
LORD WRIGHT
SIR SIDNEY ROWLATT

[*Delivered by* THE LORD CHANCELLOR]

This is an appeal from a judgment of His Majesty's Court of Appeal of Malta delivered on the 4th March, 1938, reversing the judgment given on the 11th October, 1937, by the Civil Court of Malta, First Hall.

The appeal raises the question of the validity of a customs duty imposed under an Ordinance made by the Governor of Malta, namely, the Ordinance No. 27 of 1936. The respondent, who was the plaintiff in the action, raised the question by importing certain articles of the value of 3s. 9d. suitable for use in connection with Coronation festivities. The appellant, Edgar Sammut, a Collector of Customs, exacted a duty on these articles in terms of the Ordinance 27 of 1936. This duty was paid under protest, and on the 21st April, 1937, the action was commenced. The trial Judge decided that the Ordinance was valid, but the decision of the Court of Appeal was to the contrary effect. Hence the present appeal.

The nature of the dispute can be shortly stated. It was admitted by counsel for the respondent in his learned argument that the Island of Malta (which for the present purpose includes Gozo) became a British Possession in the year 1813 under circumstances which their Lordships will consider in a little more detail later. In the years 1849, 1887, and 1903 certain limited rights of administration were conferred on the inhabitants by Letters Patent and Orders in Council made by the Crown. In the year 1921 Letters Patent (to be called for convenience the principal Letters

Patent) were issued by His Majesty, dated the 14th April, 1921, establishing in Malta a Legislature consisting of a Senate and Legislative Assembly to deal with local matters. The material section (section 41) conferring the legislative powers on the Senate and Legislative Assembly began in the following terms:—

> " It shall be lawful for Us and Our successors, by and with the advice and consent of the Senate and Legislative Assembly, subject to the provisions of these Our Letters Patent, to make Laws, to be entitled ' Acts,' for the peace, order and good government of Malta, with the following limitations, namely, that the said power to make Laws shall not extend to matters (hereinafter referred to as reserved matters) touching the public safety and defence of Our Empire and the general interests of Our subjects not resident in Malta, or touching the general interests of Our subjects resident in Malta and the preservation and continuance of peace, order, and good government therein in the event of such interests and such peace, order, and good government being endangered, or the carrying on of responsible government under these Our Letters Patent being prejudiced, by reason of any grave emergency which the Secretary of State shall be satisfied has arisen and continues to exist within the Island, and (without prejudice to such general limitation) shall not extend to the following matters in particular or any of them."

There followed a description of some 17 matters which were so reserved. They included merchant shipping, external trade, immigration, coinage, and the appointment and remuneration of Judges of the superior Courts and the removal of such Judges. Any law passed by the Legislature had to be presented for His Majesty's assent to the Governor, and express provisions were contained in relation to that assent and to the power of the Crown to disallow any law within one year from the date of the Governor's assent thereof. By section 68 there was reserved to the Crown " 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, and also sections 40, 56, 57, and 63 " of the Letters Patent as the Crown might think fit. And further there was reserved to the Crown by the section " full power and authority from time to time to amend section 41 so as to provide that the establishment, discipline, control and administration of the police or any particular matter relating to the subjects aforesaid or any of them," should be a reserved matter. Section 40 related to the matter of language; section 56 related to religious tolerance; section 57 (like section 40) to the matter of language; and section 63 to the payment out of the Consolidated Revenue Fund of Malta of the reserved Civil List (which provided for Imperial services and the judiciary). Except as above stated the Letters Patent did not contain any clause enabling the King to revoke or amend the same.

It should be noted that under section 41 the limitations on the power to make laws related to matters touching (amongst other things) the general interests of subjects resident in Malta, and to the carrying on of responsible

government under the Letters Patent in the event of such interests, and peace, order and good government being prejudiced by reason of any grave emergency which might exist in the Island; and that all provisions relating to "reserved matters" could be revoked, altered or amended. As regards the reservations, they were so extensive that the following description of them given in a work of high authority seems to be correct. "Malta, acquired by cession, was long governed under a Crown Colony regime, but in 1921 on the analogy of the new Indian Constitution a complex system of Dyarchy was introduced." (Anson's Law and Customs of the Constitution, 4th Edn., Keith, Vol. II, Part II, 74.)

Separate Letters Patent, also dated the 14th April, 1921, were issued constituting the office of Governor and Commander in Chief. These were amended by subsequent Letters Patent dated the 9th August, 1930. In that year the Crown acting under section 41 (above stated), and on the view of the Secretary of State that there was a grave emergency, suspended the full operation of the constitution. After an enquiry by a Royal Commission, and subject to certain alterations by Letters Patent not material to the present purpose, responsible government as regards local matters was restored by the Crown in 1932. Doubts as to the validity of certain Letters Patent relating to Malta, subsequent to those above referred to, were removed by the (Imperial) Act, 1932. These Letters Patent and the Malta (Temporary Government) Order in Council, 1930, were declared to have been validly passed and to have been within the powers reserved to His Majesty. If any vestige of doubt could have previously existed as to the validity of the principal Letters Patent, and in the view of their Lordships there was none, it was removed by this Act.

In the year 1933 it was again considered necessary by the Crown to suspend the Constitution of Malta, and the existing Ministers were removed from office by the Governor. Doubts seem to have arisen as to the validity of this proceeding, and the Malta (Letters Patent) Act of 1936 was passed and received the Royal Assent on the 14th July, 1936. By section 1 of this Act, it was provided as follows:—

> "The Malta Constitution Letters Patent, 1921, shall notwithstanding any limitation imposed by section 68 thereof, have effect as if there were thereby reserved to His Majesty full power to revoke or amend by any further Letters Patent any or all of the provisions of the Malta Constitution Letters Patent, 1921, as subsequently amended."

By the Letters Patent of the 12th August, 1936, His Majesty revoked the principal Letters Patent, and made provision for the government of Malta including the exercise of legislative powers by the Governor under section 15 thereof. The section is in these terms: "The Governor may make laws for the peace, order, and good government of Malta." By section 17, there was reserved to the Crown the (concurrent) right, with the advice of the Privy Council, from time to time to make laws for the

peace, order, and good government of Malta. The repeals included several Letters Patent which were revoked without prejudice to anything lawful done thereunder. The Letters Patent providing for the government of Malta and so repealed were the following:—

1. The Malta Constitution Letters Patent (the principal Letters Patent).

2. The Malta Constitution (Amendment) Letters Patent, 1933.

3. The Malta Constitution (Amendment) Letters Patent, 1934.

4. Letters Patent dated the 18th March, 1936.

Three Letters Patent constituting the office of Governor and Commander in Chief of Malta were also repealed, namely, Letters Patent respectively dated the 14th April, 1921, the 9th August, 1930, and the 16th August, 1934.

The Governor then purported by Ordinance 27 of 1936 to impose customs duties on certain foreign articles imported into Malta, and it is not disputed that that Ordinance was within the powers purported to be conferred on the Governor by the Letters Patent of the 12th August, 1936. It is, however, contended by the respondent that there was no power in the Crown on that date to provide by Orders in Council or by Letters Patent for the government of Malta, or to confer on the Governor any power of making laws, except it may be in respect of the matters reserved to the Crown under the express provisions of the principal Letters Patent. It is not in dispute that those Letters Patent were validly revoked under the express power of revocation resulting from the provision in section 1 of the Malta (Letters Patent) Act, 1936, and the effect of the contention of the respondent, if correct, is that since the 12th August, 1936, Malta has been devoid of any legislative body. The question how far and to what extent certain of the provisions of the Letters Patent of the 12th August, 1936 (on this hypothesis) may be valid, as having been issued under the powers reserved by the principal Letters Patent and by the Malta Constitution Act, 1932, has not been investigated before their Lordships.

The Judge in the First Hall (Dr. L. A. Camilleri) after a careful consideration of the arguments decided in favour of the appellants. He held, first that Malta must be regarded as a colony acquired by cession; secondly, that a ceded colony is by common law prerogative of the Crown subject to legislation by Order in Council or Letters Patent; thirdly, that the revocation of the principal Letters Patent of 1921 not being in dispute, the rights of the Crown as regards legislation reverted to the position which had existed immediately prior to the principal Letters Patent being issued; and fourthly, that as the result of the revocation the Royal Prerogative as regards legislation was fully restored and that the Letters Patent of the 12th August, 1936, were accordingly valid. The action was, therefore, dismissed with costs.

In the Court of Appeal a different view was taken. First, they were of opinion that Malta was not acquired by the Crown by cession, but by "compact" between the inhabitants and the Crown. Secondly, they held nevertheless that by "uniformity of usage" from 1836, if not before, the Crown had acquired the right of legislating for the inhabitants of Malta, and accordingly the contention that the Crown never had the right of legislating for Malta by Letters Patent prior to 1921 was rejected. Thirdly, they held on the authority of *Campbell* v. *Hall* (1774) (1 Cowper's Reports, 204) that by the grant of representative institutions by the principal Letters Patent, without reserving a power of revocation, the Royal Prerogative was irrevocably surrendered. Fourthly, that the revocation of the principal Letters by virtue of clause 1 of the Malta (Letters Patent) Act, 1936, was insufficient to restore the prerogative right to legislate, or to confer a new right, since that clause did not contain any words conferring a right to legislate after the revocation. Finally, the Court held that the Royal Prerogative which existed prior to 1921 having only been acquired as a title by usage, it "evidently lapsed with the enactment of autonomy and cannot be revived." The appeal was accordingly allowed and judgment was given in favour of the appellant. There was no order as to costs.

Before their Lordships the respondent not only supported the contentions on which the Court of Appeal decided the case, but further argued, (1) that the title of the Crown to Malta did not rest on cession, but "on the voluntary acceptance by the people of Malta (allied with the Crown against France which had acquired sovereign authority), of British protection, and later of formal sovereignty"; (2) that such an acquisition of sovereignty conferred on the Crown no constitutional authority to legislate or to impose taxation; (3) that the exercise of rights by the Crown involving power to legislate and tax was in law a mere usurpation; (4) that in any case the effect of the principal Letters Patent was to extinguish all legislative and taxation authority, except in regard to those matters specially reserved; and (5) that power to restore authority to the Crown in non-reserved matters could thereafter be granted only by Parliament.

It should be observed at the outset that the question as to the extent of the Royal Prerogative in the case under consideration is a pure question of English common law, upon which the principles of Roman law, which were invoked in the Court of Appeal, could have very little influence. The sovereignty of Malta admittedly passed to the Crown not later than the year 1813. It is material to consider the circumstances under which this event took place in order to determine the extent of the Royal Prerogative at that time. The Maltese people are not unnaturally proud of their early history and of the fact that the title of the Crown to Malta is, as has been truly said, "the very reverse of a right of conquest". It is not necessary to recapitulate the

known historical documents, which are set out in great detail in Hardman's History of Malta. It is sufficient to say that their Lordships for the present purpose are content to accept the elaborate statement of the position of Malta in the British Empire contained in the judgment of the Court of Appeal of Malta, delivered in the case of *Strickland* v. *Galea* on the 22nd June, 1935, and cited in the judgments of the Trial Judge and of the Court of Appeal in the present case. Whatever may have been the juridical position in the period prior to 1813, when Malta was successively in the possession of the Order of the Knights of St. John of Jerusalem, of the first French Republic (1798), of a number of victorious co-belligerents assisting the insurgent Maltese, of the King of the two Sicilies, of Great Britain (1801), of the Knights of St. John, and again of Great Britain, it is certain that in 1813 a decisive step was taken when Sir Thomas Maitland, on his arrival as Governor in Malta, published a Declaration in the name and on behalf of King George III to the effect that the King had determined " henceforth 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 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 ". It may be noted that the last sentence certainly gives no support to the view that there was a promise, still less " a pact ", which would involve the grant of representative institutions with substantial law-making powers to the Maltese people. It must be borne in mind that the population of the island was only that of a moderate town in England, that its size is about that of the Isle of Wight, and that its people, however brave, could not have hoped to resist without assistance the attack of a first-rate power. It is clear that as a whole they welcomed the Declaration, though at this date Great Britain was still engaged in a life and death struggle with Napoleon and the Battle of Leipzig had not yet been fought. A year later the Treaty of Paris (1814) was signed recognising the British claims as regards Malta, and that treaty was ratified by the Congress of Vienna in 1815. Ever since that time Malta has been occupied by British troops and there has been a Governor in control appointed from Great Britain. It has become a British fortress of great strategical importance, a station for troops, and a first-class harbour for naval and civil purposes. It seems to their Lordships that Counsel for the respondent was acting wisely when he admitted without hesitation that since 1813 the sovereignty of the island had been in the Crown, and when he said little or nothing in support of the contention set forth in the respondent's Case to the effect that the subsequent exercise of rights on behalf of the Crown was in law a usurpation.

What then was the true nature of the title of the Crown to the sovereignty of Malta? In answering this question it is important to bear in mind that we are considering a matter of substance rather than one of names or labels. The contention of the respondent on this part of the case is founded on the proposition that the prerogative of the Crown to legislate by Orders in Council and Letters Patent for the Government of a possession (using the word in the widest sense), is restricted to cases where the possession was acquired either by conquest or by cession, but the word cession is employed by the respondent in this connection in a limited sense so as to exclude a voluntary cession by the general consent of the people. This involves the division of ceded territories into two classes, those acquired by an act of cession from some sovereign power and those ceded by the general consent or desire of the inhabitants. Their Lordships must observe that there seems to be no authority in any case or recognised text-book on constitutional law for this distinction. The leading writers have always divided the possessions of the Crown outside the United Kingdom into those acquired by conquest, by cession, and by settlement. The statute law of this country has naturally been based on the same view. The British Settlement Act, 1887, section 6, defines "British Settlement" for the purposes of the Act as meaning "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 than by virtue of this Act or any Act repealed by this Act, of any British possession". The Foreign Jurisdiction Act, 1890, section 1, confers on the Crown in divers foreign countries jurisdiction in "the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory". It can with difficulty be supposed that the legislature in these uses of the word "cession" was employing it as referring only to a limited class of cessions. Moreover, the Act of 1887 (sections 2 and 5) empowered Her Majesty in Council in the widest terms to make laws and to make, alter, and revoke orders for the purposes of the Act in every settlement. If the contention as to the limited meaning of the word "cession" is correct, it would seem to follow that British possessions acquired by voluntary cession being therefore "British Settlements" are in several respects in a less advantageous position as between themselves and the Crown than possessions acquired by a formal cession from some independent sovereign with or without the consent of the people. It seems clear to their Lordships that in both these Acts the legislature is using the word "cession" as including cases of voluntary cession.

The text-books also use the word in the wider and general sense. The passage already cited from Anson (4th Edn., Keith, Vol. II, Pt. II, p. 74) is an example (see also Ibid. p. 64), and others could be found in the same work. It is needless to multiply instances, for until the present case

no one seems to have distinguished or divided cessions to the Crown in the way suggested. In Halsbury's Laws of England 2nd Edn., Vol. XI, tit. Dominions, Colonies and Possessions, p. 11, will be found a list of 18 possessions of the Crown acquired by cession, including cases of cession by tribal chiefs; and it is to be noted that the the learned author states that "Malta must be regarded as a cession." (See also Halsbury, 2nd Edn., Vol. VI, p. 477.)

It may be said with truth that cases of voluntary cession, that is, cession otherwise than from a Sovereign Power, are rare, and it is urged that the case has been neglected by text-book writers and not noticed by the Legislature. It seems right, therefore, to consider whether there is anything to support the respondent's contention on this point, based on the principle of constitutional law formulated in the general proposition that the Crown by virtue of the Royal Prerogative (apart from the effect of the British Settlements Act, 1887) is *prima facie* entitled to legislate for possessions acquired by conquest or cession, but is not so entitled in the case of settlements. The line of distinction here has always been based on the circumstance that English settlers wherever they went carried with them the principles of English law, and that English common law necessarily applied in so far as such laws were applicable to the conditions of the new colony. The Crown clearly had no prerogative right to legislate in such a case. Where, however, the territory was acquired by cession or conquest, more particularly where there was an existing system of law, it has always been considered that there was an absolute power in the Crown, so far as was consistent with the terms of cession (if it was a case of that kind), to alter the existing system of law, though until such interference the laws remained as they were before the territory was acquired by the Crown. (See Blackstone's Commentaries, 21st Edn., Vol. I, pp. 107, 108. It may be noted that the learned author refers to "conquered or ceded colonies" without any suggestion that the case of voluntary cession required separate consideration.) It seems to their Lordships to be reasonably plain that the principle which excluded cases of settlement from the Royal Prerogative has no application to cases where there has been a cession in the popular sense, whether with or without the assent of the inhabitants, and that there is no valid ground for the distinction suggested between the case of Malta and other cases of cession.

There remains, however, a second point which was strongly argued on behalf of the respondent. It may be stated as follows:—If the Crown by an exercise of Prerogative has conferred representative institutions on the inhabitants of a territory which has been acquired by the Crown without however reserving, in addition to a power of revoking the Letters Patent or the Order in Council, a power of resuming the Royal Prerogative of legislation, is it within the power of the Crown after the revocation to legislate for the territory? The contrary is contended on

behalf of the respondent. It is suggested as a general proposition that, whenever responsible government is conceded by the Crown to a colony or possession, the Royal Prerogative to legislate by Letters Patent or Orders in Council comes to an end and is irrevocably lost or surrendered by the Crown, unless a special reservation is made in the grant. It may be stated at once that there is no authority for this view, and that the statements in the text-books relied on in support of it are capable of a different meaning. The case relied on is the well-known decision of *Campbell* v. *Hall* (*supra*) where Lord Mansfield delivered the judgment, and this authority must now be considered. It related to the island of Grenada taken by the British arms in open war from the French king and surrendered upon capitulation. Letters Patent dated the 26th March, 1764, commissioned General Melville as Governor of Grenada. He was given power to set up a legislature as specified in a previous proclamation under the Great Seal dated the 7th October, 1763, whereby (*inter alia*) the King had empowered and directed the Government of Grenada by Letters Patent under the Great Seal to summon general assemblies of the representatives of the people of Grenada so soon as the circumstances of the colony would allow, and with their consent to make laws for the public peace, welfare, and good government of the colony and its inhabitants. There had also been a second proclamation of the 26th March, 1764, containing a recital of a survey of the islands and their division into allotments, as an invitation to purchasers to come in and take up properties on terms specified in the proclamation. After these three instruments had been published, namely, on the 20th July, 1764, Letters Patent were issued purporting to impose by virtue of the Royal Prerogative a duty of 4½ per cent. on all sugars exported from the island, in lieu of certain duties previously levied by the French King. The question was whether these Letters Patent were valid.

Lord Mansfield, in delivering judgment, said that upon full consideration the Court was of opinion that before the issue of 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. He then proceeded to consider the terms of the two proclamations and after this examination used these words (p. 213):—

> "We therefore think that by the two proclamations and the commission to Governor Melville, the King had immediately and irrevocably 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 legislature 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."

He added that "through the inattention of the King's servants, in inadverting the order in which the instruments should have passed" (that is, in issuing the Letters Patent of the 20th July, 1764, after the Proclamation instead of

before) " the last Act is contradictory to and a violation of the first, and is therefore void." It is plain that this authority is dealing only with a case where the Crown after having granted representative institutions to the colony was purporting to exercise by Royal Prerogative a concurrent right of legislation, though no such right had been reserved; and indeed Lord Mansfield found that there was language to be found in the Letters Patent confirming the Proclamations showing that no such concurrent power was being reserved.

It seems to their Lordships that this case in no way tends to support the respondent's present contention; and with all respect to the Court of Appeal they are unable to agree with their statement that it is an established constitutional principle based on *Campbell* v. *Hall* that the grant of representative institutions once made, the Crown is immediately and irrevocably deprived of its right to legislate by Letters Patent or Orders in Council, unless there is an express reservation of a right to that effect. The true proposition is that as a general rule such a grant without the reservation of a power of concurrent legislation precludes the exercise of the prerogative while the legislative institutions continue to exist. Nor is it in doubt that a power of revoking the grant must be reserved or it will not exist. The statements made in the text-books based on the authority of *Campbell* v. *Hall,* properly understood, do not go beyond the decision, since they are not dealing with the hypothesis that the grant of representative institutions has been lawfully revoked.

The Court of Appeal, however, lays stress upon an argument based upon what they call " the general and constant rule followed in the issue of instruments granting representative government to colonies and other possessions whenever it is meant to preserve the Royal Prerogative." There are, it is said, two reservations, one, a reservation of full power to make laws as may seem necessary and so that such laws shall be of the same force and effect as if the grant has not been made, and, two, a power to revoke, alter, or amend the grant. It is desirable to set out an example of the usual form of such reservations, taking it from the Malta Letters Patent of 1903:—

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

There can be no doubt as to the meaning and effect of the second reservation. The Crown by virtue of it can curtail or extend the powers of the legislative body entrusted with law-making or administrative duties by the instrument in which the reservation is found. Since all such powers could be annulled, it is clear that there is no limit to the

right of curtailing or extending the powers; and in effect this preserves the prerogative of making laws by alteration or amendment of the Letters Patent while they are still, at least to some extent, in force. If once they are revoked it is urged that the Crown no longer has any right to make laws for the possession in question, unless the first reservation has been inserted as well as the second. It seems to their Lordships that this is a misapprehension as to the object of the first reservation. It is not dealing mainly, if at all, with the reservation of a prerogative right after the Letters Patent have been revoked, but with the reservation of a concurrent right from the start to legislate for the peace, order, and good government of the possession while the Letters Patent are in full force. This is plain from the context and from the phrase that the laws so made shall be of the same force " as if these Letters Patent had not been made ". It may be added that there is a cogent reason for holding that the reservation has no application to the case where there has been a complete revocation of the Letters Patent because that would appear to postulate a reliance on a clause contained in the instrument after the instrument itself had been annulled.

Their Lordships for these reasons have come to the conclusion that neither the authority of *Campbell* v. *Hall,* nor the text-books on constitutional law, nor the argument based on the forms in use by the Crown in granting representative government to colonies and other possessions, can be relied on as tending to establish the proposition that after the revocation of the principal Letters Patent on the 12th August, 1936, the Crown was divested of all legislative authority in regard to Malta, except perhaps in regard to matters expressly reserved by the principal Letters Patent. The problem which arises is to be solved by a consideration of the surrounding circumstances, some of them special to Malta as a fortress, by a careful examination of the nature of the matters which were entrusted in 1921 to the Senate and Legislative Assembly of Malta, and of those matters which were reserved to the Crown as touching the public safety and defence of the Empire, and the general interests of the King's subjects visiting or resident in Malta, and by asking the question whether it should be inferred that, if the Letters Patent were revoked, the inhabitants of Malta were to be left without a legislature and without means of raising a revenue for essential local purposes unless and until Imperial Parliament should intervene. There might be matters urgently calling for the local administration of a Governor long before an Act of Parliament could be passed. Above all it seems very unlikely that on instituting a complex system of dyarchy by Letters Patent it could have been intended that if that part of the law-making and administrative power which was being confided to a representative body came to an end, the Crown would be left in the enjoyment of truncated and mutilated powers and with no means of providing for the peace, order, and good government of Malta.

For these reasons their Lordships have come to the conclusion that there is no valid ground, either on principle or authority, for holding that the Royal Prerogative had been so far extinguished, when the principal Letters Patent were issued in 1921, that after they were revoked the Prerogative did not exist. The right to legislate in relation to local matters was doubtless suspended while the Letters Patent were in force for the reason indicated by Lord Mansfield in the passage already quoted, namely, that so to legislate would be " contradictory to and a violation " of the instrument granting the powers; but there is nothing in it to preclude the exercise of the Royal Prerogative as soon as the Letters Patent in that respect cease to be in force..

It is proper to add that their Lordships have considered the effect of the British Settlements Act, 1887, but, for the reasons given, there seems to be no good ground for holding that Malta has not been acquired " by cession or conquest "; and Malta is therefore not within the definition of British Settlement contained in section 6 of that Act.

On the grounds above stated their Lordships thought it right humbly to advise His Majesty to allow the appeal and to restore the order of the learned Judge in the First Hall. They also followed the course as to costs adopted by the Court of Appeal and for like reasons they made no order as to the costs of the appeal.

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In the Privy Council

EDGAR SAMMUT AND ANOTHER

v.

STRICKLAND

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