

85, 1948

In the Privy Council.

On Appeal from the Court of Appeal,

Malta.

BETWEEN

ANTONIO BUTTIGIEG for the firm
"MESSRS. BUTTIGIEG BROS. & Co."

Appellant (Plaintiff).

AND

INEZ wife of ANTHONY FALZON, CARMELINA wife
of JOSEPH SALIBA, both with the assistance of their
respective husband, and JOSEPH QUINTANO
as legitimate heirs to the estate of their
parents SALVATORE AND GIUSEP-
PINA QUINTANO.

Respondents (Defendants).

RECORD OF PROCEEDINGS

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RECORD OF PROCEEDINGS

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In the Privy Council.

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BETWEEN

ANTONIO BUTTIGIEG for the firm
"MESSRS. BUTTIGIEG BROS. & Co."

Appellant (Plaintiff).

AND

INEZ wife of ANTHONY FALZON, CARMELINA wife
of JOSEPH SALIBA, both with the assistance of their
respective husband, and JOSEPH QUINTANO
as legitimate heirs to the estate of their
parents SALVATORE AND GIUSEP-
PINA QUINTANO.

Respondents (Defendants).

RECORD OF PROCEEDINGS

No. 1.

Writ of Summons

No. 1.
Writ of
Summons

In His Majesty's Commercial Court

GEORGE VI

By the Grace of God, of Great Britain,
Ireland and the British Dominions Beyond
the Seas KING, Defender of the Faith
etc. etc. etc.

To the Marshal of Our Superior Courts.

By Our command and at the suit of Antonio Buttigieg for the firm "Messrs. Buttigieg Bros. & Co." — YOU SHALL SUMMON — Inez, wife of Anthony Falzon, Carmelina wife of Joseph Saliba, both with the assistance of their respective husband, and Joseph Quintano, as legitimate heirs to the estate of their parents Salvatore and Giuseppina Quintano, to appear before Our said Court at the sitting of the 23rd January, 1945 at 9 a.m.

No. 1.
Writ of
Summons
—Continued.

And there — whereas the Defendants in virtue of a contract published by Notary Paul Pellegrini Petit on the 18th January, 1944 (Exhibit A), ceded, conveyed and transferred to the Plaintiff **nomine** a moiety of the concern, goodwill and right of tenancy of the “PALAIS DES DANSES” at No. 34 Strait Street, Valletta, including all rights, licences and permits relative and inherent to the same concern, for the price of Seven Hundred Pounds sterling (£700) and under the express condition, amongst others, that should the Police not approve the transfer in favour of Plaintiff **nomine** of the permit for the holding of public dances, which the Police had granted to Carmelo Bonavia and Salvatore Quintano, the latter of whom Defendants succeeded, the aforesaid conveyance should be rescinded and be of no further effect;

10

And whereas in virtue of the judgment delivered by the First Hall of His Majesty’s Civil Court on the 25th November, 1944, in the action “Carmelo Bonavia **et versus** Advocate Enrico Borg Olivier, **nomine et**”, it was ruled that Defendants did not hold the right of tenancy of the premises aforementioned, and, therefore, the Police are unable to transfer the permit aforesaid to Plaintiff firm; —

20

All necessary declarations being prefaced and all relevant orders being made, — to shew cause why it should not be ruled by this Court that the aforesaid contract of conveyance in the acts of Notary Paul Pellegrini Petit of the 18th January, 1944, be rescinded and declared of no further effect; and accordingly, why the Defendants should not be held responsible for the damages which the Plaintiff has borne or may bear in consequence of the contract aforesaid — such damages to be assessed in this or in another separate action.

30

With Costs, including those of the judicial letter of the 7th December, 1944.

You shall summon the Defendants to appear in person so that a reference to their oath may be made.

You shall further give due notice to the Defendants that should they intend to contest Plaintiff’s claims, they are, at least two working days before the day of hearing of the cause, to file their pleadings according to law, and that, should they fail to plead within the above specified time and to enter an appearance on the day and at the place and hour aforementioned, this, Our Court, shall proceed to deliver its judgment according to law on the request of the aforesaid Plaintiff **nomine** on that same day or on any other day as shall be ordered by this Court.

40

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

No. 1.
Writ of
Summons
—Continued.

Given by Our aforesaid Commercial Court, witness Our faithful and well-beloved the Hon. Justice S. Schembri, Doctor of Laws, Judge of Our said Court,

This Twenteight (28th) day of December, 1944.

(signed) S. SCHEMBRI.

10

No. 2.

Plaintiff's Declaration according to law.

No. 2.
Plaintiff's
Declaration
according to law.

The Plaintiff respectfully states:—

In virtue of a contract published by Notary Paul Pellegrini Petit on the 18th January, 1944, (Exhibit A) Plaintiff firm bought and acquired from the Defendants a moiety of the concern, goodwill and tenancy of the "PALAIS DES DANSES" at No. 34 Strait Street, Valletta, together with all rights, licences and permits relative thereto, for the price of Seven Hundred Pounds sterling (£700), under the express condition, amongst others, that, should the permit for the holding of public dances not be transferred by the Police to the Plaintiff **nomine**, the contract aforesaid shall be rescinded and of no further value.

The First Hall of His Majesty's Civil Court, delivering judgment in the cause "Carmelo Bonavia **et — versus —** Advocate Enrico Borg Olivier **nomine et**" on the 25th November, 1944, held that the Defendants had forfeited the right of tenancy of the premises aforementioned, and the Police are therefore unable to transfer the aforesaid permit to the Plaintiff.

Defendants were vainly enjoined upon in a judicial letter dated 7th December, 1944, to rescind the contract aforementioned.

(signed) F. CREMONA, Advocate.

GIUS. PACE BONELLO, L.P.

No. 2.
Plaintiff's
Declaration
according to law.
—Continued.

WITNESSES:—

The Plaintiff to confirm this statement.

Gius. Pace Bonello, L.P., to corroborate Plaintiff's evidence.

The Defendants for a reference to their oath.

The Police Officer in charge of the transfer of licences to state that the transfer of the permit cannot be effected to Plaintiff **nomine**.

(signed) F. CREMONA, Advocate.

GIUS. PACE BONELLO, L.P. 10

No. 3.
Minute of the
Documents
produced by the
Plaintiff nomine,
with the Writ
of Summons

No. 3.

**Minute of the Documents produced by the Plaintiff nomine,
with the Writ of Summons.**

EXHIBIT A. Legal Copy of the contract of the 18th January, 1944, mentioned in the Summons.

Plaintiff makes reference to the record of the cause "Carmelo Bonavia **et—versus** — Advocate Enrico Borg Olivier nomine et" determined by the First Hall of His Majesty's Civil Court on the 25th November, 1944.

(signed) F. CREMONA, Advocate. 20

GIUS. PACE BONELLO, L.P.

No. 4.
Statement of
Defence.

No. 4.

Statement of Defence.

The Defendants respectfully submit that Plaintiff's claims are inadmissible in fact and at law.

(signed) DUNSTAN G. BELLANTI, Advocate.

No. 5.**Defendants' Declaration according to law.**

No. 5.
Defendants'
Declaration
according to law.

The Defendants respectfully submit:—

The cession in the acts of Notary Paul Pellegrini Petit of the 18th January, 1944, was "substantially" of the moiety of the permit for the holding of public dances; and the resolute condition contained in that contract was limited exclusively to the transfer of this permit to the name of Plaintiff firm.

10 It was immaterial whether this permit would be availed of — as heretofore — at 34 Strait Street, Valletta, or on other premises chosen by Plaintiff firm and by the owner of the other moiety of the same permit — Carmelo Bonavia: the whole substance of the cession lay subject to one condition — the transfer of this permit to the name of Plaintiff firm; and that transfer took place and was effected by the Police, as Plaintiff Antonio Buttigieg has long since known.

30 The aforesaid Buttigieg and his legal adviser, Giuseppe Pace Bonello, L.P., knew before the cession was concluded that there lay a doubt upon the existence of the right of tenancy: accordingly the cession was couched in the terms shown in the notarial instrument to deprive the Plaintiff firm from any means to seek its rescission. The Defendants and their legal adviser had given to the Plaintiff and his legal adviser to understand so clearly that the right of tenancy was doubtful, that Antonio Buttigieg himself — before the publication of the contract aforementioned — said: "I shall go into litigation on it at my expense" Although in that law-suit the Defendants associated themselves with Plaintiff firm, the
20 least they expected was that Plaintiff firm would now repay them in this manner because that law-suit was instituted in the exclusive interest of Plaintiff firm and of Carmelo Bonavia.

40 Plaintiff firm was so cognizant of the fact that the aforementioned permit had been transferred to its name, and therefore that the contract in respect of the Defendants had become absolute, that the Plaintiff Antonio Buttigieg and the aforementioned Carmelo Bonavia on the 3rd February, 1944, signed a private agreement, copy whereof is hereto attached (Exhibit A). This agreement clearly shows not only that this permit had already been transferred in the name of Arthur Buttigieg but also that the business of the concern in question could be carried on in other premises.

No. 5.
Declaration
according to law.
—Continued.

That the Police are unable to transfer the aforesaid permit in favour of Plaintiff firm is sheer imagination, because the transfer has already been effected, and all that the Police require is to know where that permit shall be used.

(signed) DUNSTAN G. BELLANTI, Advocate.

WITNESSES:—

1. The Defendants to confirm their statement.
2. Plaintiff Antonio Buttigieg to state what he knows of the facts submitted above by the Defendants.
3. Giuseppe Pace Bonello, L.P., for the same purpose. 10
4. Advocate Dunstan George Bellanti, for the same purpose.
5. Carmelo Bonavia to state what agreements he entered into with Plaintiff firm.
6. Superintendent of Police William H. Tabone to state what he knows about the permit.
7. P.S. 530 Attard, i/c licences, for the same purpose and other witnesses if necessary.

(signed) DUNSTAN G. BELLANTI, Advocate.

No. 6.
Sworn evidence
of the Plaintiff.
Cross-
examination

No. 6.

20

Sworn evidence of the Plaintiff.

The 23rd January, 1945.

The Plaintiff, at his own request, states on oath:—

I was transacting with the defendants the purchase of the moiety of the permit of the "PALAIS DES DANSES", that is to say the permit to hold public dances, and the Defendants had asked for about Six hundred pounds (£600), and I had offered either Three Hundred and Fifty pounds, or Three Hundred pounds, I do not remember well how much. Later I spoke to Mr. Pace Bonello L.P., who assured me that the permit without the premises was of no value. Mr. Pace Bonello began to transact the matter himself on my behalf with the Defendants, and the conclusion arrived at was that the Defendants were to sell to us a moiety of their rights of tenancy, goodwill and licence; and they at first asked for Nine hundred pounds, and later on the sum of Seven hundred

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pounds was agreed upon. The contract was executed and Mr. Pace Bonello appeared thereon on my behalf. The transfer (of the licence) has not yet been effected. A Judgment of the First Hall of the Civil Court had been delivered to the effect that the lease of the premises had expired owing to the demolition of the premises through enemy action. The owners of the premises have also had a protest served on the Commissioner of Police to the sense that he should not issue the permit pending the decision of the present action.

No. 6.
Sworn evidence
of the Plaintiff.
Cross-
examination
—Continued.

10

Cross-examination.

To the question put to me by Defendants' Counsel whether I had been informed by him or by the Defendants that the right of tenancy was doubtful, as an action was pending, I reply in the negative; on the other hand the Defendants insisted that they had the right of tenancy. I did not tell Dr. Bellanti that in case the right of tenancy was lost it did not matter to me, as I would transfer the permit to other premises. I am seeing the agreement at page 15 of the Record but I cannot state whether I signed that agreement once that my signature is not there; I do not remember having signed an agreement concerning this permit. As however it was considered that about two years would be required to have the premises repaired, my partner Bonavia and I formed the idea of using this licence in other premises, as I have other premises where I could have made use of this permit.

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No. 7.

Sworn evidence of Legal Procurator Giuseppe Pace Bonello.

The 23rd January, 1945.

No. 7.
Sworn evidence
of Legal
Procurator
Giuseppe Pace
Bonello.

Giuseppe Pace Bonello, Legal Procurator, at the request of the Defendants, states, on oath:—

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I had appeared on behalf of the Plaintiff on the deed of assignment. I had advised the Plaintiff not to buy the Police permit by itself unless a cession of the right of tenancy were made to him as well, as the permit by itself had no value. Afterwards, on behalf of the Plaintiff, I met Dr. Bellanti and an agreement was reached, and Dr. Bellanti drafted the deed. I insisted that the other partner Bonavia should accept the Plaintiff as buyer and Dr. Bellanti produced the agreement which is exhibited whereby Bonavia gave his consent accordingly.

40

No. 7.
Sworn evidence
of Legal
Procurator
Giuseppe Pace
Bonello.
—Continued.

Cross-examination.

It is not true that I had been told that the right of tenancy was doubtful; on the other hand either Falzon or Quintano said that they claimed to have the right of tenancy, and added that they had approached Dr. Enrico Borg Olivier, who represented some of the interested parties in the ownership of the premises in question, Dr. Borg Olivier had told them not to pay rent for the present. Either before or after the publication of the deed Dr. Bellanti and I went to Dr. Borg Olivier and to Marquis Apap Bologna on the question of the tenancy. Dr. Borg Olivier sent us to Marquis Apap Bologna and the latter told us that the matter concerned his mother but not him assuring me that he would send me a reply, which he did not. It is true that I told Dr. Bellanti that Antonio Buttigieg was mad to buy the moiety of the permit without his having acquired the right of tenancy; and on my advice, afterwards, the transfer of the right of tenancy as well was effected.

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No. 8.
Sworn evidence
of the
Defendant
Anthony Falzon.

No. 8.

Sworn evidence of the Defendant Anthony Falzon.

The 23rd January, 1945.

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The Defendant Anthony Falzon at his own request states on oath:—

The Plaintiff came to me often and he began to transact with me the transfer of the permit of the "PALAIS DES DANSES", that is to say the permit to hold dances. I used to tell him that I had to consult the other owners. On one occasion I said to the Plaintiff: "How do you want to use the premises if it is demolished?" He answered me that he had other premises wherein he could hold dances. On another occasion I met Plaintiff, who asked me: "What are we going to do about the matter?" I answered that I had other offers, and told him to submit a tender. He told me that he was ready to give me either Fifty pounds or One Hundred pounds — I do not remember which of the two — above other tenders. Subsequently we agreed upon the price for the transfer of the permit, but later on he asked for the transfer of the right of tenancy as well. I told him that the right of tenancy was doubtful, but he replied that a room (of the premises) appeared to be still existing, and he added that he was ready to bring a law-suit, and I replied that we did not want to incur

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expenses. He told me that he would bear the costs of the law-suit. The price of the transfer of the moiety of the permit was about Five Hundred and Fifty pounds (£550); when we included the right of tenancy, we agreed upon Seven Hundred pounds (£700), including the transfer of a moiety of the claim filed with the War Damage Commission, our share of which was Four Hundred pounds (£400). It was agreed in the deed that the price was to be retained by me until the actual transfer of the Police permit. The request to the Police

10 authorities was made, and on one occasion Sergeant Attard informed me on the telephone that the transfer had been approved. As I was responsible for the sharing of the price (between the owners) I wanted to make sure of the transfer of the permit, and I sent Saliba, husband of my wife's sister, in order that Sergeant Attard might confirm to him that the transfer had been effected; and, as Saliba informed me, Sergeant Attard informed him that the transfer had been approved. Subsequently I had an opportunity to speak with Sergeant Attard, who informed me that the transfer had been

20 approved and that the Plaintiff had been informed accordingly. I produce a copy of a letter sent by the heirs of Quintano and signed also by Bonavia and by Plaintiff's brother Arthur. When the deed was being drafted we were still negotiating about the price; we had asked for Eight Hundred pounds (£800) and subsequently the sum of Seven Hundred pounds (£700) was agreed upon. Legal Procurator Pace Bonello said: "The price has been raised from Five hundred pounds (£500) to Seven hundred pounds (£700) when the right of tenancy is still uncertain." He added that the plaintiff was mad

30 to buy and bid such a price when the right of tenancy was uncertain.

Read over to the witness.

(signed) ANTHONY FALZON
J. DINGLI,
Deputy Registrar.

No. 9.

Sworn evidence of the Defendant Joseph Quintano.

The Defendant Joseph Quintano at his own request states on oath:—

40 I have heard Defendant Antonio Falzon, my sister's husband, giving evidence. At the time the contract was being drawn up mention was made of the right of tenancy; before

No. 8.
Sworn evidence
of the
Defendant
Anthony Falzon.
—Continued.

No. 9.
Sworn evidence
of the
Defendant
Joseph Quintano

No. 9.
Sworn evidence
of the Defendant
Joseph Quintano.
—Continued.

the drawing up of the deed we had arrived to a sort of agreement for £550. Our idea was limited to the transfer of the permit, Mr. Pace Bonello, however, wanted to include the right of tenancy, and the claim against the War Damage Commission, and we subsequently agreed on £700. The conveyance had to include all the interests we had as a whole. The right of tenancy was mentioned as a thing which was uncertain. When I gave evidence before the First Hall of His Majesty's Civil Court in the other suit, Mr. Pace Bonello told me that if that suit were lost we would have to refund the price and I replied that he was joking, as we had agreed upon the transaction as a "universum jus".

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Cross-Examination.

Before holding with Plaintiff the conversation I have mentioned, we never spoke (**sic**).

Read over to witness.

(signed) J. QUINTANO
J. DINGLI,
Deputy Registrar.

No. 10.

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No. 10.
Sworn evidence
of the Defendant
Joseph Saliba.

Sworn evidence of the Defendant Joseph Saliba.

The Defendant Saliba at his own request states on oath:—

On one occasion I spoke to the Plaintiff when we were still transacting the matter, and he told me that he had an opportunity to use the permit in several premises. A short time after, Bonavia and I met the Plaintiff and he showed us the premises he was repairing in front of the "Monico" and the Plaintiff told Bonavia that those premises were as suitable as the "Palais des Danses". While the Plaintiff was remarking that the "Palais des Danses" had a large Dance Hall, Bonavia observed: "This place is as good as the "Palais des Danses"." Falzon used to say that he was dealing with the Plaintiff. When the contract was being published mention was made of the fact that the right of tenancy was uncertain. When the contract was published and the price was fixed the Plaintiff accepted it, and he also accepted that the right of tenancy was

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uncertain. I also called on the Police Sergeant who is in charge of Licences, who informed me that the transfer of the permit had been approved. I requested him to show us, for my information, some document confirming his statement, and he replied that he could not show it to us as it was a "file", and that he could only tell us the number of the file. I wished to ascertain this fact as Falzon had the money in his possession and had told me that Plaintiff had remarked to him that he had acted wrongly in cashing the cheque. Falzon had told me that he had told plaintiff that once the transfer of the permit had been approved, he could distribute the money, and that if he had any remark to make, he should communicate with our lawyer.

No. 10,
Sworn evidence
of the Defendant
Joseph Saliba.
—Continued.

Read over to the witness.

(signed) J. SALIBA
J. DINGLI,
Deputy Registrar.

No. 11.

Sworn evidence of Superintendent of Police William Tabone

No. 11.
Sworn evidence
of Superintendent
of Police
William Tabone

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The 16th March, 1945.

Superintendent of Police William Tabone, produced by Plaintiff, states on oath:—

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The Palais ds Danses, No. 34 Strait Street, Valletta, was licenced as a Dance Hall. These licences, of which only four exist in Valletta, did not continue to be operative as from 1940 on account of the curfew order. The licence I have mentioned was in the name of Salvatore Quintano, deceased, and of Carmel Bonavia. During the year 1941 the Palais des Danses was hit and damaged extensively. These licences remained in abeyance.

On the 18th January, 1944, the heirs of Salvatore Quintano, and Carmel Bonavia filed an application for the transfer of this licence for a Dance Hall in the name of Arturo Buttigieg. The application was signed by Carmelo Bonavia as co-licencee, Inez Falzon, Carmelina Saliba, Anthony Falzon, J. Saliba and Joseph Quintano. This application was attended to in the usual way. On the 28th March, 1944, the transfer from the name of the applicants to Arturo Buttigieg was

No. 11.
Sworn evidence
of Superintendent
of Police
William Tabone
—Continued.

authorized by the Commissioner. On the 10th April, 1944, however, on the same file of the application the Commissioner ordered that the neighbours' consent be produced. While this was being done, protests against this transfer were entered by the owner of the premises of the Palais des Danses, as the owner is a "neighbour" as well and consequently his signature was also required as he is the owner of the premises at No. 29 Strait Street, which, as I presume, is unoccupied. The case was referred to the Board under Article 106 of the Police Laws, and the Board ruled that it could not take further cognizance of the matter before the premises were reconstructed. 10

The reason wherefor the Police authorities did not require the neighbours' consent at the beginning was exactly because the licence could not have been used as the place was demolished, and consequently there could have been no reason to require the neighbours' consent.

The transfer authorized by the Commissioner could not have been used in the sense that such licence could have been used not only in those premiss but also in others, as an application of such licence would require first the consent of the neighbours and also the authorization of the Medical and Health Department. Consequently the Commissioner's authorization may be considered as a **nominal transfer** and not as a real transfer. In order that any transfer of a licence be effective, it is necessary that that same licence be altered in favour of the **transferee**, or that a new licence be issued. 20

During the war we adopted a provisional procedure as there were many demolished premises, and we effected nominal transfers of licences in demolished premises, and by this I mean that we reverted to the ordinary procedure when such premises were reconstructed. 30

Cross-Examination.

My Sergeant told me that the applicants used to ask him about the transfer of the licence and that when the transfer had been authorized by the Commissioner he had informed them accordingly.

(signed) J. DINGLI,

Deputy Registrar.

No. 12.**Sworn evidence of Police Sergeant Anthony Attard.**

No. 12
Sworn evidence
of Police
Sergeant
Anthony Attard.

The 16th March, 1945.

P.S. 530 Anthony Attard, produced by the Defendants, states on oath:—

When the transfer of the licence in question had been authorized by the Commissioner I informed both parties and I informed both Plaintiff and his brother Arturo.

(signed) J. DINGLI,

10

Deputy Registrar.

No. 13.**Sworn evidence of Carmelo Bonavia.**

No. 13.
Sworn evidence
of Carmelo
Bonavia.

The 16th March, 1945.

Carmelo Bonavia, son of the late Carmelo, produced by the Defendants, states on oath:—

I am the owner of the moiety of the concern "Palais des Danses", and consequently I own the moiety of the licence. I know that the Plaintiff has bought this concern. After the contract had been signed by the contending parties, the Plaintiff informed me that he had to look for other premises whereto he could transfer the licence, of the Palais des Danses when the war would be over. At that time the transfer of the licence in favour of the Plaintiff had been already authorized by the Commissioner of Police. We had drafted an agreement, as, however, this agreement contained a clause whereby the Plaintiff had to seek other premises, the Plaintiff refused to sign it, as he said he had other premises in hand wherein he could make use of the licence.

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Cross-Examination.

I knew that the transfer had been authorized because the Sergeant had informed me accordingly.

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(signed) J. DINGLI,

Deputy Registrar.

No. 14.
Sworn evidence
of Legal
Procurator
Giuseppe Pace
Bonello.

No. 14.**Sworn Evidence of Legal Procurator Giuseppe Pace Bonello.**

The 12th April, 1945.

Legal Procurator Giuseppe Pace Bonello, produced by the Plaintiff, states on oath:—

In my previous evidence I stated that I was not sure whether Dr. Bellanti and myself had called on Marquis Apap Bologna before or after the contract had been executed. I am sure, however, that it was after, because Marquis Apap Bologna asked whom we represented and we replied that Dr. Bellanti represented the tenants and I represented the assignees. 10

Cross-Examination.

The costs of the inspection held in “*faciem loci*” in the suit before the First Hall of His Majesty’s Civil Court were paid by me on behalf of the Plaintiff, who was one of the Plaintiffs in that action as well.

(signed) J. DINGI,
Deputy Registrar.

No. 15.
Sworn evidence
of Dr. Dunstan
Bellanti.

No. 15.

20

Sworn evidence of Dr. Dunstan G. Bellanti.

The 12th April, 1945.

Dr. Dunstan Bellanti, produced by the Defendants, states on oath:—

About the end of the year 1943, or the first days of 1944, I received a telephone call from Anthony Falzon who informed me that he was transacting with the Plaintiff the assignment of the permit to hold dances at the Palais des Danses; he informed me, however, that the Defendants were asking the price of Seven Hundred pounds (£700) for this permit, while the Plaintiff had only offered a sum in the neighbourhood of Five Hundred pounds (£500). In fact, few days after, the same Falzon telephoned to me that the preliminary discussions had been laid in abeyance owing to this reason. 30

Subsequently he again rang me up and told me that the transaction had been concluded for the aforementioned sum of Seven Hundred pounds (£700), on condition, however, that the assignment would be extended to all the rights including Defendants' claim against the War Damage Commission and including the right of tenancy of the Palais des Danses situate at Strait Street, Valletta. The Defendants then called on me in order that I might advise them as to the form which the said assignment had to assume.

No. 15.
Sworn evidence
of Dr. Dunstan
Bellanti.
—Continued.

10 During that interview I had with the Defendants I noticed that their right of tenancy, even if it still existed, was in my opinion very uncertain, and I consequently told them that it was fair that they should inform Plaintiff from that very same moment that the said right of tenancy if still existing, was in my opinion as their legal adviser definitely uncertain.

I cannot say whether the Defendants informed the Plaintiff of my advice, I know, however, that before the deed of assignment was executed I had at least one interview with the Plaintiff. In this interview I explained to him most clearly
20 that the right of tenancy was being included among the other rights which were being assigned only "**pro forma**". I did not actually use the words "**pro forma**", but I explained to him that we were including the right of tenancy to bring in all rights notwithstanding that it could be non-existent or uncertain. Notwithstanding all this the Plaintiff still insisted that the transaction should be concluded, for all he wanted was the transfer of Defendants' rights on the permit to hold dances. In view of this insistence on the part of the Plaintiff I began to ask him about his particulars, but he told me that it
30 was his legal adviser. Legal Procurator Giuseppe Pace Bonello who would eventually appear as assignee on the contract of transfer, and I think, but I am not sure, that he requested me that the draft deed of the transfer should be drawn up by his legal adviser and me.

In fact the 18th of January, 1944, was fixed for the execution of this deed, which took place in the late after-noon of that day. A few hours before Legal Procurator Pace Bonello called on me and we began to prepare the draft deed. In the course of the conversation which took place between us while
40 we were preparing the draft Legal Procurator Pace Bonello said to me these words "My client is mad to spend this money on a piece of paper". He added that once his client was insisting for the transfer notwithstanding his opinion to the contrary, there was nothing else to do, and the contract was executed as it now stands.

No. 15.
Sworn evidence
of Dr. Dunstan
Bellanti.
—Continued.

I do not know on which occasion the Plaintiff, with reference to the right of tenancy, said that it was his intention to institute a law-suit at his own expense in order to ascertain whether the lease of the premises still existed or not, because he said that if the permit to hold dances could not be used at the Palais des Danses he could use it elsewhere.

Subsequently Legal Procurator Pace Bonello and myself called on Marquis Apap Bologna. Before going to him I had written to Marquis Apap Bologna as he had from the outset refused to recognize this right, and we went to try to persuade him. On that occasion as well Marquis Apap Bologna would not acknowledge this right of tenancy. 10

Some time after a suit was instituted against Marquis Apap Bologna and the other owners, and previously Legal Procurator Pace Bonello had informed me that I had to appear in the interest of the assignors, if I am not precise, at least this was the understanding.

Cross-Examination.

I do not remember that besides the interview I had with Legal Procurator Pace Bonello to draw up the deed, there was another interview, and that Legal Procurator Pace Bonello had insisted that the right of tenancy would be included as well in the contract and that Falzon was present as well, and the latter said that in that case the price would be higher and that he wished to consult the others, and nothing was concluded on that day. I do not even remember that two notaries were mentioned. It is possible that during the conversation I had with Legal Procurator Pace Bonello on the telephone mention was made of the notary, not, however, during our interview. My idea is that I have had only one interview with Legal Procurator Pace Bonello. I myself had informed the Notary to come to my house at 5.30 p.m., and I dictated to him the deed. It is possible that he had drafted the deed and that the notary read it out. 20 30

Between Legal Procurator Pace Bonello and myself the question of the right of tenancy was never raised. I do not remember having previously given Legal Procurator Pace Bonello a draft of the deed wherein no mention had been made of the right of tenancy and that a correction had been made by Legal Procurator Pace Bonello whereby the right of tenancy was added. 40

The price had been determined some days before, and it had been determined by the parties not in my presence.

I have no idea that when we met in my house a telephone call was made to Buttigieg about the price. I am now remembering that my clients arrived at 5.30 p.m. along with Notary Pellegrini.

No. 15
Sworn evidence
of Dr. Dunstan
Bellanti.
—Continued.

(signed) J. DINGLI,

Deputy Registrar.

No. 16.

Minute of the Defendants.

No. 16.
Minute of the
Defendants.

10 The Defendants respectfully file a copy of a letter (Exhibit "A") sent by the legal advisers of the contending parties on the 17th of April, 1945.

(signed) DUNSTAN G. BELLANTI, Advocate.

This, 24th day of April, 1945.

Filed at the sitting by Dr. D. G. Bellanti with one exhibit.

(signed) J. CAMILLERI CACOPARDO,
Deputy Registrar.

No. 17.

Sworn evidence of Notary Pellegrini Petit.

No. 17.
Sworn evidence
of Notary
Pellegrini Petit.

The 11th May, 1945.

20 Notary Paul Pellegrini Petit, produced by the Plaintiff, states on oath:—

I remember the deed published by me whereof a copy is filed in the Record. I was instructed by Dr. Bellanti and it was published in his office. He had informed me before but he had not handed me the draft for perusal. I found the draft already prepared. In my presence there were no discussions between Dr. Bellanti and Legal Procurator Pace Bonello other than about the capacity in which the latter was appearing on the deed. No other matter was discussed in my presence as far
30 as I remember.

Cross-Examination.

My clerk Francis Pace accompanied me.

(signed) J. DINGLI,

Deputy Registrar.

No. 18.
Sworn evidence
of the Defendant
Anthony Falzon.

No. 18.**Sworn evidence of Defendant Anthony Falzon.**

The 11th May, 1945.

The Defendant Anthony Falzon, states on oath:—

At the time the contract was published the price of £700 was paid to me by a cheque drawn on the Bank Tagliaferro and payable to me. I cashed the cheque about two days later and I deposited the amount in my current account. Subsequently I received a telephone call from the Plaintiff who asked me: "How did you cash the cheque?" I answered: "The cheque was in my name and I cashed it." When, subsequently, I was informed that the transfer of the licence had been effected, I distributed the money among the parties. Up to the time I distributed the money I received no protest whatsoever from Buttigieg, nor even after. The Writ-of-Summons was filed long time after. 10

(signed) J. DINGLI,
Deputy Registrar.

No. 19.
Sworn evidence
of Dr. Dunstan
G. Bellanti.

No. 19.**Sworn evidence of Dr. Dunstan G. Bellanti.**

20

The 11th May, 1945.

Dr. Dunstan G. Bellanti, reproduced by the Defendants, states on oath:—

A few days after the contract had been published the plaintiff asked me by telephone how and why my clients had withdrawn the money. I replied that this was done in accordance with the terms of the contract.

Some time after, I do not remember how long, the previous witness Anthony Falzon, informed me by Telephone that the transfer of the licence had been effected, and suggested that I should inform personally the Plaintiff thereof. I telephoned to the Plaintiff that very moment and told him that the transfer of the licence had been effected and that consequently I was authorizing Anthony Falzon to distribute the money among the parties concerned. Neither Plaintiff nor anybody else on his behalf raised any protest against the procedure adopted until this law-suit was instituted. 30

Cross-Examination.

I myself did not ascertain whether the licence had been actually transferred, but I relied on the information given me by Falzon, as it appeared to me that I could rely on him.

(signed) J. DINGLI,
Deputy Registrar.

No. 19.
Sworn evidence
of Dr. Dunstan
G. Bellanti.
—Continued.

No. 20.**Minute of the Defendants.**

No. 20.
Minute of the
Defendants.

10 The Defendants respectfully file the annexed Note of submissions (Exhibit "A").

(signed) DUNSTAN G. BELLANTI, Advocate.

The Twentysecond day of May, 1945.

Filed at the sitting by Dr. Dunstan G. Bellanti with a Note of Submissions.

(signed) J. DINGLI,
Deputy Registrar.

No. 21.**Note of Submissions of Defendants.**

No. 21
Note of
Submissions of
Defendants.

The Defendants respectfully submit:—

20 That the transfer made by Defendants in favour of the Plaintiff in the acts of Notary Paul Pellegrini Petit of the 18th January, 1944, copy of which is annexed to the Writ-of-Summons, although it included the moiety of all rights that the Defendants have in respect of the concern Palais des Danses, which was being carried out in the premises 34 Strait Street Valletta, prior to their being demolished, had without any doubt for its principal object only and exclusively the moiety of the police permit for holding public dances.

30 That it is so emerges not only from the resolute condition stipulated in the third clause of the deed, but also from the second clause and from the evidence produced by the defendants.

No. 21
Note of
Submissions of
Defendants.
—Continued.

Consequently the point at issue is one and only one: Whether the personal permit to hold dances has or has not in fact been transferred. The Plaintiff holds that once there was no right of tenancy, this transfer could not be effected, but it is clear, from the evidence of Superintendent William Tabone and of Sergeant Attard, that the personal transfer in favour of the purchasing firm was approved by the Police Authorities, and that this permit has not been issued by the Police for the reason that, the premises 34 Strait Street, Valletta, being demolished, the Police were awaiting and are still awaiting to be informed as to where this permit — already personally transferred — was going to be used. 10

The Plaintiff knew before the deed of assignment was published that the premises 34 Strait Street were demolished as he also knew that there was a serious doubt as to whether the right of tenancy existed or not. When the deed was published his only concern was whether the Police would approve of the “personal transfer” of the permit to hold dances, personally to him. This is so much so that the Plaintiff did not even want his name to appear before the Police and the application was made in the name of Arthur Buttigieg. The application was allowed; and it is clear enough that as soon as the Plaintiff will declare to the Police where this permit is to be used, the Police will be ready to issue the same to Arthur Buttigieg. 20

The above-stated are the humble submissions of the Defendants who humbly submit that there is nothing in the deed and in the evidence produced by the Plaintiff which may ever give reason for the deed to be rescinded as the Plaintiff has claimed, contrarily to the principles laid down by the law, and by local and foreign judgments as to the respect due to contracts. 30

(signed) DUNSTAN G. BELLANTI, Advocate.

No. 22
Minute of the
Plaintiff.

No. 22.
Minute of the Plaintiff.

The Plaintiff files the annexed Note of submissions (Exhibit A).

(signed) F. CREMONA, Advocate.

The Fifth day of June, 1945.

Filed at the sitting by Prof. F. Cremona with a note of submissions. 40

(signed) J. DINGLI,
Deputy Registrar.

Note of submissions of the Plaintiff.

The Plaintiff respectfully submits:

10 That the allegation contained in the first paragraph of Defendants' Note of Submissions, in the sense that the licence was the principal motive of the assignment is absolutely gratuitous, as the contrary results from the spirit and the letter of the deed. This contention is corroborated, were corroboration necessary, by the fact that when the transfer of the moiety of the licence only was being discussed the price agreed upon was Fourhundred pounds (£400) or thereabouts, whilst when the parties wanted to include in the assignment the right of goodwill and that of tenancy the price was, after prolonged discussions, raised to Seven hundred pounds (£700). This clearly proves that the purpose of the assignment was not only the transfer of the licence, as is claimed by Defendants.

20 That the argument which the Defendants wish to infer from the circumstance that the price had to be paid after the transfer of the licence, cannot be construed as suggested by the Defendants, as the present is a clause which is usually stipulated in similar contracts in order that the payer may have an assurance that he may secure his money until the transfer of the licence in his favour is not effected.

30 Another circumstance that confirms the assertion of the Plaintiff is the fact that the Defendants themselves indicated the premises where the licence had been used before as the place where the same licence was to be used when they requested the Commissioner of Police to transfer the licence in favour of Plaintiff's brother; and it would have been absurd that they should make the request in these terms if there were any doubt that the right of tenancy in respect of those premises had lapsed.

40 It should be also noted that the Defendants themselves, by a Writ-of Summons filed in His Majesty's Civil ourt, First Hall, reference whereto has been made, had sought in litigation with the owners of the premises in question, a declaration in the sense that they still held the right of tenancy. Consequently the Defendants cannot to-day claim that the Plaintiff had no interest for the right of tenancy, particularly when it is considered that in that suit they wanted the Plaintiff to be a party thereto **in view of any interest that he might have.**

No. 23
Note of
Submissions of
of the Plaintiff.
—Continued.

That finally the deed is drawn up in a clear and unequivocal manner, and does not admit any interpretation of the intention of the contracting parties.

This is what the Plaintiff has to submit to rebut the submissions contained in the Note filed by the Defendants.

(signed) F. CREMONA, Advocate.

No. 24.
Judgment of
H.M's
Commercial
Court.

No. 24.

Judgment of H.M's Commercial Court.

HIS MAJESTY'S COMMERCIAL COURT.

Judge:—

10

The Honourable Mr. Justice S. SCSEMBRI, LL.D.

Sitting held on
Thursday, Twenty-first (21st) June, 1945.

No. 18.

Writ-of-Summons No. 275/1944.

ANTONIO BUTTIGIEG for the firm
"Messrs. Buttigieg Bros. & Co."

vs.

INEZ wife of ANTHONY FALZON,
CARMELINA wife of JOSEPH SA-
LIBA, both with the assistance of their
respective husband, and JOSEPH
QUINTANO as legitimate heirs to the
estate of their parents SALVATORE
and GIUSEPPINA QUINTANO.

20

The Court,

Having seen the Writ-of-Summons wherein Plaintiff **nomine**, submitting that — whereas the defendants in virtue of the contract published by Notary Paul Pellegrini Petit on the 18th January, 1944 (Exhibit A), had ceded, sold and conveyed to the Plaintiff **nomine** a moiety of the business, goodwill and tenancy of the "Palais des Danses" at No. 34 Strait Street, Valletta, together with all rights, licences and permits relative and inherent to the same business, for the price of Sevenhundred pounds (£700); and with the express condition,

30

amongst others, that should the Police not approve the transfer in favour of the Plaintiff **nomine** of the permit for the holding of Public Dances issued by the Police to Carmelo Bonavia and Salvatore Quintano, the latter of whom the Defendants succeeded, the aforementioned deed of conveyance was to be rescinded and of no further effect; — And whereas in virtue of a judgment delivered by the First Hall of His Majesty's Civil Court on the 25th November, 1944, in the cause "Carmelo Bonavia **et versus** Doctor Enrico Borg Olivier LL.D., **nomine et**", it had been ruled that the Defendants had not the right of tenancy of the aforementioned premises, and the Police were therefore unable to effect the transfer of the permit aforesaid in favour of the Plaintiff firm; all necessary declarations being prefaced and requisite directions being given — prayed that the aforementioned deed of conveyance published by Notary Paul Pellegrini Petit on the 18th January, 1944, be rescinded and declared to be of no further effect; and that, consequently, the Defendants be declared responsible for the damages borne or which may be borne by the Plaintiff in consequence of the contract aforementioned—
 10 such damages to be assessed in this or in an other separate
 20 action; — with costs including those of the judicial letter of the 7th December, 1944;

Having seen Plaintiff's declaration and the exhibits filed;

Having seen the Statement of Defence of the Defendants whereby they submitted that Plaintiff's claim is inadmissible;

Having seen Defendants' declaration;

Having heard the evidence produced;

Having heard Counsel for the contending parties;

30 Having seen the Written submissions of the parties;

Having seen the record of the suit to which reference has been made, determined by His Majesty's Civil Court First Hall on the 25th November, 1944;

Having considered:

That it emerges that the Plaintiff, as his own evidence also shows, intended buying the moiety held by the Defendants of the permit in respect of the "Palais des Danses" at No. 34 Strait Street, Valletta. During the negotiations his legal adviser informed him that he could not acquire the Police
 40 Permit alone without obtaining also the cession of the right of tenancy because the permit alone was worthless. That is why in the contract of cession of the moiety of the Police Permit published by Notary Paul Pellegrini Petit on the 18th January, 1944, is likewise included the moiety of the business,

goodwill and right of tenancy of the "Palais des Danses" together with the right to the permits inherent to the same concern. The contract was subjected to only one resolute condition, namely, that contemplating the disallowance by the Commissioner of Police of the transfer of the permit to hold public dances in favour of the Plaintiff;

Having considered:

That the Court is satisfied that the transfer of the permits has been authorized by the Commissioner of Police; and once that the permit exists, it would be easy to obtain its transfer from those to other premises; 10

Having considered:

That the Plaintiff is seeking the rescission of the cession on the grounds that, consequent upon the ruling of the First Hall of His Majesty's Civil Court of the 25th November, 1944, that the Defendants had not the right of tenancy, the Police are finding difficulties to the transfer of the permits in favour of the Plaintiff;

That the Defendants contend that in the aforementioned deed the right of tenancy was included not because it was in actual fact being transferred, but it was included merely for the purpose of the transfer of the permits to hold public dances, because the cession was real only in so far as these permits were concerned; so much so that the resolution of the deed was agreed upon only in case that the transfer of the permits were not effected. 20

That from the evidence produced the Court is satisfied that Plaintiff's aim was to obtain the cession of the police permits, and that this was the object of the deed and that the cession of the tenancy rights was not real but mentioned solely for the purpose of obtaining the transfer of the permits. This emerges principally from Plaintiff's evidence as well as from other evidence. The evidence of Legal Procurator Giuseppe Pace Bonello confirms also this view: in fact he suggested that the deed should also include the cession of the goodwill, because he believed that the Police would not consent to the transfer of the permits without there being also the cession of the right of tenancy, and this suggestion was made by him in order to render possible the transfer of the permits. Carmelo Bonavia who was to be the partner of the Plaintiff stated that the latter, after the publication of the contract, told him that he would be seeking other premises so that after the war he would transfer the licence of the "Palais des Danses" to such 30 40

10 other premises. It is important to note that this conversation took place after the contract was published and this shows that Plaintiff wanted the licence only. There is too the written agreement on page 15 of the Record. This document, it is true, was not signed, but Bonavia's evidence is to the effect that that document was drawn up by them, and it is therein stated that the Plaintiff was to look for other premises. The Plaintiff had also told Bonavia that he had another place where the permit could be availed of. This document is dated the 3rd day of February, 1944, and the licence had to be in the name of Arthur Buttigieg, Plaintiff's brother. — This is also confirmed by the evidence of the Defendants and by that of Dr. Bellanti.

20 That on these grounds the Court holds that the cession of the tenancy has been simulated and inserted in the deed merely for the purpose of the transfer of the licence. In support of all this there is in the contract the explicit stipulation that the price, which was paid to Antonio Falzon, was to be withheld by the latter and eventually distributed to the interested parties after the transfer of the permit. Falzon actually distributed the price among the interested parties after the transfer of the permit was effected.

Having considered:

That the Plaintiff had seen the premises and was well aware that they were completely destroyed and he consequently also knew that there was no longer any right of tenancy;

30 That the Defendants along with the Plaintiff sued the owners of the premises before His Majesty's Civil Court, First Hall, for the assessment of the rent payable by them in respect of the aforesaid premises, and that Court in virtue of its aforesaid judgment held the tenancy to have ceased **ipso jure** as the premises were to be considered totally destroyed. For the abovementioned reasons the Plaintiff cannot now invoke that judgment to his advantage. It has moreover been proved that it was the Plaintiff who wanted to institute that suit. The fact that he associated himself with the Defendants in instituting that suit also proves his intention to promote that suit: had Defendants made unto him a real cession of the right of tenancy, and had he truly wished to ascertain that this right 40 still existed, he would have compelled them to institute those proceedings alone;

No. 24.
Judgment of
Commercial
Court.

—Continued.

Having considered:

That it has emerged that there are only four such permits in Valletta, and this explains the price agreed upon and why Plaintiff was anxious to acquire it apart from other rights;

Having considered:

That the Plaintiff has submitted that the original price of Five hundred and fifty pounds (£550) agreed upon for the cession of the Police permit, was increased to Seven Hundred Pounds (£700) when the right of tenancy was included in the cession. But it has also been proved that when the price was so increased the cession was also made to include Defendants' claim against the War Damage Commission amounting to Four Hundred pounds (£400); 10

Having considered:

That all the evidence proves that the object of the contract was the cession of the permit or licence aforementioned in addition to the claim against the War Damage Commission and therefore, once the real purpose of the contract was the transfer of this permit while the cession of the right of tenancy was only intended to facilitate the transfer of this permit and was not real, Plaintiff's claims are inadmissible. 20

On these grounds the Court dismisses Plaintiff's claims with costs.

(signed) J. DINGLI,

Deputy Registrar.

No. 25.

Note of Appeal of the Plaintiff.

No. 25.
Note of Appeal
of the Plaintiff.

The Plaintiff **nomine** appears and deeming himself aggrieved by the judgment given by this Court on the 21st June, 1945, in the suit in the names aforesaid, humbly enters an appeal therefrom to His Majesty's Court of Appeal. 30

(signed) E. GRIMA, Advocate.

GIUS. PACE BONELLO, L.P

The 25th day of June, 1945.

Filed by G. Pace Bonello, L.P. without exhibits.

No. 25.
Note of Appeal
of the Plaintiff.
—Continued.

(signed) J. DINGLI,

Deputy Registrar.

No. 26.

Plaintiff's Petition to the Court of Appeal.

IN HIS MAJESTY'S COURT OF APPEAL

ANTONIO BUTTIGIEG **nomine**

vs.

10 INEZ wife of ANTHONY FALZON and others

The Petition of the said Antonio Buttigieg **nomine**.

Respectfully sheweth:—

That by Writ-of-Summons filed in His Majesty's Commercial Court the Petitioner after premising that the defendants in virtue of a contract published in the acts of Notary Paul Pellegrini Petit on the 18th January, 1944, had ceded, conveyed and transferred to the Plaintiff **nomine** a moiety of the concern, goodwill and tenancy of the "Palais des Danses" at No. 34, Strait Street, Valletta, including all rights, licences and permits relative and inherent to the said concern for Seven hundred pounds (£700); and under the express stipulation, amongst others, that should the Police not approve the transfer in favour of Petitioner **nomine** of the permit for the holding of public dances, which had been granted by the Police to Carmelo Bonavia and to Salvatore Quintano, whose heirs are the Defendants, the said deed of transfer was to be rescinded and become of no further effect; and after having also premised that in virtue of the judgment delivered by the First Hall of His Majesty's Civil Court on the 25th November, 1944, in the suit **in re** "Carmelo Bonavia **et versus** Enrico Borg Olivier LL.D., **nomine et**" it had been ruled that the Defendants did not hold the right of tenancy of the premises in question and that accordingly the Police were not in the position to transfer the aforesaid permit in favour of the Plaintiff firm — prayed that the contract of assignment aforemen-

No. 26.
Plaintiff's Petition
to the Court
of Appeal.

No. 26.
 Plaintiff's Petition
 to the Court
 of Appeal.
 —Continued.

tioned published in the acts of Notary Paul Pellegrini Petit on the 18th January, 1944, be rescinded and declared to be of no further effect, and that consequently Defendants be declared responsible for the damages which Plaintiff **nomine** had borne or could subsequently bear, in consequence of the aforementioned contract — such damages to be assessed in this or in a separate action.

2. That the Defendants had pleaded that Plaintiff's claims were without foundation.

3. That in virtue of a judgment delivered by His Majesty's Commercial Court on the 21st June, 1945, Plaintiff's claims were dismissed with costs. 10

4. That whereas Petitioner **nomine** felt aggrieved by the said judgment, in virtue of a Minute filed on the 25th June, 1945, he humbly lodged an appeal before this Court.

5. That the grievance of Petitioner is manifest and consists in the fact that the Court below reached the conclusion that there was no room for the rescission of the contract in question because it held that the principal purpose of the assignment was that of the transfer of the licence for the holding of public dances and that the resolute condition in the contract had been limited only to the contingency that the Police would not authorize the transfer of the permit aforesaid in favour of the Petitioner, and because it also held that the transfer of the licence had been authorized by the Commissioner of Police and that as soon as the Petitioner would find other premises the transfer would operate in his favour. 20

6. That contrarily to what has been held by the Court below, the transfer of the licence has not been effected, as clearly emerges from the evidence of Police Superintendent William Tabone. In fact this witness stated that although the Commissioner of Police had found no objection to the transfer of the licence in question, he, however, held that the Police Laws concerning the transfer of licences had to be observed, that provision in particular regarding adequate premises, for the purpose for which a particular licence was being issued, in conformity with the order of the Health Department and other exigencies and the neighbours' consent. Consequently, if these conditions or any one of them, being prerequisite for the transfer of a licence, do not materialize, the Commissioner of Police would not consent to the transfer of such a licence. And actually there is no disagreement on the fact that up to this day this transfer has not yet been officially approved. 30 40

7. That the holding of the Court below that the inclusion in the contract of assignment of the goodwill and tenancy was simulated does not correspond to facts, because — apart from the juridical principle that the Court could not stigmatize the contract to be a simulation when no such plea of simulation had been raised by the Defendants, and in fact no such plea has been raised in this suit — had this been so the original agreement which had been limited to the transfer of the moiety of the licence would have come into force for a price which would not have been that indicated by the Court below, but on the basis of a much lower figure. It is unlikely that the Petitioner would have agreed to pay Seven hundred pounds (£700) instead of Three hundred and Fifty pounds (£350) for the inclusion in the contract of something — right or otherwise — simulated. Moreover, no element of simulation is to be found in this particular case: it is true, on the contrary, that Petitioner's insistence for the inclusion in the assignment of the right of tenancy was due to the fact that he knew, as presumably Defendants likewise were aware, that the issue of permits and similar licences was very restricted, as likewise emerges from the evidence of Police Superintendent Tabone, who stated that in Malta there were only four such licences and that these could be issued in respect of premises specially fitted out for the purpose and situate only in certain streets of Valletta.

8. That the argument drawn by the Court below from the circumstance that the Petitioner and Bonavia might have entertained the idea of transferring the licence with the approval of the Police to other premises until such time as those in question had been rebuilt, is not based at law because that idea did not amount to a renunciation to those rights which the petitioner acquired in virtue of the aforementioned contract he now impugns.

9. That in consequence of the judgment appealed against the Petitioner is now in the position that should he not find other premises whereto the licence in question can be transferred, and also finding such premises should the Police or the Health Authorities or the neighbours object to such transfer, he will never be able to realize and enjoy his rights deriving from the contract in question.

10. That moreover it conclusively emerges that before the publication of the contract Defendant Quintano, upon the insistence of the Petitioner, had assured him that the Defendants still held the tenancy of the premises in question: had it been true that this tenancy was of no particular interest to

No. 26.
Plaintiff's Petition
to the Court
of Appeal.
—Continued.

the petitioner his insistence to obtain this assurance would have been out of place, as it would be inconceivable that he consented to pay a higher price for a right of the existence of which he had not been assured.

Wherefore Petitioner whilst tendering the undermentioned security for the costs of this appeal and making reference to all the proofs adduced before the Court below and reserving to produce all further evidence allowed by law — including the examination on oath of the Defendants, for which purpose the said Defendants are hereby summoned — 10
humbly prays that the judgment delivered by His Majesty's Commercial Court on the 21st June, 1945, be repealed and that Plaintiff's claims be admitted with costs of both instances.

(signed) F. CREMONA, Advocate.
GIUS. PACE BONELLO, L.P.

The Ninth July, 1945.

Filed by Gius. Pace Bonello, L.P. without exhibits.

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

No. 27.

20

No. 27.
Answer of the
Defendants.

Answer of the Defendants.

Defendants respectfully submit:

That the judgment appealed from is just and should be affirmed by this Court not only on the grounds set forth in the said judgment but also on those hereunder stated and on those which shall result during the hearing of the case before this Court.

That in order to support his appeal the Plaintiff has in his Petition submitted allegations which are totally contrary to facts:—

30

1. Neither the Defendant Quintano nor anybody else assured the appellant that the right of tenancy in respect of the premises at 34 Strait Street, Valletta, still existed: on the other hand Dr. Bellanti, Defendants' legal adviser, clearly warned Legal Procurator Pace Bonello during the preliminary discussions that such right was very uncertain in view of the fact

that no rent had been paid for the premises after they had been destroyed, and also owing to their complete destruction. Although the appellant was aware of all these facts, his only insistence was to acquire from the Defendants the moiety of the permit to hold public dances which they had inherited from their father.

10 2. The Defendants asked from the beginning the sum of Seven Hundred pounds (£700) for the moiety of this permit; as however the appellant offered Five Hundred and Fifty pounds (£550), and not the much lower sum of Three Hundred and Fifty pounds (£350) — as it has been indicated in the Petition — the Defendants made unto him a cession **in toto** of all their rights in the concern “Palais des Danses”, including, if it eventually still existed, the right of tenancy and the right to claim compensation for damages, amounting to Four Hundred pounds (£400), against the War Damage Commission.

20 3. It is most important to note that the application to the Police Authorities, with the consent of Bonavia, was made for the issue of the permit in the name of Arthur Buttigieg, appellant’s brother; and when the appellant asked Bonavia’s consent he said to him that if the right of tenancy was lost he had three other premises wherein the permit could be availed of. In actual fact, both Superintendent of Police William Tabone and Police Sergeant Attard stated that the permit had been actually transferred in the name of Arthur Buttigieg but it could not be issued until new premises were provided in lieu of those at No. 34 Strait Street, Valletta, which were destroyed.

30 The facts being thus established according to actual truth, it is clear that the judgment appealed from is just.

Wherefore the Defendants humbly pray that this Court be pleased to uphold the judgment appealed from and to dismiss the appeal lodged by the Plaintiff **nomine** and to disallow Plaintiff’s claims as set forth in the Writ-of-Summons with costs both of First and Second Instance.

(signed) DUNSTAN G. BELLANTI, Advocate.
ROB. DINGLI, L.P

This sixteenth day of July, 1945.

Filed by Rob. Dingli, L.P without exhibits.

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(signed) J. DINGLI,
Deputy Registrar.

Judgment of H.M.'s Court of Appeal.

HIS MAJESTY'S COURT OF APPEAL.

(Commercial Hall)

Judges:—

His Honour Sir GEORGE BORG, M.B.E., LL.D., President.
The Honourable Mr. Justice Prof. E. GANADO, LL.D.
The Honourable Mr. Justice L. A. CAMILLERI, LL.D.

Sitting held on
Monday, Third (3rd) December, 1945. 10

No. 7.

Writ-of-Summons No. 275 of 1944.

ANTHONY BUTTIGIEG for the firm
Messrs. Buttigieg Bros. & Co.

vs.

INEZ wife of ANTHONY FALZON,
CARMELINA wife of JOSEPH SA-
LIBA, both with the assistance of their
respective husband, and JOSEPH
QUINTANO as legitimate heirs to the 20
estate of their Parents SALVATORE
and GIUSEPPINA QUINTANO.

The Court,

Having seen the Writ-of-Summons wherein Plaintiff **nomine**, submitting that — whereas the Defendants in virtue of a contract published by Notary Pellegrini Petit on the 18th January, 1944, (Exhibit A) had ceded sold and conveyed to the Plaintiff **nomine** a moiety of the business, goodwill and tenancy of the Palais des Danses at No. 34 Strait Street, Valletta, together with all rights, licences and permits relative and inherent to the same business, for the price of Seven Hundred pounds (£700); and with the express condition, amongst others, that should the Police not approve the transfer in favour of the Plaintiff **nomine** of the permit for the holding of public dances issued by the Police to Carmelo Bonavia and Salvatore Quintano, the latter of whom the 30

Defendants succeeded, the aforementioned deed of conveyance was to be rescinded and of no further effect; — and whereas in virtue of a judgment delivered by the First Hall of His Majesty's Civil Court on the 25th November, 1944, in the cause "Carmelo Bonavia **et versus** Dr. Enrico Borg Olivier LL.D., **nomine et**", it had been ruled that the Defendants had not the right of tenancy of the aforementioned premises; and the police were therefore unable to effect the transfer of the permit aforesaid in favour of the Plaintiff firm; — all necessary declarations being prefaced and requisite directions being given; — prayed that the aforementioned deed of conveyance published by Notary Paul Pellegrini Petit on the 18th January, 1944, be rescinded and declared to be of no further effect; and that, consequently, the Defendants be declared responsible for the damages borne or which may be borne by the Plaintiff in consequence of the contract aforementioned — such damages to be assessed in this or in another separate action; — with costs including those of the judicial letter of the 7th December, 1944.

20 Having seen Plaintiff's Declaration and the exhibit filed;

Having seen the Statement of Defence of the Defendants whereby they submitted that Plaintiff's claim is inadmissible;

30 Having seen the judgment delivered by His Majesty's Commercial Court on the 21st June, 1945, dismissing Plaintiff's Claims with costs, that Court having considered: that the transfer of the permits had been authorized by the Commissioner of Police, and that the transfer of the said permit to other premises can be easily effected, once the permit exists; — that the purpose of the contract between the contending parties had in view the cession of the permits; and the right of tenancy was mentioned as a means to that end, as it emerged from Plaintiff's evidence as well as from the evidence of other witnesses amongst whom Legal Procurator Pace Bonello; — that the Plaintiff had told Carmelo Bonavia, his partner in that concern, that he was looking for other premises so that after the war he could obtain the transfer of the licence of the Palais des Danses thereto, which conversation took place after the publication of the contract; — that there was also the agreement on page 15, which though not signed revealed Plaintiff's intentions; — that therefore the cession of the tenancy was simulated and the Plaintiff was well aware that the premises were completely destroyed; — that had the cession of the right of tenancy been real the Plaintiff would have insisted upon the Defendants alone instituting the cause

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No. 28.
 Judgment of
 H.M.'s Court
 of Appeal.
 —Continued.

against the owners of these premises in order to ascertain that that right still existed; — that although the price of £550 had been increased to £700 when the moiety of the right of tenancy was included, Defendants, however, had then also made over to the Plaintiff their rights on a Claim for £400 against the War Damage Commission.

Having seen Plaintiff's Minute of Appeal and his Petition praying for the repeal of that judgment and the consequent upholding of his claims with costs of both First and Second Instance;

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Having seen Defendants' Answer wherein they pray for the upholding of that judgment with costs.

Having examined the Record of the action;

Having heard Counsel for the contending parties;

Considering:

The questions at issue before this Court are twofold: firstly, whether the Plaintiff at the moment of the contract aforementioned published by Notary Paul Pellegrini Petit on the 18th January, 1944, was sufficiently aware that the right of tenancy, if not forfeited altogether, was at least doubtful; and, secondly, whether the contract is rescindible in terms of the stipulations contained in it.

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On the first question as the Court below has well held the Plaintiff knew without a doubt that the right of tenancy, if at all existent, was however very doubtful; and many circumstances prove this. In fact (1) the Plaintiff was well aware where these premises were situated and it is not possible that he did not know in what condition they lay at the moment of the contract, because it is not conceivable that a sensible person would be a party to a contract of this importance, involving a cession of licences and of a tenancy, without his having beforehand taken the trouble to inspect "**de visu**" the condition of the premises concerned, that is to say to ascertain whether such premises were still standing even in part; and therefore once he was aware of the condition of these premises, it is impossible that he did not entertain serious doubts upon the right of tenancy in question. (2) This point having been established, the party taking over the cession of the premises and the licences and goodwill in respect thereof would exact, in clear contractual terms a guarantee by the other party that the right of tenancy was also in force. Now the evidence shows, on the contrary, that the Defendants had

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told the Plaintiff that the right of tenancy was doubtful and this notwithstanding the Plaintiff replied that he was prepared to enter into litigation with the owners on the point at issue, whilst on the other hand the Defendants made it clear to him that they would not be involved in any such litigation. Were Appellant's allegations to be accepted as true, the position would have been quite different; because apart from the stipulation, subordinating the whole existence of the cession, expressly laid down in the contract, the Plaintiff would at least have insisted upon the Defendants' taking a leading part in that litigation. (3) The negotiations did not originally contemplate the tenancy which was subsequently included because the Plaintiff's legal adviser informed him that a similar contract was not possible without including the right of tenancy, the permit being inherent to the premises. This likewise reveals the parties' intentions, especially Plaintiff's, namely, that he would take over the permits of the Palais des Danses in order to be able to hold those dances in other premises, with of course the consent of the Police, as he himself had said. (4) The costs of that litigation have been wholly borne by the Plaintiff, and were his pretensions now to be taken into account, there would be nothing to explain why he embarked upon that litigation at his own risk and paid all the costs thereof, while the Defendants merely lent their name to it though appearing as a party thereto. (5) Appellant's aim, as rightly held by the Court below, is likewise revealed by the agreement at page 15 which, though unsigned by the parties thereto — the Plaintiff and his partner Carmelo Bonavia — shows in one of the stipulations therein that they had contemplated the eventual transfer of the business to some other premises which they might choose.

It is true that, as submitted by the Plaintiff, the price of the cession was raised from £550 to £700 when the "goodwill clause" was included in the contract, but it has been proved that at the same time and in addition to **(sic) (? recte** consideration of) that increase the Defendants also made over to the Plaintiff the right to claim in his own name and receive from the War Damage Commission the compensation, estimated by them at £400, in respect of chattels which they had lost (through enemy action). Even if the War Commission would not award the whole sum of £400, it must be held that the Plaintiff has been adequately compensated for the increase of price from £550 to £700;

Considering:

Once the appellant knew that the right of tenancy was

No. 28.
Judgment of
H.M.'s Court
of Appeal.
—Continued.

doubtful, as this had been explained to him by the Defendants, for which reason that condition — in the sense however that the Plaintiff should be vested with such rights as the Defendants held — was included in the contract, the Plaintiff cannot now, after the Court's decision in the action against the owners that the right of tenancy does no longer exist, turn against the assignors to have this contract rescinded. It is a case of applying the principle "**Nemo plus juris ad alium transferre potest, quam ipse habet**" (L. 54. D.L. 17) and when the Defendants mentioned in the contract the right of tenancy — and they had beforehand informed the Plaintiff that such right was doubtful, and the latter therefore knew that even if it existed such right was very doubtful — they precisely made over to him such right as they eventually held according to law. It is moreover another fundamental principle in law that contracts must be interpreted in good faith and therefore the Plaintiff cannot now disavow all the understandings he entered into with the Defendants and turn against them, for this reason, for the rescission of the contract and for damages.

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Considering:

On the second question the contending parties had agreed in the contract: "the appearers stipulate in virtue hereof that the price of Sevenhundred pounds (£700) as hereby paid shall not be shared and had by the three transferers until the transfer of the permit for the holding of public dances issued to Salvatore Quintano and Carmelo Bonavia by the Police on the 29th September, 1925, in virtue of permit No. 83,353, shall have been approved by the Police; and accordingly until such time as the Police shall not have yet approved the transfer of the permit aforesaid, Anthony Falzon, hereundersigned, shall be held personally responsible for the aforesaid sum of seven hundred pounds (£700)." Immediately after, in the Third clause they laid down: "the parties hereto do now expressly agree that this present cession is subject to the condition of the transfer of the permit aforesaid, and accordingly, should the Police not approve the transfer of this same permit to the name of Carmelo Bonavia and of the acquiring firm, this present contract of cession shall be rescinded and of no further effect, and the acquiring firm shall in consequence be immediately entitled to the refund of the aforesaid sum of seven hundred pounds (£700). Contrarily, upon the Police approval of the transfer of the said permit to Carmelo Bonavia and the acquiring firm, this present cession shall become absolute,

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complete and irrevocable." These two stipulations must doubtlessly be read together for the purpose of their interpretation inasmuch as one of them is so worded as to be capable of a more extensive interpretation than the other. In fact in the first stipulation it is laid down that "Until the transfer of the permit for the holding of public dances issued to Salvatore Quintano and Carmelo Bonavia by the Police on the 29th September, 1925, by permit No. (83,353), shall have been approved by the police" This may mean that the transfer was to be effected or at least that there was to be the approval for the transfer of that permit which is inherent to those premises. In the second stipulation, however, it is expressly laid down that "upon the Police approval of the transfer of the said permit to Carmelo Bonavia and the acquiring firm this present cession shall become absolute, complete and irrevocable." And this stipulation, coming immediately after the other, must have necessarily had for its end the modification of that other in its bearing, for it would otherwise have been a useless stipulation and in discord with the fundamental rule in law as laid down in article 710 of Ordinance No. VII of 1868. In fact, what was causing anxiety to the parties was the possibility that the Police would refuse the transfer of the permit in question in favour of the Plaintiff, and that is why the application for the transfer was made by the Appellant's brother, Arthur Buttigieg. The transfer of that permit was approved by the Commissioner of Police, and as the Defendants were informed of this approval, they informed the Plaintiff thereof, and thereupon Counsel for the Defendants informed the Appellant accordingly, and the latter raised no objections. Although the transfer of the licence in favour of Bonavia and of the Plaintiff was authorized, the actual transfer of the permit was not effected inasmuch as the Police had subsequently required the neighbours' consent, and also because the owners of the premises had objected thereto. But the appellant had achieved his purpose in that the Police had approved that the licence for holding public dances be transferred also in the name of Arturo Buttigieg. The only question now was for the appellant and his partner to provide other premises, once it had been ruled that the tenancy of the premises in question had been lost, and to apply to the Police for the transfer of that permit to the new premises, a contingency which, as it emerges from the proofs adduced as well as from the evidence of Dr. Bellanti, the Plaintiff had envisaged. This contingency was also foreseen in the draft agreement between Bonavia and the Plaintiff at

No. 28.
Judgment of
H.M.'s Court of
Appeal.
—Continued.

page 15 of the Record. This however was altogether alien to the Defendants.

On these grounds and for the reasons, as far as they apply, stated by the Court below.

Dismisses Plaintiff's appeal and affirms the judgment delivered by His Majesty's Commercial Court on the 21st June, 1945, with costs against the Plaintiff.

(signed) J. N. CAMILLERI,

Deputy Registrar.

No. 29
Petition asking
for Leave
to Appeal

No. 29.

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Petition asking for Leave to Appeal.

The Petition of the Plaintiff Antonio Buttigieg in his aforementioned capacity.

Respectfully sheweth:—

That by a Writ-of-Summons filed before His Majesty's Commercial Court the Petitioner, after premising that the Defendants in virtue of a contract published in the acts of Notary Paul Pellegrini Petit on the 18th January, 1944, had ceded, conveyed and transferred to the Plaintiff **nomine** a moiety of the concern, goodwill and tenancy of the Palais des Danses at No. 34 Strait Street, Valletta, including all rights, licences and permits relative and inherent to the said concern for seven hundred pounds (£700); and under the express stipulation, amongst others, that should the Police not approve the transfer in favour of Petitioner **nomine** of the permit for the holding of public dances, which had been granted by the Police to Carmelo Bonavia and to Salvatore Quintano, whose heirs are the Defendants, the said deed of transfer was to be rescinded and become of no further effect; and after having also premised that in virtue of the judgment delivered by the First Hall of His Majesty's Civil Court on the 25th November, 1944, in the suit "Carmelo Bonavia **et versus** Enrico Borg Olivier LL.D. **nomine et**" it had been ruled that the Defendants did not hold the right of tenancy of the premises in question and that accordingly the Police were not in a position to transfer the aforesaid permit in favour of the Plaintiff firm — prayed that the contract of assignment aforementioned published in the acts of Notary Paul Pellegrini Petit on the 18th

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January, 1944, be rescinded and declared to be of no further effect, and that consequently Defendants be declared responsible for the damages which Plaintiff **nomine** had borne or could subsequently bear in consequence of the aforesaid contract — such damages to be assessed in this or in a separate action.

No. 29
Petition asking
for Leave
to Appeal
—Continued.

That the Defendants had pleaded that Plaintiff's claims were without foundation.

10 That in virtue of a judgment delivered by His Majesty's Commercial Court on the 21st June, 1945, Plaintiff's claims were dismissed with costs.

That whereas Petitioner **nomine** felt aggrieved by the said judgment, in virtue of a Minute filed on the 25th June, 1945, he humbly lodged an appeal before this Court.

That this Court by a Judgment delivered on the 3rd December, 1945, dismissed the Petitioner's Appeal with costs and upheld the judgment given by His Majesty's Commercial Court on the 21st June, 1945.

20 That Petitioner, deeming himself aggrieved by the judgment given by this Court on the 3rd December, 1945, intends to appeal therefrom to His Majesty in His Privy Council, as the Petitioner is of opinion that he has the right to this appeal as the value of the matter in dispute is over Five Hundred pounds (£500).

Wherefore Petitioner in his aforesaid capacity humbly prays that this Court may be pleased to grant him leave to Appeal from the judgment delivered by this Court on the 3rd December, 1945, to His Majesty in His Privy Council.

(signed) E. GRIMA, Advocate.

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GIUS. PACE BONELLO, L.P.

This Twenty-fourth day of December, 1945.

Filed by G. Pace Bonello, L.P. without exhibits.

(signed) J. MICALLEF,

Deputy Registrar.

Note of Submissions of the Defendants.

Defendants' Note of submissions.

Respectfully sheweth:

That the Plaintiff had premised in the Writ-of-Summons that "The Police are not in a position to effect the transfer of the abovementioned permit in favour of the acquiring firm": if this were true he (the Plaintiff) should have brought in a suit not against the Defendants but against Anthony Falzon, who, in terms of the contract, was responsible for the sum of Seven Hundred Pounds (£700) which had been paid by the Plaintiff in virtue of the said contract. 10

Wherefrom emerges Defendants' opposition against the Plaintiff's request that leave to appeal to His Majesty in His Privy Council be granted to him. It is, in fact, clear that, in view of the manner in which the Defendants have been sued, the Plaintiff cannot now claim that the value of the merits of the case exceeds Five Hundred pounds (£500). Even if ever he could have obtained a judgment in his favour, he would never have been able to seek execution thereof against any one of the Defendants for the sum involved exceeding that of £500 (Art. 643 — Ord. VII of 1868). 20

The Defendants, therefore, humbly pray that it may please this Court to dismiss Plaintiff's Petition with costs; and, in case this Court should deem fit to grant to the Plaintiff leave to Appeal, the Defendants humbly pray that the Plaintiff should tender an adequate security for the prosecution of the Appeal and for the observance of all those conditions contemplated in the Order in Council of the 22nd November, 1909. 30

(signed) DUNSTAN G. BELLANTI, Advocate.
 EDWARD BUGEJA, Legal Procurator.

This Eight day of February, 1946.

Filed at the hearing by Dr. D. G. Bellanti.

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

No. 31.

No. 31.
Application of
the Plaintiff.

Application of the Plaintiff.

Application of Plaintiff Buttigieg.

Respectfully sheweth.

That this cause has been adjourned for judgment to the 25th February, 1946.

That the Applicant desires to produce the annexed Note of Submissions.

10 Wherefore Applicant humbly prays that he may be allowed to produce the annexed Note of Submissions.

(signed) F. CREMONA, Advocate.

GIUS. PACE BONELLO, L.P.

The Fourteenth day of February, 1946.

Filed by G. Pace Bonello, L.P together with a Note of Submissions.

(signed) A. GHIRLANDO, .
Deputy Registrar.

No. 32.

No. 32.
Decree of
foregoing
Application.

Decree on foregoing Application.

20 HIS MAJESTY'S COURT OF APPEAL.

The Court,

Allows the Application and orders service of the Note of Submission — after due filing in the Registry—on the adverse party or on Counsel for same.

This Fourteenth day of February, 1946.

(signed) J. CAMILLERI CACOPARDO,
Deputy Registrar.

**Plaintiff's Note of Submissions produced with the
foregoing Application.**

Note of submissions of the Plaintiff in reply to that filed by the Defendants.

Respectfully sheweth:—

That the Defendants have submitted that the judgment cannot be Appealed from to His Majesty in Council, on the ground that the interest of each of the Defendants in the present suit is less in value than Five Hundred pounds (£500) 10

That the claim brought forward by the Plaintiff was that for the rescission of the contract published on the 18th January, 1944, and consequently it is indivisible as it concerns the rescission of the contract **in toto** and therefore the matter at stake cannot be divided into the interest each one of the Defendants has in the suit.

Moreover the words used in the Order in Council of the 22nd November, 1909 are clear. In fact section 1 of that Order lays down: "An Appeal shall lie:

a) As of right, from any final judgment of the Court 20
when the matter in dispute on Appeal amounts to or is of the value of £500 or upwards, or where the appeal **involves directly or indirectly** some claim etc."

These words show clearly that it is not the interest each of the contending parties has in the matter which should be taken into account, but the matter in dispute, which, in the present case is of the value of Seven Hundred Pounds (£700).

Furthermore, apart from all other considerations, the fact remains that it is the Plaintiff who is appealing from the Judgment, and in his respect, the interest at stake is of the value of Seven Hundred Pounds (£700). 30

Finally, as the matter in dispute is of a commercial nature, it is to be presumed that each of the Defendants have a joint interest, and consequently the value of the interest of each of the Defendants amounts to £700, as every one of them is liable for the whole amount.

Wherefore Defendants' opposition to the granting of the leave to appeal is without foundation.

(signed) F. CREMONA, Advocate.
GIUS. PACE BONELLO, L.P

No. 33.
Plaintiff's Note
of Submissions
produced with
the foregoing
Application.
—Continued.

This Twentieth day of February, 1946.

Filed by G. Pace Bonello, L.P. without exhibits.

(signed) J. MICALLEF,
Deputy Registrar.

No. 34.

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**Judgment of H.M's Court of Appeal granting
leave to Appeal to H.M's Privy Council.**

HIS MAJESTY'S COURT OF APPEAL.

Judges:

His Honour Sir GEORGE BORG, M.B.E., LL.D.,
Chief Justice and President of H.M's Court of Appeal.
The Honourable Mr. Justice Prof. E. GANADO, LL.D.
The Honourable Mr. Justice L. A. CAMILLERI, LL.D.

Sitting held on
Monday Twenty-fifth (25th) February, 1946.

No. 34.
Judgment of
H.M's Court of
Appeal granting
leave to Appeal
to H.M's Privy
Council.

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**ANTONIO BUTTIGIEG nomine
vs.**

INEZ FALZON and others

The Court,

Having seen its judgment delivered on the 3rd December, 1945, whereby the judgment given by His Majesty's Commercial Court on the 21st June, 1944 was upheld and consequently the Appeal lodged therefrom by the Plaintiff was dismissed with costs.

30 Having seen the Petition of the Plaintiff Antonio Buttigieg **nomine**, filed on the 24th December, 1945, whereby he prayed for leave to appeal from the judgment given by this Court on the 3rd December, 1945, to His Majesty in His Privy Council.

No. 34.
 Judgment of
 H.M.'s Court of
 Appeal granting
 leave to Appeal
 to H.M.'s Privy
 Council.
 —Continued.

Having seen the Answer of the Defendants praying that the Petition aforesaid of the Plaintiff Buttigieg **nomine** be dismissed with costs, and subordinately, that an obligation be imposed on the Plaintiff to tender an adequate security for the prosecution of the Appeal and for the observance of all the conditions contemplated in the Order in Council of the 22nd November, 1909.

Having heard Counsel for the contending parties.

Having seen the Note of Submissions filed by the Defendants and by the Plaintiff.

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Having considered:

That according to the Order in Council abovementioned an Appeal shall lie as of right from any final judgment of this Court, where the matter upon which there is an appeal involves an amount of the value of Five Hundred pounds (£500) or upwards, or where the appeal involves directly or indirectly, some claim or pretension or question of the value of Five Hundred Pounds sterling (£500) or upwards.

The original claim of the Plaintiff **nomine** contained in the Writ-of-Summons before His Majesty's Commercial Court was that the contract of assignment published on the 18th January, 1944, in the acts of Notary Paul Pellegrini Petit be rescinded and declared to be of no effect, and that the Defendants be declared responsible for the damages which the Plaintiff claims to have borne. As the Defendants had been sued as the three heirs of their parents, they pleaded that their interest in the suit was not a joint interest, and therefore the value of the matter in dispute was less than Five Hundred Pounds (£500), as the price of the cession amounting to Seven Hundred Pounds (£700) should be divided into three shares.

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Having considered:

That, however, the first claim, namely the claim for the rescission of the contract aforementioned — which is the most important in this cause as it constituted the foundation and the basis of the other claim for damages, — though directed against the heirs of Salvatore and Giuseppina Quintano, who are three, even if it were considered in respect of the interest which one only of the heirs had therein, implies the resolution of the aforementioned contract in the interest of that heir, and owing to the indivisibility of the matter in dispute, the contract could not have been rescinded only for the part affecting

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that heir. Consequently the question at issue implies, if not directly, indirectly an amount upwards of Five Hundred Pounds (£500). In fact, **in re** "Baboo Gopal Lall Thakoor vs. Teluk Rai" (1860) reported at page 23 of Bentwich, Privy Council Cases, it was held that although there had been separate judgments, as however in every one of those cases there was involved an important question of law, "in each of which the value was under the appealable amount, though in the aggregate the sums claimed were over that amount, leave to appeal was granted on the parties undertaking to abide by the decision in the first Appeal." (v. Bentwich l.c.) In this present suit the case is simpler, as the case is one and the same, and the claim for the rescission of the contract is one contained in the same case against three persons, and consequently that question, which is important in the case, must be determined in opposition to the three of them, and it will be implying, as it has been stated above, a value or "a civil right" amounting to over Five Hundred Pounds (£500).

No. 34.
Judgment of
H.M.'s Court of
Appeal granting
leave to Appeal
to H.M.'s Privy
Council.
—Continued.

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Having considered:

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That moreover, another rule applying in such Appeals is that "the rule is that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by Appeal." (Bentwich l.c. p. 142) and in this case the question **sub judice** involved precisely, at least as regards the Plaintiff, an amount or a "civil right" of a value of over Five Hundred Pounds (£500), and consequently the Plaintiff is entitled to ask for leave to appeal in respect of the value of the claim.

On these grounds:

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Allows the Petition of the Plaintiff and grants him conditional leave to Appeal from the judgment delivered by this Court on the 3rd December, 1945, to His Majesty in His Privy Council, and allows the said Plaintiff the period of one month within which to tender the security contemplated in section 4a of the said Order in Council, fixing the sum of Four Hundred Pounds (£400) as the amount of such security and allowing him the period of three months for the preparation and translation of the Record of this case and the transmission thereof to the Judicial Committee in accordance with the aforesaid section. Costs reserved to the final order for final leave to Appeal.

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

No. 35.
Application of
Plaintiff.

No. 35.

Application of Plaintiff.

The Application of Antonio Buttigieg **nomine**.

Respectfully sheweth:—

That this Court by a decree of the 25th February, 1946, has granted him leave to appeal to His Majesty in His Privy Council from the judgment delivered by this Court on the 3rd December, 1945, on condition of his tendering a security for the sum of Four Hundred Pounds (400), and had granted him the period of three months for the preparation, and translation of the Record and transmission thereof. 10

That by a decree of the 10th April, 1946, this Court has appointed Doctor Giovanni Filiberto Gouder to prepare the Record aforesaid.

That Petitioner has, within the period granted to him, produced the aforesaid security, but the said Doctor Gouder has not yet completed the translation and some further time is required by him.

Wherefore Applicant humbly prays that this Court may be pleased to extend the said period of three months to a further period of two months. 20

(signed) E. GRIMA, Advocate.
GIUS. PACE BONELLO, L.P.

The Seventeenth (17th) day of May, 1946.
Filed by G. Pace Bonello, L.P. without exhibits.

(signed) S. BUGEJA,
Deputy Registrar.

No. 36.
Decree on
foregoing
Application

No. 36.

Decree on foregoing Application.

HIS MAJESTY'S COURT OF APPEAL. 30

The Court,
Upon seeing the Application.
Allows the demand.

This Twentyfourth day of May, 1946.

(signed) J. DINGLI,
Deputy Registrar.

No. 37.**Plaintiff's Application for final leave to Appeal**

No. 37
Plaintiff's
Application
for final
leave to
Appeal

The application of ANTONIO BUTTIGIEG **nomine**
Respectfully sheweth:

That the printing of the English Translation of the Record,
which has been duly approved by the defendants, is ready,
except the Final Decree, which has yet to be delivered;

Wherefore Applicant humbly prays that this Court may
be pleased to deliver the Final Decree for final leave to appeal,
10 in order that the same may be translated and printed, and
that the whole record may be bound up.

(signed) F. CREMONA, Advocate,
GIUS. PACE BONELLO, L.P.

The Second day of January, 1947.

Filed by Gius. Pace Bonello L.P. without exhibits.

(signed) J. MICALLEF,
Deputy Registrar.

No. 38.**Decree granting Final leave.**

No. 38
Decree
granting
Final
leave.

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HIS MAJESTY'S COURT OF APPEAL.

Judges:

His Honour Sir G. BORG, Kt., M.B.E., LL.D. President.
The Honourable Mr. Justice Prof. E. GANADO, LL.D.
The Honourable Mr. Justice L.A. CAMILLERI, LL.D.
Sitting held on Monday Third of March, 1947.

ANTONIO BUTTIGIEG **nomine**
vs.
INEZ FALZON and others

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The Court,
Having seen its Decree delivered on the 25th February,
1946, whereby the Plaintiff was granted conditional leave to
Appeal to His Majesty in His Privy Council against the

No. 38
Decree
granting
Final
leave
—Continued.

judgment delivered by this Court on the 3rd December, 1945 — the costs being reserved to the decree wherein final leave to appeal should have been granted to him;

Having seen Plaintiff's application whereby the said Plaintiff prayed for final leave to appeal;

Having heard Counsel for the contending parties;

Having considered:

That during the hearing of the case, the Respondents, by means of their counsel, objected to the granting of final leave to appeal, on the ground that the term wherein the preparatory acts should have been made, even as extended, had elapsed, and the plaintiff had filed no application for a further extension of the term, and consequently they submitted that the Appeal should be declared rescinded in terms of Section 4 (b) of the Order in Council regulating Appeals to His Majesty in His Privy Council; 10

The Appellant on the other hand submitted that the relevant Section is not that referred to by the Respondents, but number 22 of the said Order in Council;

Having considered: 20

That in accordance with the latter section, the preparatory acts should be effected with due diligence, and if the Appellant, after obtaining conditional leave, fails to complete these acts with the necessary diligence, the Respondent may apply to this Court in order that this Court may declare the Appeal rescinded;

That this Court, by a decree delivered on the 25th February, 1946, granted to the Plaintiff conditional leave to appeal to His Majesty in His Privy Council from the judgment delivered by this Court on the 3rd December, 1945, and fixed a term of two months wherein the Plaintiff should produce a surety required by Law to cover the costs of the Appeal, and that of three months wherein he should perform the preparatory acts of the appeal, amongst which the English translation of the Record; 30

That, as the Translation was not ready in the prescribed term, the Appellant, by means of another application filed on the 17th May, 1946, prayed that the original term be extended by another two months; and this Court, after having

ordered that the application should be served on the Respondents who were given two days to reply, and who failed to reply thereto, allowed the request, so that the original term was extended to the 25th July, 1946;

No. 38
Decree
granting
Final
leave
—Continued.

That by means of a Schedule filed on the 2nd July, 1946, before the term had elapsed, the Appellant filed the English translation of the Record, and this Schedule was duly served on the Respondents;

10 That as it emerges from Section 22 above mentioned, it is the Respondent who should file an application praying for the declaration to rescind the appeal, if it appears to him that the Appellant fails to exercise all due diligence;

That the Respondents have not entered such an application nor does it appear that the Appellant has failed to exercise all due diligence;

On these grounds:

20 Dismisses the exception raised by the Respondents, with costs against said Respondents, and allows Plaintiff's application granting him final and definite leave to appeal to His Majesty in His Privy Council from the judgment of this Court above mentioned. Costs in respect of this Decree and in respect of the Decree whereby conditional leave to appeal was granted to Plaintiff shall be borne by the said Plaintiff, it being reserved to him to recover from the Defendants all or part of the said costs if so ordered by the Judicial Committee of His Majesty in His Privy Council.

(signed) J.N. CAMILLERI,

Deputy Registrar.

EXHIBITS.

PLAINTIFF'S EXHIBITS.

PLAINTIFF'S EXHIBITS.

Exhibit "A".

Filed by the Plaintiff together with the Writ-of-Summons (page 5 of the Record) — Legal Copy of the Contract published by Notary Paul Pellegrini Petit on the 18th January, 1944.

This Eighteenth day of January in the Year of Our Lord One Thousand Nine Hundred and Forty-four (1944).

10 Before me Notary Paul Pellegrini Petit, Notary Public in the Island of Malta, hereundersigned, and in the presence of the hereundersigned duly qualified witnesses, have personally appeared:

Mrs. INEZ wife of Mr. ANTHONY FALZON, housewife;

Mrs. CARMELINA wife of Mr. JOSEPH SALIBA, housewife;

20 Mr. JOSEPH QUINTANO, clerk at the Command Pay Office sisters and brother, respectively, born of Mr. Salvatore Quintano and Mrs. Giuseppina n e Sultana, his wife both deceased, the three appearers having been born at Hamrun, where they likewise reside except Mr. Joseph Quintano who resides at Sliema; the aforesaid Mrs. Inez Falzon and Mrs. Carmelina Saliba here appearing assisted by and with the intervention of their respective husband, Mr. Anthony Falzon of the Civil Service, son of Mr. Ruggiero and Evelyn n e Bonnici, deceased, born in Sliema and residing at Hamrun, and Mr. Joseph Saliba, clerk, son of the late Mr. Paul Saliba and Mrs. Bice n e Quintano, born in Sliema and residing at Hamrun, all being hereunder signed —of the one part — and

30 Mr. Giuseppe Pace Bonello, Legal Procurator, son of Mr. Luigi Pace Bonello, Legal Procurator, and his wife Mrs. Carmela n e Degiorgio, both deceased, born and residing at Saint Julian's, on behalf and in the interest of, and in his capacity as agent for MESSRS. BUTTIGIEG BROS. & Co., hereundersigned — of the other part —

All the appearers being personally known to me hereundersigned Notary.

Whereas appearers Mrs. Inez Falzon and Mrs. Carmelina Saliba, both assisted by their respective husband, and Mr. Joseph Quintano, sisters and brother, as legitimate heirs of

Mr. Salvatore Quintano and of his wife Mrs. Giuseppina n e Sultana, hold a moiety of the concern "Palais des Danses", formerly conducted by the aforesaid Mr. Salvatore Quintano in partnership with Mr. Carmelo Bonavia, of the goodwill and of all the other rights inherent to the aforementioned concern, and which will be described in greater detail hereunder, they, in virtue of this instrument, do hereby cede, convey and transfer to the other appearer Mr. Joseph Pace Bonello, Legal Procurator, who, in his aforesaid capacity, accepts, buys and acquires, for the mutually agreed upon price of Seven hundred pounds sterling (£700) the moiety of the concern, of the goodwill and right of tenancy, of the "Palais des Danses" at number Thirty-four, Strait Street, Valletta, and of all other rights, licences and permits relative and inherent to the said concern, everything included and nothing excluded, and there being also included all rights to indemnity arising from enemy damage by bombing and accorded by the provisions of the War Damage Ordinance — under the following conditions:—

Firstly: This present conveyance is absolute and comprehensive and includes all the rights formerly held by the parents of the transferers in the aforesaid concern, and, accordingly, the acquiring firm now holds in virtue of this instrument the moiety of all such rights on the aforementioned concern as were formerly held by Mr. Salvatore Quintano, deceased, parent of the transferers.

Secondly: The aforementioned price of Seven Hundred pounds (£700) is being hereby paid by the appearer Mr. Giuseppe Pace Bonello, Legal Procurator, in his aforesaid capacity, by cheque for the corresponding sum of Seven Hundred pounds (£700) on Messrs. "B. Tagliaferro & Sons", Bankers, and dated to-day, bearing number One Thousand Five Hundred and Eighty-nine (No. 1589) and for this said sum, they are hereby accepting and receiving, appearers Mrs. Inez Falzon and Mrs. Carmelina Saliba, assisted by their respective husband, and Mr. Joseph Quintano, sisters and brother, do hereby give a receipt. Whereas, however, the parties hereto are subjecting this present conveyance to a resolute condition, as hereunder specified, appearers do hereby likewise stipulate that the price of seven hundred pounds, as hereby paid, shall not be shared between and taken by each transferer until such time as the transfer of the permit to hold public Dances issued by the Police to Salvatore Quintano and Carmelo Bonavia on the Twentyninth day of September, in the year One Thousand Nine Hundred and Twenty-five and bearing number Eighty-three Thousand Three Hundred and Fifty-

three (No. 83,353) shall have been approved by the Police; and, accordingly, until such time as the Police shall have approved the transfer of the aforementioned permit, the aforesaid hereundersigned Mr. Anthony Falzon will be, and shall be, personally held, responsible for the aforementioned sum of Seven hundred pounds (£700).

10 Thirdly: The parties hereto do hereby expressly stipulate that this present conveyance is subject to the condition of the transfer of the aforementioned permit; and, accordingly, if the Police shall not approve the transfer of the said permit to Carmelo Bonavia and the acquiring firm, this present conveyance shall be rescinded and of no further effect, and the acquiring firm shall, in consequence, be there and then entitled to the restitution of the aforementioned sum of Seven hundred pounds (£700). Contrarily, as soon as the Police shall have approved the transfer of the said permit to Carmelo Bonavia and the acquiring firm, this present conveyance shall become absolute, complete and irrevocable.

20 Done and published, the contents hereof having been previously and duly explained by me to the appearers according to law, in Malta, at Sliema, at Flat number Two of Number One Hundred and Thirty-eight in Tower Road, there being present as witnesses hereto Mr. Dunstan George Bellanti, Lawyer, Doctor of Laws, son of Mr. Paul Francis Bellanti, deceased, and Mr. Francis Pace, clerk, son of Mr. John Baptist Pace, deceased, both residing at Sliema.

30 .. (Signed) INEZ FALZON. ANT. FALZON.
CARMELINA SALIBA. J. SALIBA.
J. QUINTANO. GIUS. PACE BONELLO.
DUNSTAN G. BELLANTI. FRANCIS PACE.

PAUL PELLEGRINI PETT,
Notary Public — Malta.

A true copy issued from my records, this Twenty-ninth (29th) day of January, 1945.

(signed) PAUL PELLEGRINI PETT,
Notary Public — Malta.

DEFENDANTS' EXHIBITS.

DEFENDANTS' EXHIBITS.

Exhibit "A"

Filed by the Defendants together with their Statement of Defence (page 15 of the Record) — Draft agreement dated 3rd February, 1944.

This Third day of February One Thousand Nine Hundred and Forty-four.

In virtue of this private agreement Mr. Antonio Buttigieg, merchant, son of Mr. Carmelo Buttigieg and Mrs. Paola n e Galea, deceased, born in Hamrun and residing in Valletta, on behalf of the firm Messrs. Buttigieg Bros. & Co., and Mr. Carmelo Bonavia, merchant, son of Mr. Carmelo Bonavia and Mrs. Lorenza n e Gatt, both deceased, born at Bormla and residing in Birkirkara, in his own name, hereundersigned, — referring to the deed of assignment published in the acts of Notary Paul Pellegrini Petit on the 18th January, of the current year abovementioned, whereby the said firm purchased, through its legal adviser Mr. Giuseppe Pace Bonello, Legal Procurator, from Mrs. Inez wife of Mr. Anthony Falzon, Mrs. Carmelina wife of Mr. Joseph Saliba and from Mr. Joseph Quintano, as heirs of Mr. Salvatore Quintano and Mrs. Giuseppina Quintano, n e Sultana, late husband and wife, one moiety of the concern, goodwill, tenancy, including permits, licences and all other rights of the Palais des Danses, which was situate, as now these premises lie demolished through enemy action, in Valletta, at No. 34 Strait Street, — declare that the other moiety of the said concern, goodwill and tenancy, including permits, licences and all other rights, belongs exclusively and absolutely to the appearer Mr. Carmelo Bonavia.

Appearers do hereby add that, whereas the Police for the purpose of the transfer of the permit — issued by the said Police on the 29th September, 1925, and bearing the number 83,353 to the appearer Mr. Carmelo Bonavia and to the said Mr. Salvatore Quintano, — in the name of the contracting firm and of the other appearer Mr. Carmelo Bonavia, now requires that the said permit be issued in the name of one person only, appearers, therefore declare that the aforesaid concern "Palais des Danses" with its goodwill, right of tenancy, permits, — including that aforesaid, — licences and all other rights inherent to the same concern, belong all without any exception in full ownership to them in equal shares.

In consequence of this declaration the appearers affirm that all such rights as were assigned to the acquiring firm in virtue of the aforesaid deed of the 18th January, 1944, are equal to, and neither more nor less than, those held by Mr. Carmelo Bonavia aforesaid in the said concern, and consequently appearers do hereby expressly agree and reciprocally bind themselves the one in favour of the other and both mutually accepting, that neither of them shall pretend or claim more rights than the other in the said concern.

The appearers also stipulate that the aforesaid concern 10
may be transferred to and carried on in such premises as they shall choose, on condition, however, that the rent of such new premises shall be borne by both of them from the day that the aforesaid permit shall begin to be used.

The aforesaid having been premised, the appearers agree that the permit aforesaid shall be issued by the Police in the name of Mr. Arthur Buttigieg, who is one of the owners of the firm Messrs. Buttigieg Bros. & Co.

Exhibit "B".

Produced by the Defendant Anthony Falzon whilst giving 20
evidence (page 20 of the Record) — Letter dated 4th
February, 1944, addressed to the Superintendent of Police,
Valletta.

Valletta, February 4th, 1944.

The Superintendent of Police, Valletta,
Superintendent's Office,
Valletta.

Sir,

With reference to our application of January 19 last for 30
the transfer of the permission issued to Messrs. Salvatore
Quintano and Carmelo Bonavia in September 29, 1925, by
Permit No. 83353, we now beg to request you to issue the per-

mission aforesaid in the name of Mr. Arthur Buttigieg, who with us, is signed hereunder.

We have the honour to be,
Sir,
Your obedient servants.

The 23rd January, 1945 .

Filed by Anthony Falzon whilst giving evidence.

(signed) J. DINGLI,
Deputy Registrar.

10 **Translator's Note.**

This document is written in the English language.

Exhibit "A".

Filed by Minute dated 24th April, 1945 (page 37 of the Record)

Letter dated 17th April, 1944, addressed to the Most Noble
Marchese Paolo Apap Bologna.

Tel. Sliema 786.

17th April, 1944.

The Most Noble
Marchese Paolo Apap Bologna,
20 Villa Apap Bologna,
H'Attard.

Most Noble Marchese,

30 We the undersigned, in the interest of the heirs of Mr. Salvatore Quintano, deceased, and of Mr. Carmelo Bonavia, tenants of the premises in Valletta, Strait Street, No. 34, which was conducted under the firm-name "Palais des Danses", and which is in part demolished by enemy action, do hereby pray that you should determine amicably the rent payable for such portion of the said premises, as may still be used.

We beg to inform you that Advocate Enrico Borg Olivier, in respect of the part of such premises as is administered by him, has already declared himself ready to come to an agreement with our respective clients.

Awaiting your favourable and early reply,

We tender our best respects,
(signed) DUNSTAN G. BELLANTI, Advocate.
GIUS. PACE BONELLO, L.P.
