

In the Privy Council.

**On Appeal from the Court of Appeal,
Malta.**

BETWEEN

EMMANUELE BORG *proprio et nomine*
Respondent (Plaintiff).

AND

JOSEPH AND GEORGE GRISCTI *proprio et nomine*
Appellants (Defendants)

RECORD OF PROCEEDINGS

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DOCUMENTS

In

H. M. COMMERCIAL COURT

In the Privy Council.

**On Appeal from the Court of Appeal,
Malta.**

BETWEEN

EMMANUELE BORG *proprio et nomine*
Respondent (Plaintiff).

AND

JOSEPH AND GEORGE GRISCTI *proprio et nomine*
Appellants (Defendants).

RECORD OF PROCEEDINGS

Translation

DOCUMENTS

No. 1.

Writ-of-Summons.

No. 1.
Writ-of-Summons.

Writ-of-Summons No. 254/1944.

In H.M. Commercial Court.
This twenty-seventh November, 1944.
Filed by G. Galdes, L.P., with Five
Exhibits.

(Sd.) CARM. VELLA, D/Registrar.

GEORGE VI

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

By Our Command, at the suit of Emmanuele Borg, in
his own behalf and for and on behalf of the Comptoir
Internationale, in his capacity as assignee of Messrs. Allan &
Dey, of Aberdeen, Scotland, under an instrument under
private signature dated 5th September, 1944 — **You Shall
Summon** — Joseph and George Griscti, Merchants, in their

No. 1.
Writ-of-Summons.
—Continued.

own behalf and in their capacity as partners in the Firm of Vincent Grixti & Sons, to appear before this Court at the Sitting to be held on the Fourteenth December, 1944, at 9 a.m.

And there; — whereas Messrs. Allan & Dey of Aberdeen were creditors of the Defendant Firm for the sum of £433.6.8, due in respect of two consignments of fish which were shipped and delivered to the Defendants in execution of Orders dated 2nd and 5th October, 1935, and which, in view of the fact that they had placed their Orders in the name of fictitious customers, they themselves had sold and disposed of — and the whole transaction had in fact been carried out solely in their own interests; — and whereas, up to the 30th October, 1944, the interest accruing on the principal due to Messrs. Allan & Dey amounted to £225.6.3, whilst the sum of £26.6.0 was incurred in legal costs; — and whereas, under the instrument aforesaid (“A”), the Firm in Aberdeen assigned the whole of their credit to the Plaintiff for the price of £108.6.8; — and whereas notice of the assignment was served upon the Defendants by judicial letter dated 9th October, 1944, (“C”), and whereas, thereupon, the Defendants, by judicial letter dated 27th October, 1944 (“D”), claimed that the credit assigned as above was a litigious right, and that, consequently, they were entitled to the recovery of the assignment; — and whereas by Lodgment Schedule dated 31st October, 1944, (“E”), the Defendants proceeded to make the respective deposit in Court; — and whereas, prior to the assignment, the Defendants had never questioned the credit aforesaid and had in fact repeatedly admitted their liability; — and whereas even now they have failed to specify any grounds for controversy; — every necessary declaration being prefaced and any expedient direction being given; — said Defendants to shew cause why they should not be condemned to pay the Plaintiff the sum of £685.18.11 in respect of the principal, interest and costs of the assigned credit. — With further interest thereon from 1st November, 1944, and with costs, including the costs of the judicial letter dated 9th October, 1944.

You Shall Summon said Defendants **proprio et nomine** so that a reference to their oath may be made.

You shall further give the said Defendants **proprio et nomine** notice that if they want to contest the claim they must, not later than two working days previous to the day fixed for the hearing of the cause, file a statement of defence according to law, and that in default of such statement within the said period and of their appearance on the day, at the hour and

place aforesaid, the said Court will proceed to deliver judgment according to justice on the action of the said Plaintiff **proprio et nomine** on the said day, or on any subsequent day, as the Court may direct.

No. 1.
Writ-of-Summons.
—Continued.

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

Given by Our aforesaid Commercial Court.

10 Witness Our faithful and well beloved the Honourable Mr. Justice S. Schembri, Doctor of Laws, Judge of Our said Court.

This twenty-eighth November, 1944.
(Signed) S. SCHEMBRI.

No. 2.

Plaintiff's Declaration in terms of the Laws of Procedure.

No. 2.
Plaintiff's
Declaration in
terms of the Laws
of Procedure.

Emmanuele Borg **proprio et nomine**
vs.

Joseph and George Gristi, Merchants.

20 The Declaration of the Plaintiff **proprio et nomine**.

Respectfully sheweth:—

In 1935, the Firm of Vincent Gristi & Sons was in a state of bankruptcy. This notwithstanding, the Firm continued to place orders with Messrs. Allan & Dey.

On the 2nd and the 5th October, 1935, the Defendant Firm submitted an order on behalf of Felix Blanc and another order on behalf of Mazzitelli, whom they described as two of their best customers.

30 The orders, however, were fictitious. Felix Blanc, who was an employee of the Defendants, declared to the Honourable Mr. Justice S. Schembri — who, at the time, was the Legal Adviser of Messrs. Allan & Dey — that he had never placed the order and that he was only an employee of the Defendant Firm. Mazzitelli was a tailor by trade and not a fish merchant.

The Defendants sold the goods (possibly under the invoiced price) and escaped to Alexandria — notwithstanding that a Warrant of Impediment of Departure had been sued out against them by other creditors.

No. 2.
Plaintiff's
Declaration in
terms of the Laws
of Procedure.
—Continued.

Since then, the Defendants have admitted the debt owing to Messrs. Allan & Dey and have made various offers — including an offer to make over to the creditor Firm, in part payment, the sum of £209 which they have on deposit at the Midland Bank (England), and to enter into a notarial bond for the payment of the balance within ten years.

Witnesses:—

The contending parties: to give evidence in substantiation of the foregoing Declaration.

The Honourable Mr. Justice S. Schembri, LL.D. — to give evidence in substantiation of the fact that the orders were fictitious. 10

Dr. John Pullicino — to give evidence in substantiation of the fact that the Defendants admitted the debt owing to Messrs. Allan & Dey.

Paolo Pace and Giuseppe Abela — to give evidence in substantiation of the fact that the Defendants sold the goods to their own account.

(Signed) V. CARUANA, Advocate,
(Signed) G. GALDES, Legal Procurator. 20

No. 3.
List of Exhibits.

No. 3.
List of Exhibits.

In His Majesty's Commercial Court,

Emmanuele Borg proprio et nomine
vs.

Joseph and George Griscti, Merchants.

List of Exhibits produced together with the Writ-of-Summons.

Exhibit "A" — Deed of Assignment dated 5th September, 1944. 30

Exhibit "B" — Detailed statement of the assigned credit.

Exhibit "C" — Notice of Assignment (Judicial Letter) dated 9th October, 1944.

Exhibit "D" — Judicial Letter of the Defendants dated 27th October, 1944.

Exhibit "E" — Lodgment Schedule dated 31st October, 1944. No. 3.
List of Exhibits.
—Continued.

(Signed) V. CARUANA, Advocate,
(Signed) G. GALDES, Legal Procurator.

No. 4.
Statement of Defence

No. 4.
Statement of
Defence.

In His Majesty's Commercial Court,

Emmanuele Borg *proprio et nomine*

vs.

10 Joseph and George Griscti *proprio et nomine.*

Defendants' Statement of Defence.

Respectfully sheweth:—

20 The credit of £433.6.8 claimed by the Plaintiff as principal due to Messrs. Allan & Dey is made up of the sum of £260 in respect of goods sold to one Mazzitelli — who himself sold and received payment for the goods — and of the sum of £173.6.8 in respect of goods ordered to the name of Felix Blanc and taken over by the Defendants as guarantors of the said Blanc who defaulted in making payment. Therefore, the Defendants are answerable only in respect of the latter sum of £173.6.8; and as the assignor Firm was about to sue Blanc for the recovery of that amount, the respective credit is of a litigious nature and the Defendants have the right to the recovery thereof by making reimbursement of the actual price of the assignment, that is to say, of the sum of £43.11.8, which they are prepared to pay subject to subrogation of rights.

30 The Defendants never undertook to pay Messrs. Allan & Day the debt of Mazzitelli. They only made conditional offers which the exporting Firm did not accept, and which, therefore, are to be considered as withdrawn by the Defendants. In any case, the Defendants are always entitled to obtain their release from the Plaintiff assignee by reimbursing to him the actual price of the assignment — which, as already submitted, they are prepared to do if adjudged debtors of the amount.

Although it is stated in the instrument of assignment that the Plaintiff had acquired the interest due according to law, it is quite clear that the assignors never had the intention of assigning that interest, which in fact they had never taken

No. 4.
Statement of
Defence.
—Continued.

into account; and (without prejudice to the foregoing pleas) the Plaintiff is therefore entitled only to the price of the goods, to the exclusion of the interest accruing thereon.

The Defendants cannot be held liable for the legal costs included in the assignment, amounting to £26.0.0, considering that they are not the debtors of the assignors for that amount, which in fact represents an expenditure which they, the assignors, thought fit to incur out of Court in their own interests.

As shown by the letter marked Exhibit "A", there is a possibility of the assignment made to the Plaintiff being rescinded, and therefore the necessity arises for holding up the present proceedings for a reasonable period of time so as to enable the assignors to take the necessary steps. 10

Without prejudice to other pleas.

(Signed) JOS. H. XUEREB, Advocate,
(Signed) ROB. DINGLI, Legal Procurator.

The Eleventh December, 1944.

Filed by R. Dingli, L.P., with one Exhibit.

(Signed) A. GHIRLANDO, 20
Dep. Registrar.

No. 5.
Defendants'
Declaration.

No. 5.
Defendants' Declaration

In His Majesty's Commercial Court,

Emmanuele Borg **proprio et nomine**
vs.

Joseph and George Griscti **proprio et nomine.**

Defendants' Declaration.

Respectfully sheweth:—

The goods ordered by the Defendants of Messrs. Allan & Dey were ordered on behalf of their customers here in Malta. One order, for £260, was sent on behalf of Mazzitelli, and another, for £173.6.8, was sent on behalf of Felix Blanc. 30

Mazzitelli took delivery and sold the goods on his account, but failed to pay the Defendants. Felix Blanc refused the goods

and thereupon the Defendants paid for and took delivery of those goods.

No. 5.
Defendants'
Declaration.
—Continued.

At the time Messrs. Allan & Dey requested payment, the Defendants, who were then trading under the name of Vincent Griscti & Sons, were being pressed to make various payments in respect of goods which had been ordered by them. Their creditors refused to grant them any respite and they were therefore obliged to stop payments altogether. So far as Messrs. Allan & Dey were concerned, the Defendants tried to come
10 to an arrangement with them even with regard to the whole shipment — notwithstanding that they were in no way bound to do so — and they offered them money which was held to their credit elsewhere. The proposed arrangement, however, fell through.

Subsequently, the Defendants sought to compound with their creditors by paying them 20 per cent in settlement. Some of their creditors accepted and some refused and negotiations were still proceeding when war broke out.

Messrs. Allan & Dey were one of the Firms to refuse the
20 proposed settlement and had contemplated taking legal steps for the recovery of the debt and threatened the Defendants with criminal proceedings. The outbreak of war, however, brought matters to a halt.

Nevertheless, Mr. J. Pullicino, LL.D., acting on behalf of the Firm in Aberdeen, continued to press the claim against the Defendants.

Following a judicial letter which Dr. Pullicino served upon them — possibly in order to interrupt the run of
30 quinquennial prescription — the Defendants actually offered a cash payment in settlement amounting to 40 per cent of the principal; and they were awaiting a reply to that offer.

Lately, they were served with a judicial letter notifying them of the assignment made to the Plaintiff, and, in view of the litigious nature of the credit, they offered the Plaintiff full reimbursement of the actual price paid for the assignment. The Plaintiff declined the offer, and the Defendants, reserving the right to contest the claim, then made arrangements for a Court deposit to be made of the whole amount at stake.

40 Further, the Defendants wrote to Messrs. Allan & Day, informing them of the offer which they had made and pointing out that that offer was in fact more advantageous than that

No. 5.
Defendants'
Declaration.
—Continued.

made by the Plaintiff; and it would appear that Messrs. Allan & Dey are now disposed to repudiate the assignment made to the Plaintiff (Exhibit "A").

The correspondence exchanged with Messrs. Allan & Dey make it quite clear that it has never been the intention of that Firm to make assignment also of the interest on the principal, which has in fact been included in the assignment. Moreover, the credit representing extra-judicial costs is not an assignable credit, and the very wording of the assignment shows that that credit, **ut sic**, without any previous judicial recognition, or any other title in regard to the extent thereof, should never have been included in the assignment. 10

Witnesses:—

1. The contending parties — to give evidence in substantiation of the facts set out above and to give further evidence.

2. The Plaintiff — so that a reference to his oath may be made.

3. Mr. John Pullicino, LL.D. — to give evidence as to what transpired when interviewed by the Defendants.

4. John Geranzi

5. Manager, Anglo-Maltese Bank

6. Manager, Barclays Bank

to give evidence in regard to the goods ordered on behalf of Mazzitelli. 20

(Signed) JOS. H. XUEREB, Advocate.

(Signed) ROB. DINGLI, Legal Procurator.

No. 6.
Procès Verbal.

No. 6.
Procès Verbal

The 14th December, 1944.

The Honourable Mr. Justice S. Schembri, LL.D. abstains from taking cognizance of the present case on the ground that, before he was raised to the Bench, he was the Legal Adviser of Messrs. Allan & Dey. 30

Therefore the case stands adjourned to the 26th January, 1945, when it will come up for hearing before the Honourable Mr. Justice A.J. Montanaro Gauci, LL.D.

(Signed) J. DINGLI,
Deputy Registrar.

No. 7.
The Evidence of Giuseppe Abela.

No. 7.
The Evidence of
Giuseppe Abela.

In His Majesty's Commercial Court.

Twenty-seventh February, 1945.

Giuseppe Abela, son of the late Salvatore, sub-poenaed by the Plaintiff, states on oath:—

I was employed as a traveller with the firm of Vincent Griscti & Sons. I remember that the Firm placed some orders for fish with Messrs. Allan & Dey. I was working for them
 10 at the time. A certain Felix Blanc used to be at the offices of the firm, but I do not know whether or not he was in their employ — it happened ten years ago. I remember that a certain Mazzitelli, a tailor, was employed with Messrs. Vincent Griscti & Sons. I remember that the goods I mentioned before were taken by Mazzitelli who, naturally, effected their sale. However, I was ill at the time and I am not sure whether they delivered the consignment to Mazzitelli without receiving payment for it. I do not know whether Mazzitelli was at that
 20 time in a state of bankruptcy. It may be he was. I do not know whether it was usual for Mazzitelli to bring over fish without paying for it. So far as I know, that was the first time. But I know that Messrs. Griscti & Sons imported other goods on his behalf. I was merely a traveller in the employ of the Firm and I do not know exactly what connections Messrs. Griscti & Sons had with Mazzitelli. I cannot say whether Mazzitelli used to pay for the goods which the Firm imported on his behalf. It is a fact that I was entrusted with certain matters at the office. I repeat, however, I do not know what were the business relations of the Firm with Mazzitelli and Blanc. Later,
 30 Mazzitelli absconded and so did the Defendants. I do not think Mazzitelli's financial position was at all sound.

— Cross-examination —

I know that Mazzitelli used to do business with a messman on one of H.M. Ships. I do not know the name of that messman. I know only that Mazzitelli used to do business with him, but I do not know how often.

Mazzitelli himself used to mention that he used to do business with a messman. I do not know whether Messrs.
 40 Griscti & Sons had anything to do with that business.

(Signed) GIUSEPPE ABELA,
(Signed) A. GHIRLANDO,
Deputy Registrar.
2/3/45.

The Evidence of Mr. J. Pullicino, LL.D.

Eighth March, 1945.

Dr. John Pullicino, produced by the Plaintiff, states on oath:—

I was authorised by Messrs. Allan & Dey to take charge of their interests in succession to Dr. S. Schembri, now Mr. Justice Schembri. The firm in Aberdeen had a claim against Messrs. Vincent Griscti & Sons for the sum of £433.6.8, due in respect of two orders placed with them in October, 1935 — one on behalf of Felix Blanc and the other on behalf of the Firm itself. Both at the time of Mr. Justice Schembri and in my own time, various difficulties were experienced on account of the financial position of the debtors. According to the correspondence, the brothers Griscti, or the one or the other of them, had at that time left Malta and it was very doubtful whether it would be possible to collect the debt. Mr. Justice Schembri succeeded in contacting Felix Blanc, who was then still in Malta. According to the correspondence, however, Felix Blanc told Mr. Justice Schembri that he was an employee of the Defendant Firm and that he had never ordered any goods. As, according to the brothers Griscti, the other order had been made on behalf of one Mazzitelli, the former Legal Adviser of the Firm had also tried to find Mazzitelli, but was informed that Mazzitelli had likewise left the Island. Meantime, Messrs. Allan & Dey wrote to me periodically and asked for information as to the possibility of collecting the debt. At the end of 1939, the Defendants called on me and made the proposal that they should make over to the creditor Firm the sum of £209.4.7 which, together with the interest accruing thereon for the period of about four years, was held by the Midland Bank, London, to the credit of V. Griscti — and that they would then pay off the balance within ten years. I communicated the proposal to my clients and they accepted it; but in view of the various difficulties that cropped up in connection with the withdrawal of the deposit from the Midland Bank, the proposed arrangement had to be dropped. This was at the beginning of 1940.

Afterwards, I did not see the Defendants again — that is to say, they did not speak to me again on the matter. However, in November, 1943, I sent them a judicial letter, principally in order to interrupt any prescriptive period that might have

been running at the time. At the same time, I wrote to Messrs. Allan & Dey, informing them of the steps I had taken and advising them that they should obtain a Court decision on the claim in order that they might then have the credit registered against the debtors, pointing out that perhaps the brothers Griscti were then in a better position to come to an arrangement. This letter to Messrs. Allan & Dey is dated 17th November, 1943. As soon as they received the judicial letter, the brothers Griscti, George and Joseph, came to see me at Mdina and spoke to me about the debt and about their financial position. I told them that they would be well-advised to come to some arrangement with my clients and they replied that they were trying to compound with all their creditors. I do not remember that on that occasion the Defendants mentioned any percentage which they proposed to offer to their creditors, but I remember that I promised them that if at any time they had a reasonable offer to make to my clients, I would not fail to recommend it. They then asked me to advise them on some matter or other, in regard to which, however, I feel I should not give evidence without their express permission.

I did not see them again afterwards. On the 1st May, 1944, I received a letter from the Plaintiff in this case, offering to buy my clients' credit by paying 25 per cent of the credit and the legal expenses. On the 4th May of the same year, I sent my clients a copy of that letter, together with a covering letter in which I suggested that, instead of accepting the offer, they should again approach the Defendants and try to secure a higher offer. I advised them further that, if they did not agree to the course suggested, they should at least make a counter-offer to the Plaintiff. My clients, through their Legal Advisers, replied by letter dated 10th June. They stated that though they appreciated that it might be possible for them to secure a higher offer, they did not feel that they should delay matters any further. They therefore instructed me to proceed at once to make the assignment to the Plaintiff. The assignment was made in September, 1944, and I myself, if I remember rightly, signed the Judicial Letter whereby due notice was given of the assignment. I then remitted to my clients the sum paid for the assignment.

On the 8th November, I received a letter through the Legal Advisers of Messrs. Allan & Dey, stating that the Firm in Aberdeen had received a letter from George Griscti, in which George Griscti pointed out that he and his brother had made me an offer to pay 40 per cent of the debt and that they had

No. 8.
The Evidence of
Mr. J. Pullicino,
LL.D.
—Continued.

No. 8.
The Evidence of
Mr. J. Pullicino,
LL.D.
—Continued.

made arrangements for remitting the money. They therefore informed me that the sum they had received should not be considered as accepted in settlement of the claim if in fact I had had an offer for them of 40 per cent — since in that case their clients' acceptance of 25 per cent had been agreed to through what they called "misrepresentation". I wrote back on the 18th November, 1944, pointing out that that was the first time — as in fact it was — that I had heard of the offer of 40 per cent. I referred them to all my previous letters advising them to deal directly with the Defendants rather than with third parties and I asked them to let me have a copy of the letter received from George Griscti. Subsequently, I received a copy of that letter, containing the allegations to which I have referred. 10

I am in a position to state with certainty that, since 1940, I spoke to the brothers Griscti only once — and that was on the occasion I have referred to, that is to say, in November, 1943; and that on that occasion they made no offer to me and gave me no hint that they had at their disposal any money with which to compound the debt. The first time I heard about the alleged offer was when I read my clients' letter of the 8th November, 1944 — or about a year after I had last spoken to the brothers Griscti. 20

I do not object producing, **animo ritirandi**, that part of the correspondence which, in my opinion, may be produced.

I believe that, before I took over, the brothers Griscti used to object to the Mazzitelli shipment, but my clients always insisted that the brothers Griscti were liable also for the payment of the Mazzitelli goods. The proposals for a settlement made later by the Defendants concerned the whole debt. Apart from the matter of responsibility, there has never been any question in regard to the amount of the invoices. 30

— Cross-examination —

Although Messrs. Allan & Dey threatened on various occasions to take legal steps, including criminal proceedings for fraud, they never wanted to incur costs. Presumably, the Defendants were not aware of this, and, so far as I know, I never told them. The early proposals regarding the money deposited at the Midland Bank were naturally made in order that the Firm in Aberdeen might drop the threatened proceedings. I do not remember — but I do not rule out the 40

possibility — that I may have informed the Defendants that it was proposed to institute criminal proceedings against them. The threat of criminal proceedings, however, had been made to them also at the time of Mr. Justice Schembri. It is not within my recollection that the Plaintiff had ever come to me, either alone or with the Defendants, to mediate on behalf of the Defendants; and I have no idea as to how he had come to know of the debt. As regards the order on behalf of Mazzitelli, there is a Bill of Exchange accepted
 10 by Mazzitelli.

I believe that, according to the correspondence, Defendants took delivery of and themselves sold the Mazzitelli shipment — but I am not certain of this.

I remember that, at the time of Mr. Justice Schembri, a proposal had been made to come to an arrangement with all the creditors by paying them 20 per cent of their credits. Messrs. Allan & Dey had not accepted that proposal.

I do not remember that on the occasion when they called on me — after service had been made upon them of the judicial
 20 letter referred to — the Defendants had a bank pass-book in their hands.

It was because the offer was too low, and because I should have preferred the arrangement to be made with the brothers Griscti, that I advised Messrs. Allan & Dey not to accept the offer of 25 per cent made by Borg.

I did not communicate the offer made by Borg to the brothers Griscti because that offer was intended for my clients.

There is the same agreement of 25 per cent in respect of the interest due on the principal. This, however, is not
 30 mentioned in the deed of assignment, and the reason is that I was not sure as to the percentage claimed by my clients in respect of the interest assigned. Consequently, on the day the deed of assignment was drawn up, the Plaintiff agreed that, if my clients insisted on 25 per cent also in respect of the interest, he would pay the amount due at that rate. I wrote to Messrs. Allan & Dey and they replied that they insisted on that rate of percentage also in respect of the amount due for interest. The amount itself has not so far been paid by the Plaintiff. The reason is that the letter from
 40 my clients, in which they stated “on any interest payable”, was received after the commencement of the present proceedings. I have, therefore, had to wait to find out what is the

No. 8.
The Evidence of
Mr. J. Pullicino,
LL.D.
—Continued.

amount due for interest — so that, for instance, I should not include any interest, the recovery of which is barred by prescription.

(Signed) J. DINGLI,
Dep. Registrar.

No. 9.

No. 9.
The Evidence of
Mr. Justice
Schembri.

The Evidence of the Honourable Mr. Justice Schembri.

In His Majesty's Commercial Court.

The Eleventh May, 1945.

The Honourable Mr. Justice Schembri, sub-poenaed by the Plaintiff, states on oath:— 10

I was the Legal Adviser of Messrs. Allan & Dey up to the time I was practising at the Bar. Messrs. Griscti & Sons offered 20 per cent in settlement of my clients' claim. The firm in Aberdeen declined the offer. I did all I could so that Mrs. Griscti, the mother of the Defendants, should guarantee payment of the debt, and I informed my clients accordingly; but nothing came of the matter. Subsequently, I received my appointment as one of H.M. Judges and handed over the case to Dr. John Pullicino. I should be prepared to file the correspondence exchanged with Messrs. Allan & Dey, provided Messrs. Allan & Dey find no objection. I do not remember whether or not the offer of 20 per cent was made by the Defendants alone or jointly with Mrs. Griscti. The correspondence should make that clear. I say so because, having forgotten the whole matter, I looked up the correspondence. I know that the goods were for Mazzitelli and Blanc and reference both to the one and the other is made in the correspondence exchanged with Messrs. Allan & Dey. According to the correspondence, Mazzitelli left Malta and the Defendants also went abroad for a time. As I have stated, I shall produce the correspondence if Messrs. Allan & Dey have no objection. According to that correspondence, the offer of 20 per cent was in respect of the whole transaction with the firm in Aberdeen. I do not know whether the goods were taken to the Cold Stores and sold ex-Cold Stores. 20 30

(Signed) S. SCHEMBRI,
(Signed) J. DINGLI, Dep. Registrar.

The witness wishes to add:—

After I gave my evidence, I again looked up the correspondence to ascertain whether the goods had been sent over to the Cold Stores and I find that I mentioned in a letter I sent to Messrs. Allan & Dey that a consignment of fish had been sent on deposit to the Cold Stores.

(Signed) S. SCHEMBRI,
(Signed) J. DINGLI, Dep. Registrar.
5/6/45.

No. 9.
The Evidence of
the Honourable
Mr. Justice
Schembri.
—Continued.

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No. 10.
Plaintiff's Minute.

No. 10.
Plaintiff's Minute.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**
vs.

Joseph and George Griscti **proprio et nomine.**

Plaintiff's Minute.

The Plaintiff, for the better implementation of the suit, and in order the better to establish the personal responsibility of the Defendants, hereby produces the whole correspondence exchanged on the subject of the claim at issue. The documents are numbered 1 to 50 and the Plaintiff reserves the right to withdraw them after the case has been disposed of.

(Signed) V. CARUANA, Advocate,

The 15th June, 1945.

Filed by Prof. V. Caruana, LL.D., with 46 Exhibits numbered 1 to 50.

(Signed) J. CAMILLERI CACOPARDO,
Deputy Registrar.

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No. 11.
The Evidence of the Defendant Joseph Griscti.

No. 11.
The Evidence of
the Defendant
Joseph Griscti.

The sixth May, 1946.

The Defendant, Joseph Griscti, states on oath:—

We were local Agents for certain firms abroad. We placed certain orders which were made out to the name of John Mazzitelli and Felix Blanc. Mazzitelli, besides being a tailor, was in business; he did business with messmen, supplying

No. 11.
The Evidence of
the Defendant
Joseph Grisetti.
—Continued.

them with certain goods. Felix Blanc took over an establishment at Hamrun together with my brother — they entered into a partnership which, however, was later dissolved. Felix Blanc then asked me to relieve him of the consignment of fish, and suggested that the consignment should be taken over by us; and, in view of the acceptance of the respective Bill of Exchange, we agreed that we should take over the consignment destined for Blanc. As regards the Mazzitelli consignment, the Bank presented the documents to John Mazzitelli — for the goods had been ordered to his name and he had ninety days within which to effect payment; and thus Mazzitelli became the owner of the goods. At about that time, my brother and I went abroad and we knew nothing as to what had happened to that consignment. When, subsequently, the Plaintiff bought over the debt, I started making investigations, still insisting as I did that I was not answerable so far as Mazzitelli was concerned; and I found that Mazzitelli had sold the goods to Gialanze', who took delivery of the goods and paid Mazzitelli by cheque drawn on Barclays Bank and who was in possession of the counterfoil of that cheque. At that time, following legal advice, and much against our will, we absconded from Malta. This was in 1935-1936. When we saw that the matter had not been straightened out, we returned to Malta and assumed full liability. Prior to the assignment of the credit to the Plaintiff, we were approached by Judge Schembri who, as a practising barrister, was then the Legal representative of the Firm in Scotland, and at that time my mother made an offer to Judge Schembri of 20 per cent. The Firm in Scotland, however, refused that offer. We explained to Judge Schembri that we did not hold ourselves responsible. Nevertheless, we offered 20 per cent which we were prepared to pay in settlement of the claim against us and in settlement of the claim against Mazzitelli. We were prepared to pay the whole debt, both that of Blanc and that of Mazzitelli. In fact, we had a sum of money lying in England and we offered it to Dr. John Pullicino, who succeeded Judge Schembri as the Legal representative of the Firm in Scotland. At that time, Dr. Pullicino was also my Legal Adviser in connection with other matters. We always went to see Dr. Pullicino whenever he sent for us; calling upon him the following day or the day after. On these occasions, Dr. Pullicino told us repeatedly that the Firm in Scotland was pressing him to send all the documents to the Attorney-General and that he was consequently finding it impossible to accommodate matters. I remember that we were served with a Judicial Letter and that the following day my brother George

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and I went up to Rabat to see Dr. Pullicino. He, Dr. Pullicino, was surprised to see us and he told us that it was not such an urgent matter and that he had caused service to be made of the Judicial Letter solely in order to interrupt the run of prescription. He told us there was no cause for anxiety, and that, if he were ever compelled to send the documents to the Attorney-General, he would let us know beforehand. Whilst my brother and I were at his office, I told Dr. John Pullicino that I should like to try to come to a final settlement and we offered him 25 per cent instead of 20 per cent. Dr. Pullicino replied that it was useless inasmuch as the Firm in Scotland had taken a firm stand and would not agree. I pointed out to him that I was offering 25 per cent in respect of the debt of Felix Blanc, for which I was responsible, as well as in respect of the debt of Mazzitelli, which was not my own debt. Dr. Pullicino, however, told us that it would be useless to communicate to his clients the offer of 25 per cent. My brother then offered 30 per cent and Dr. Pullicino again replied that it would be useless to offer the Firm 30 per cent. Seeing this, I offered 40 per cent. Dr. Pullicino replied that if we were prepared to offer 40 per cent, he would approach his clients for an arrangement on that basis. We told him that, to prove our good faith, we would hand over to him a Pass-Book of the Government Savings Bank, in which we had a sum of over £300 to our credit, which would have been sufficient to cover payment of our offer of 40 per cent. As the war was still in progress at the time, I asked Dr. Pullicino to communicate our offer by wire so that we might have an early reply. Dr. Pullicino replied that there was no need to incur telegraphic expenses and that it would have been enough for him to inform his clients of our offer by an Air Mail letter sent under Registered cover. We offered to hand over the Pass-Book to Dr. Pullicino, duly endorsed "To Bearer". Dr. Pullicino, however, stated he could not agree to that proposal before he was authorised by his clients to accept our offer. He told us also that he expected the Firm to accept our offer of 40 per cent. Dr. Pullicino himself showed us out, telling us not to worry. This arrangement was made on the 26th November, 1943. I had not yet received a reply to my offer when the letter filed at fol. 76 of the Record was written, although the date of this letter shows when it was sent to me. After we left Dr. Pullicino, my brother took me to task because he thought Dr. Pullicino would have ended by accepting our offer of 30 per cent. However, I told my brother that it would be better to pay 40 per cent and settle matters once for all and I told him also

No. 11.
The Evidence of
the Defendant
Joseph Griscti.
—Continued.

No. 11.
The Evidence of
the Defendant
Joseph Griscti.
—Continued.

that I hoped we would have a reply to our offer within a month. On that occasion, Dr. Pullicino informed us that the fees and expenses due to him and to Dr. Schembri, and those in respect of the contracts, would have to be paid by us, and we agreed that we should pay also these fees and expenses. We did not again approach Dr. Pullicino, relying on his word that he would at once communicate to us whatever reply, good or bad, he might receive. We continued to rest on his assurance that nothing untoward would happen so long as he continued to act on behalf of the Firm. He told us that if the Firm appointed anyone else — in view of the fact that he had showed us so much patience — he would at once let us know. There were other matters outstanding between me and the Plaintiff and one day I received a judicial letter informing us that he had bought over the debt in question by paying 40 per cent and, over and above the whole amount of the debt, he claimed also the interest accruing thereon. We wrote to the Firm and explained everything and also pointed out that the Plaintiff had not paid any percentage in respect of the interest on the sum paid by him. The Firm replied that, if the facts were as we had stated them, they would repudiate the agreement entered into with the Plaintiff. When Plaintiff's judicial letter was served upon us, we made a deposit in Court of the sum of £700, which was the amount claimed by the Plaintiff Borg, inclusive of the whole debt and the interest paid by him. At the time we agreed to pay both the sum due by Felix Blanc and that due by Mazzitelli, they were threatening to send the documents to the Attorney-General; and I used to tell Dr. Pullicino that I was not frightened by the threat of criminal proceedings and that I did not think I should be found guilty. If I had known that Gialanze' had paid Mazzitelli, I should not have offered to pay a percentage also on the debt of Mazzitelli.

— Cross-examination —

Question: Did you do any business with Mazzitelli on other occasions?

Witness: On several occasions.

Question: What kind of business?

Answer: Business in draperies, soap, fruit. He used to pay the Bank by Bill of Exchange and there were various Bills of Exchange which had been paid. I do not remember, however, on what date he had paid the last Bill of Exchange. When at

the office, I used to make sure that he had paid for the goods taken last before placing any further orders on his behalf. All the same, I cannot say whether Mazzitelli was in a flourishing state at the time when I delivered to him the goods in question. Before Mazzitelli made the orders to the R.M.S. Textiles, Bradford, he had a pass-book issued by the Anglo-Maltese Bank and another issued by Barclays Bank; and he used to draw cheques on these two Banks. These Bills of Exchange are not in respect of transactions with our Firm, and, when Mazzitelli approached us to do business with us, I asked him for references. Mazzitelli started to do business with us in 1933, and we continued trading together up to 1935. Before carrying out the transaction in question, we had made other transactions with him and he had always paid. We cannot tell what happened to our books because we had entrusted our books to Carmelo Borg and Carmelo Borg is now dead. When we returned from abroad, Carmelo Borg was still living. We had also appointed Paolo Pace to act on our behalf. We left Malta in January, 1936. We had been legally advised to leave the island and we were so advised in order that our legal adviser might offer a percentage out of the funds we left for the purpose, here in Malta. I do not know whether any proceedings were instituted during my absence from the island. So long as we were in Malta, we always paid, although over a protracted period.

We were making payments out of the money we had with our customers and out of the proceeds of about £500 worth of goods which we had left in possession of "Kodak". The firm drew a Bill of Exchange on Mazzitelli payable at ninety days. After I had seen Mazzitelli's references, I told the Firm that he was a customer of the same standing as the others. When I accepted the last order from him, Mazzitelli was sound financially and was paying other firms which we represented; and he also had his own business. For goods which we sold to him on our own account, Mazzitelli used to pay us by cheque, which we in turn used to place to our account. We had moneys to our credit at Scicluna's Bank, Barclay's Bank and the Banco di Roma — that is to say, up to the time we carried out this transaction, we had been receiving cheques from the firm of Mazzitelli in respect of the transactions we carried out with him. When we sold goods to Mazzitelli, we used to give him time up to the end of the month; there were occasions when we sold him £30 worth of soap which he did not pay all at once. Giuseppe Abela was a traveller working for us and he

No. 11.
The Evidence of
the Defendant
Joseph Griscti.
—Continued.

No. 11.
The Evidence of
the Defendant
Joseph Griscti.
—Continued.

used to cash moneys due to us. Mazzitelli himself took delivery of the goods against a Bill of Lading handed over to him by the Bank; and it was afterwards established that Mazzitelli sold the goods to Gialanze'. The goods were sent to the Cold Stores. We had business with Gialanze' as a wholesaler. We never made use of the name of Gialanze'. We never bought goods by making unwarranted use of anyone's name. In the case in question, Gialanze' gave Mazzitelli a cheque payable to Mazzitelli; and we sub-poenaed Barclay's Bank to find out whether or not that cheque had been cashed.

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(Signed) J. E. GRISCTI.

Read over to the witness.

(Signed) J. CAMILLERI CACOPARDO,
Deputy Registrar.

No. 12.
Plaintiff's Minute.

No. 12.
Plaintiff's Minute.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**
vs.

Joseph and George Griscti **proprio et nomine.** 20

The Plaintiff produces a true copy of the Judgment given by this Court on the 1st October, 1936, in re "Ercole Valenzia **nomine** v. Giuseppe Griscti **nomine**", wherein it is established that, in connection with an order bearing a date previous to that of the orders at issue in the present case, the Defendants admitted that Mazzitelli had acted for them as a **prête-nom** and that he was insolvent at the time the order was made on his behalf. (Exhibit "X").

(Signed) V. CARUANA, Advocate,

This fourteenth June, 1946.

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Filed at the Sitting by Prof. V. Caruana with two exhibits.

(Signed) J. CAMILLERI CACOPARDO,
Dep. Registrar.

The Evidence of the Defendant George Griscti.

No. 13.
The Evidence of
the Defendant
George Griscti,

In His Majesty's Commercial Court.

The fourteenth June, 1946.

The Defendant, George Griscti, states on oath:—

During the war, I was in the employment of the Military Authorities. One day my brother Joseph came to see me. "We have received a letter from Dr. Pullicino", he told me, "and he is threatening to take legal steps against us unless we pay him". He added: "Shall we go and see him?" And I replied: "All right". I took a day off and we went to see him. My brother told me: "Wouldn't it be better to agree to pay him?" To which I replied: "All right. I have something at the Bank." My brother told me to get the Bank pass-book and I took it with me. We went into Dr. Pullicino's office and we told him: "Why are you bringing up the matter now?" He replied: "The five-year period expires to-day and I wrote to you so as to interrupt the run of prescription — and not because I am going to take steps against you". He asked what we were going to do and we told him that we maintained our offer of 20 per cent. He replied: "The Firm will not accept, for we have already made that offer". I told him: "Let us try 25 per cent"; and he replied "It is useless". Whereupon my brother said: "30 per cent or 40 per cent". Dr. Pullicino replied: "The Firm is certain to agree to that". I told him: "Let us make out a cheque". He replied: "No, I will now write to the Firm and will inform you of the reply I shall receive". He told us that the expenses would not be large and we agreed to pay any small expenses incurred. He told me that the expenses would be small and we agreed to pay such expenses. "After all, there has only been an exchange of letters so far. We have not yet appeared in Court".

Question: Did he not state counsel's fees, or something similar?

Answer: The fees of counsel acting for them.

It was my brother who mentioned 40 per cent, not Dr. Pullicino. I do not know whether it was 30 per cent or 40 per cent, but he offered him more than I did, and I told him: "Why did you offer so much?" Dr. Pullicino, referring to the offer of 40 per cent, told us "They will certainly accept".

No. 13.
The Evidence of
the Defendant
George Griscti.
—Continued.

I asked him: "Do you want the money?" And he replied: "No, I will let you know later." And we heard nothing more after that and were served with the Writ-of-Summons. On that occasion, I had taken with me the pass-book of the Government Savings Bank because Dr. Pullicino used to tell us "You have nothing but promises". Dr. Pullicino did not write again and one day my brother came along and told me "Look what's happened. Manwel has bought the debt". I told him: "Is it not your fault? It's from you that he got to know". Dr. Pullicino told us that the Firm was certain to accept the offer of 30 per cent or 40 per cent. Dr. Pullicino told us also: "I wrote to you so as to interrupt the run of prescription. I am not taking legal steps". Once I gave Borg a customer's draft to collect for me, and I received nothing; but I had no dealings with him. He and my brother, however, worked together; and my other brother also worked with him. We went abroad at one time. My brother took away everything from the office, our books and everything, and handed them over to Borg, from whom he kept nothing back. My eldest brother used to do the same, for they were bosom friends; and he knew also that we were offering 20 per cent. We tried to make over to the Firm in Scotland the sum of £200 which was on deposit at the Midland Bank, and of which we came into possession under the terms of a contract with our mother; but afterwards some difficulty arose regarding the withdrawal of the money. It was in dispute between ourselves and the Firm in Scotland as to whether that Firm was entitled to recover the whole amount from us. In our first interview with Judge Schembri, we explained to him that we had taken only part of the consignment, and that the other part had gone to the Cold Stores in the name of Mazzitelli — and also that Mazzitelli had sold that part of the consignment when we were in Alexandria. The offer of 20 per cent did not amount to the sum of £200 lying in London. We told the Firm to take the whole amount. I think there is some Bill of Exchange accepted by Mazzitelli. He, Mazzitelli, also cashed the money. We were in Alexandria when Gialanze' paid Mazzitelli for the fish in question.

(Signed) GEORGE GRISCTI.

Read over to the witness.

(Signed) J. CAMILLERI CACOPARDO, 40
Dep. Registrar.

No. 14.**The Further Evidence of Dr. J. Pullicino.**

In His Majesty's Commercial Court.

The fourteenth June, 1946.

Dr. John Pullicino, sub-poenaed by the Plaintiff, states on oath:—

10 In writing to me and to Judge Schembri, the Firm in Scotland always insisted that they should not bear any part of the expenses in connection with any arrangement that might be arrived at. So far as I can remember, when the Defendants proposed, some little time before war broke out, to pay to the Firm, on account, a sum lying on deposit in a bank in England, the Firm wanted that the expenses should be included in the amount outstanding to its credit. I do not remember exactly, but when I told Griscti that the Firm would come to an arrangement, I told them, presumably, that the Firm would take the money at the Midland Bank and that the balance and the expenses would be payable within 10 years under contract. However, it is only presumable that I also mentioned legal expenses. Such at any rate was the intention of the Firm. The Firm always maintained that it would have nothing to do with expenses. So far as expenses are concerned, the Firm used to tell us, it is entirely your own concern.

(Signed) J. PULLICINO.

Read over to the witness.

(Signed) J. CAMILLERI CACOPARDO,
Dep. Registrar.

No. 15.**Plaintiff's Minute.**

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In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**

vs.

Joseph and George Griscti **proprio et nomine.**

Plaintiff's Minute.

The Plaintiff produces a letter from the Lieutenant-Governor's Office, dated 2nd October, 1946, showing that Mazzitelli had left Malta prior to January 1936. (Exhibit "A").

(Signed) V. CARUANA, Advocate,

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The twelfth October, 1946.

Filed at the Sitting by Prof. V. Caruana with one Exhibit.

(Signed) J. DINGLI,
Dep. Registrar.

No. 14.
The Further
Evidence of Dr.
J. Pullicino.

No. 15.
Plaintiff's Minute

The Evidence of John Gialanze'.

In His Majesty's Commercial Court.

The Twelfth October, 1946.

John Gialanze', son of the late Michele, sub-poenaed by the Defendant, states on oath:—

I know Carmelo Mazzitelli. Once I bought from a traveller working for him a consignment of fish which was being kept at the Cold Stores at the Marsa. I paid Mazzitelli the price of the consignment, but at the moment I do not remember the exact amount. I do not know how long the consignment of fish had been in Malta. I made some deliveries on board, but the goods deteriorated some six months later and had to be sent to the incinerator. 10

— Cross-examination —

I had a copy of the cheque with which I paid for the consignment of fish. It was drawn on Scicluna's Bank. I think I paid in the month of January. I have lost this copy of the cheque. I do not remember whether or not the Defendants were in Malta at that time. I did not transact the business personally with Mazzitelli's traveller, but with Mazzitelli himself. I do not know whether Mazzitelli was a trader or a tailor. I know only that he had a drapery shop in Valetta. I do not remember the quantity I bought. I remember only that I made deliveries to the N.A.A.F.I., fifty cases at a time; but afterwards the goods deteriorated. It is not within my knowledge that afterwards Mazzitelli absconded. I do not know whether Mazzitelli carried through the deal on his own behalf or on behalf of any other party. I did not know the Defendants Griscti at that time. Abela was the name of the traveller I have mentioned. I do not know whether Abela was employed by the Grisctis, or whether he worked in partnership with them. It may be that now Abela has his own shop in the Arcades in Valletta. I should recognise him if I saw him. I believe the bank honoured the cheque I gave to Mazzitelli. 20 30

(The witness has failed to attend at this Registry for the purpose of reading over the deposition).

(Signed) J. DINGLI,
Dep. Registrar.

The Evidence of Mr. Ercole Valenzia, L.P.

In His Majesty's Commercial Court.

The Twelfth October, 1946.

Ercole Valenzia, Legal Procurator, states on oath:—

I was acting as attorney for Messrs. Rees & Co., Bradford. I had been asked to collect some moneys owing to that Firm by Messrs. Vincent Griscti & Sons. As at that time the Firm in Malta was in financial difficulties, we came to an arrangement whereby I accepted 20 per cent of the sum due to Messrs. Rees & Co. I told him, however, that although the Firm in Bradford was prepared to accept 20 per cent, it was necessary for us to secure judgment against him, and this in fact was done. I never succeeded in collecting the debt because the Grisctis were insolvent. Part of the debt was owing by Griscti and another part by other people, Mazzitelli being amongst the latter. One day I was approached by Mazzitelli's father. He told me that his son was in England and that he wished to bring him over to Malta. It was agreed that Mazzitelli's father should pay Messrs. Rees & Co. a part of that debt. The Firm in Bradford accepted the payment in settlement. Actually, Mazzitelli's father paid by instalments of so much per month and the matter was settled. I remember I sued out a Writ-of-Summons against Griscti, claiming payment of the whole debt. I do not remember exactly whether I received payment from Messrs. Griscti of the amount claimed in that Writ-of-Summons. I have never had any dealings with Mrs. Griscti, Defendants' mother. I always dealt directly with Joseph Griscti. Nor do I remember that I ever had anything to do with Griscti's Legal Adviser, Sir Ugo Mifsud. The Advocate appearing in Court on our behalf was Professor Carlo Mallia. It is true that negotiations were made for a settlement on the basis of 20 per cent. However, we did not get payment even of that amount, and in fact it was because of that that I insisted upon securing a Court judgment. I believe Messrs. Rees & Co. would have accepted even less than 20 per cent.

(The witness has failed to attend at this Registry for the purpose of reading over the deposition).

(Signed) J. DINGLI,
Dep. Registrar.

The Further Evidence of George Griscti.

In His Majesty's Commercial Court.

Twelfth October, 1946.

George Griscti, at his own request, states on oath:—

I remember that some question arose concerning the Writ-of-Summons which Messrs. Rees & Co. sued out against Mazzitelli. I think I appeared in that case and that it was agreed to secure a judgment and that we should then pay 20 per cent. This agreement was also entered into with my uncle. Notwithstanding this agreement, family reasons intervened and nothing was done. In actual fact, the sum owing by Mazzitelli was due for goods which he himself had taken. 10

— Cross-examination —

No agreement was entered into in writing.

(Signed) GEORGE GRISCTI.

Read over to the witness.

(Signed) J. DINGLI,
Dep. Registrar. 20

Judgment of H.M. Commercial Court

His Majesty's Commercial Court

Judge:—

The Honourable Mr. Justice A.J. Montanaro Gauci, LL.D.

Sitting held on
Tuesday, the twenty-second April, 1947.

No. 3.

Writ-of-Summons No. 254/44.

Emmanuele Borg, in his own behalf 30
and for and on behalf of the Comptoir
Commercial Internationale, in his

capacity as assignee of Messrs. Allan & Dey, of Aberdeen, Scotland, under an instrument under private signature dated 5th September, 1944.

No. 19.
Judgment of H.M.
Commercial Court.
—Continued.

vs.

Joseph and George Griscti, Merchants, in their own behalf and in their capacity as partners in the Firm of Vincent Griscti & Sons.

10 The Court,

Upon seeing the Writ-of-Summons, whereby the Plaintiff, submitting:—

20 That Messrs. Allan & Dey of Aberdeen were creditors of the Defendant Firm for the sum of £433.6.8, due in respect of two consignments of fish which were shipped and delivered to the Defendants in execution of Orders dated 2nd and 5th October, 1935, and which, in view of the fact that they had placed their Orders in the name of fictitious customers, they themselves had sold and disposed of — and the whole transaction had in fact been carried out solely in their own interests; — that, up to the 30th October, 1944, the interest accruing on the principal due to Messrs. Allan & Dey amounted to £225.6.3, whilst the sum of £26.6.0 was incurred in legal costs; — that, under the instrument aforesaid (“A”), the Firm in Aberdeen assigned the whole of their credit to the Plaintiff for the price of £108.6.8; — that notice of the assignment was served upon the Defendants by judicial letter dated 9th October, 1944 (“C”); — that, thereupon, the Defendants, by judicial letter dated 27th October, 1944 (“D”), claimed that

30 the credit assigned as above was a litigious right, and that, consequently, they were entitled to the recovery of the assignment; — that, by Lodgment Schedule dated 31st October, 1944, (“E”), the Defendants proceeded to make the respective deposit in Court;—and that, prior to the assignment, the Defendants had never questioned the credit aforesaid and had in fact repeatedly admitted their liability — and that even now they have failed to specify any grounds for controversy; — prayed that — every necessary declaration being prefaced and any expedient direction being given, — said Defendants

40 be condemned to pay to him the sum of £685.18.11 in respect of the principal, interest and costs of the assigned credit. — With further interest thereon from 1st November, 1944, and with costs, including the costs of the judicial letter dated 9th October, 1944.

No. 19.
Judgment of H.M.
Commercial Court.
—Continued.

Upon seeing the Defendants' Statement of Defence, pleading: — that the credit of £433.6.8 claimed by the Plaintiff as principal due to Messrs. Allan & Dey is made up of the sum of £260 in respect of goods sold to one Mazzitelli — who himself sold and received payment for the goods — and of the sum of £173.6.8 in respect of goods ordered to the name of Felix Blanc and taken over by the Defendants as guarantors of the said Blanc who defaulted in making payment; — that, therefore, the Defendants are answerable only in respect of the latter sum of £173.6.8; — that as the assignor Firm was about to sue Blanc for the recovery of that amount, the respective credit is of a litigious nature and, consequently, the Defendants have the right to the recovery thereof by making reimbursement of the actual price of the assignment, that is to say, of the sum of £43.11.8, which they are prepared to pay subject to subrogation of rights; — that the Defendants never undertook to pay Messrs. Allan & Dey the debt of Mazzitelli; that they made only conditional offers which the exporting Firm did not accept, and those offers are therefore to be considered as withdrawn by the Defendants; that in any case the Defendants are always entitled to obtain their release from the Plaintiff assignee by reimbursing to him the actual price of the assignment which, as already submitted, they are prepared to do if adjudged debtors of the amount; — that, although it is stated in the instrument of assignment that the Plaintiff had acquired the interest due according to law, it is quite clear that the assignors never had the intention of assigning that interest, which in fact they had never taken into account — and that (without prejudice to the foregoing pleas) the Plaintiff is therefore entitled only to the price of the goods, to the exclusion of the interest accruing thereon; — that the Defendants cannot be held liable for the legal costs included in the assignment, amounting to £26.6.0, considering that they are not the debtors of the assignors for that amount, which in fact represents an expenditure which they, the assignors, thought fit to incur out of Court in their own interests; — that, as shown by the letter marked Exhibit "A", there is a possibility of the assignment made to the Plaintiff being rescinded by the assignors, and that, therefore, the necessity arises for holding up the present proceedings for a reasonable period of time so as to enable the assignors to take the necessary steps.

Upon hearing the sworn evidence of the Defendants and the witnesses produced.

Having examined all the acts and all the documents in the Record.

No. 19.
Judgment of H.M.
Commercial Court.
—Continued.

Having heard Counsel on both sides.

Considering:

According to the evidence, Plaintiff's credit represents two outstanding debts assigned to him by Messrs. Allan & Dey for the price of £108.6.8.

10 The claim includes the sum of £173.6.8 which, together with the interest accruing thereon, is due in respect of a consignment of fish ordered by the Defendants on behalf of Felix Blanc (which the Defendants have acknowledged as their own debt), whilst the balance — apart from £26.6.0 costs incurred — represents the proceeds of another shipment of fish which the Firm in Aberdeen made to one Mazzitelli in execution of an Order placed with them by the Defendants. So far as the latter sale is concerned, the Defendants disclaim any liability on their part.

20 It has been established in evidence that Mazzitelli had accepted a Bill of Exchange drawn by Messrs. Allan & Dey, that he sold the goods to John Gialanze', and that he received payment for the goods by cheque drawn on Scicluna's Bank — after which he left Malta without paying the Defendants.

Subsequently, the Defendants themselves left Malta on account of certain debts which they were unable to meet and, afterwards, they made an effort to come to an arrangement with the Firm in Aberdeen. They failed, however, to reach an agreement and the Firm in Aberdeen held them answerable for the payment of the goods ordered by them for Mazzitelli.

30 Mazzitelli's main occupation was that of a tailor and he only did a little trade as and when opportunity offered. He was employed with the Defendants, and when the Defendants ordered the goods on his behalf, he was actually in a state of bankruptcy. In fact, the order was dated 24th September 1936, and, at that time, Mazzitelli had already dishonoured one Bill of Exchange (Exhibit fol.100/1); and, later, he failed to honour various other Bills which had matured for payment.

This notwithstanding, the Defendants, in forwarding the Order on his behalf, described Mazzitelli as one of their best customers and as "an important firm". Thus, the Defendants

No. 19.
 Judgment of H.M.
 Commercial Court.
 —Continued.

deceived the Firm in Aberdeen by means of information which was false and which they must have known to be false and succeeded in persuading that Firm to ship the goods to Mazzitelli. Not only that, but after the arrival of the goods they managed to persuade the Firm to give Mazzitelli three months time in which to make payemnt. This gave Mazzitelli the opportunity to take delivery and dispose of the goods and abscond with the money. In the circumstances, therefore, it is reasonable to suspect, as mentioned in the document at fol.100 of the Record, that Mazzitelli was merely a **prête-nom** screening the Defendants, in whose employ he was at the time. In fact, whilst all this was happening, Felix Blanc refused to take delivery of the goods that had allegedly been ordered on his behalf, stating that he had never ordered those goods — whereupon the Defendants themselves sold the goods and pocketed the price. Something of the kind had occurred also in connection with certain goods which the Defendants once ordered of Messrs. William E. Rees on behalf of Mazzitelli: when sued for payment by the exporting Firm, on the allegation that they had induced that Firm to ship goods to Mazzitelli when Mazzitelli was virtually a bankrupt, or merely acting for them as a **prête-nom**, the Defendants admitted the claim (Exhibit fol.100). 10 20

On the 9th December, 1945, the Defendants informed Messrs. Allan & Dey that Mazzitelli was about to leave the island. Gialanze', according to the evidence at fol.123, had paid Mazzitelli some time in January.

Meantime, the Defendants also absconded because of their debts. When they came back, they tried to come to a compromise with Messrs. Allan & Dey by paying a certain percentage of their debt, pleading that they were bankrupt and unable to pay more. And it stands to reason that they would not have made that proposal if they had really been convinced that they were under no obligation to pay the debt. 30

It follows, therefore, that even if they themselves had not benefited by the Mazzitelli transaction, the Defendants would still be liable for the price of the goods, considering that they had by means of false and misleading information induced the exporting Firm to give credit to a man who was bankrupt and undeserving of trust. The credit which the Plaintiff took over by assignment is therefore an actual and real credit. 40

Nevertheless, the Defendants, invoking section 1565 of the Civil Code, claim that, in view of the litigious nature of the credit, they are entitled to obtain their release from the Plaintiff by reimbursing to him the actual price paid by him for the assignment, together with interest thereon from the date on which he made payment, and costs. However, the credit is not a litigious credit within the meaning of para. 2 of section 1565, for it was not an unliquidated debt and there was no contested suit as to the existence thereof. And, even if it were a litigious credit, the Defendants would still be unable to avail themselves of the provisions of section 1565 of the Civil Code, and to obtain their release from the Plaintiff by reimbursing to him the price paid. In fact, it is laid down in section 122 of the Commercial Code that: "The right competent to a debtor under section 1565 of the Civil Code (Chapter 23), in the case of assignments of a litigious right, cannot be exercised where the litigious right so assigned arises from a commercial transaction".

No. 19.
Judgment of H.M.
Commercial Court.
—Continued.

On these grounds:

20 The Court allows the claim, with costs against the Defendants.

(Signed) J. DINGLI, Dep. Registrar.

Defendants' Note of Appeal.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**

vs.

Joseph and George Griscti **proprio et nomine.**

The Note of Appeal of Joseph and George Griscti **proprio et nomine.**

There appear the said Joseph and George Griscti, in their own behalf and in their capacity as partners in the Firm of Vincent Griscti & Sons, and, deeming themselves aggrieved by the judgment given by this Court on the 22nd April, 1947, hereby enter appeal therefrom to His Majesty's Court of Appeal. 10

(Signed) JOS. XUEREB,
Advocate.

(Signed) G. MANGION,
Legal Procurator.

The twenty-ninth April, 1947.

Filed by G. Mangion, L.P. without exhibits. 20

(Signed) S. BUGEJA,
Dep. Registrar.

In

H.M. COURT OF APPEAL

Defendants' Petition.

In His Majesty's Commercial Court.

Emmanuele Borg, in his own behalf
and for and on behalf of the Comptoir
Commercial Internationale, in his
capacity as assignee of Messrs. Allan
& Dey, of Aberdeen, Scotland, under
an instrument under private
signature dated 5th September, 1944.

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vs.

Joseph and George Griscti, Merchants,
in their own behalf and in their
capacity as partners in the Firm of
Vincent Griscti & Sons.

Defendants' Petition.

Respectfully sheweth:—

That by Writ-of-Summons filed in His Majesty's
Commercial Court, whereby the Plaintiff, submitting:—

- 20 That Messrs. Allan & Dey of Aberdeen were creditors of
the Defendant Firm for the sum of £433.6.8, due in respect of
two consignments of fish which were shipped and delivered to
the Defendants in execution of two Orders dated 2nd and 5th
October, 1935, and which, in view of the fact that they had
placed their Orders in the name of fictitious customers, they
themselves had sold and disposed of — and the whole trans-
action had in fact been carried out solely in their own interests;
— that, up to the 30th October, 1944, the interest accruing on
the principal due to Messrs. Allan & Dey amounted to £225.6.3,
30 whilst the sum of £26.6.0 was incurred in legal costs;—that, under
the instrument aforesaid (“A”), the Firm in Aberdeen
assigned the whole of their credit to the Plaintiff for the price
of £108.6.8; — that notice of the assignment was served upon
the Defendants by judicial letter dated 9th October, 1944
(“C”); — that, thereupon, the Defendants, by judicial letter
date 27th October, 1944 (“D”), claimed that the credit assigned
as above was a litigious right, and that, consequently, they
were entitled to the recovery of the assignment; — that by
Lodgment Schedule dated 31st October, 1944 (“E”), the
40 Defendants proceeded to make the respective deposit in Court;
— and that, prior to the assignment, the Defendants had never

No. 21.
Defendants'
Petition.

—Continued

questioned the credit aforesaid and had in fact repeatedly admitted their liability — and that even now they have failed to specify any grounds for controversy; — prayed that, — every necessary declaration being prefaced and any expedient direction being given, — said Defendants be condemned to pay to him the sum of £685.18.11 in respect of the principal, interest and costs of the assigned credit. — With further interest thereon from 1st November, 1944, and with costs, including the costs of the judicial letter dated 9th October, 1944.

10

That the Court of First Instance, by judgment given on the 22nd April, 1947, allowed Plaintiff's claim, with Costs.

That the Defendants, deeming themselves aggrieved by that judgment, entered appeal therefrom to this Court by Minute filed on the 29th April, 1947.

The grievance is manifest.

In fact, it was established that, properly speaking, the debt was not Defendants' debt, but was shared between Mazzitelli and Felix Blanc, respectively to the extent of £260 and £173.6.8. Mazzitelli took delivery and sold the goods and absconded with the money. Felix Blanc would not take the goods which, consequently, were taken over by the Defendants, even though the Defendants were under no obligation so to do.

20

This shows that, so far as the Mazzitelli debt is concerned, no liability attaches to the Defendants, since it was Mazzitelli who was directly the debtor of the exporting firm. The Court below held the Defendants liable on the ground that the exporting firm would not have shipped the goods to Mazzitelli if the Defendants had not supplied that firm with false and misleading information. However, there is no evidence in substantiation, for Mazzitelli was a trader and it could never have been in the interests of the Defendants to deceive their principals — to their own detriment.

30

That, supposing even that the view of the Court below could be upheld, Defendants' liability would still be an indirect liability, thus excluding the commercial nature of the issue; and once the Defendants contested the claim, which may be to them purely an issue under the Civil Law, they are entitled to the exercise of the right of litigious pre-emption.

That, as regards the debt of Felix Blanc, that debt was never admitted by the Defendants unconditionally, and they assumed liability solely in order to avoid judicial proceedings. Therefore, it follows that, even in this case, Defendants'

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liability is Civil in character and admits of the exercise of the right of litigious pre-emption.

No. 21.
Defendants'
Petition.
—Continued.

Wherefore, producing the undermentioned surety for the costs of the action, making reference to the evidence adduced and reserving the right to produce all further evidence admissible at law — including a reference to Plaintiff's oath, for which said Plaintiff is hereby summoned — the Defendants pray that the judgment given by His Majesty's Commercial Court on the 22nd April, 1947, be varied, in the sense, that is, that it be reversed in so far as the Defendants were condemned to pay the sum of £516.6.3 and the costs of the suit, and affirmed in so far as they were condemned to pay the sum of £69.12.8, representing 25 per cent of the debt of Felix Blanc, together with the costs of the assignment, or such share thereof as may be allocated in accordance with the amount of the assigned debt. — With the Costs both of the First and of this Second Instance against the Plaintiff.

(Signed) A. MAGRI,
Advocate.

20 (Signed) JOS. H. XUEREB,
Advocate.

(Signed) G. MANGION,
Legal Procurator.

The thirteenth May, 1947.

Filed by G. Mangion, L.P., without exhibits.

(Signed) S. BUGEJA,
Dep. Registrar.

No. 22
Surety Bond.

No. 22.
Surety Bond.

30 Giovanni Cauchi, Clerk, son of the late Enrico and Bernarda née Teuma, born in Valletta, residing at Gzira, appears and hereby stands joint surety with the Appellants, Joseph and George Griscti **proprio et nomine**, for the costs of this appeal, hypothecating the whole of his present and future property and renouncing every benefit accorded by law.

(Signed) GIOV. CAUCHI.

The said Giovanni Cauchi has affixed his signature hereto in my presence.

40 This thirteenth May, 1947.

(Signed) A. GHIRLANDO,
Dep. Registrar.

Plaintiff's Answer.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**

vs.

Joseph and George Griscti **proprio et nomine.**

The Answer of the Plaintiff (Respondent).

Respectfully sheweth:—

That the surety produced by the Appellants is unsuitable and is declined by the Respondent for all the ends and purposes of the law. 10

That, without prejudice thereto, the appeal is groundless: direct or indirect liability, contractual or **ex delicto**, which is connected with commercial transactions, is a liability of a commercial nature, and this has been recognised by the Appellants themselves in conducting the whole proceedings in the Commercial Court.

That, this apart, the credit is not a litigious credit.

Wherefore the Respondent prays that the appeal be declared non-prosecuted, with costs, and, where a suitable surety is produced, that it be dismissed, with costs. 20

(Signed) V. CARUANA, Advocate,
(Signed) G. GALDES, Legal Procurator.

This twenty-second May, 1947.

Filed by G. Galdes, L.P. without Exhibits.

(Signed) J. CAMILLERI CACOPARDO,
Dep. Registrar.

Defendants' Note of Submissions.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**
vs.

Joseph and George Griscti **proprio et nomine.**

Defendants' Note of Submissions.

Respectfully sheweth:—

10 The Plaintiff has brought the action as the assignee of a sum of money due to Messrs. Allan & Dey in respect of goods ordered through the Defendants by Felix Blanc and John Mazzitelli, alleging that the latter were simulated or fictitious customers and that the transactions had been made solely in the interests of the Defendants.

20 That action is barred first of all by the fact that notice of the assignment had failed to be served also upon Blanc and Mazzitelli who, whatever the facts, were recognised by Messrs. Allan & Dey as the debtors of the Firm. In fact, the goods were ordered to the name of Felix Blanc (fol.37), and the exporting Firm entrusted their then legal representative, Dr. Salvatore Schembri, with the task of finding and instituting proceedings against Blanc. So far as Mazzitelli is concerned, Mazzitelli signed the respective Bill of Exchange (fol.62), and the exporting firm, admitting that he had placed that order (fol.56), gave instructions to Dr. Schembri to take steps to induce him to pay (fol.54). Further, the Plaintiff himself, in the Declaration annexed to the Writ-of-Summons, admitted that "On the 2nd and 5th October, 1935, the Defendant firm submitted an order on behalf of Felix Blanc and another
30 order on behalf of Mazzitelli".

The foregoing shows that Messrs. Allan & Dey considered the Defendants as co-debtors with Blanc and Mazzitelli, and, consequently, notice of the assignment should have been served also upon the latter. Now, whether these co-debtors are jointly and severally liable, or whether they are not in fact liable **in solidum**, notice of the assignment should have been served upon each one of them, for, though it is **the one and the same** debt, the debtors concerned are **several** in number.

No. 24.
Defendants' Note
of Submissions,
—Continued.

"Intimation in the manner laid down in article 1539 of the assignment of a credit **must** be given by the assignee to **all the debtors**; and it cannot be objected that one of the debtors, who happens to be also the agent of the other debtors, cannot juridically ignore the assignment notified to his principals". (Fadda — **Codice Civile Italiano**, articles 1539-40, No. 84); and one finds in the same text-book that "even in the case where several debtors are bound **in solidum**, due notice to all of them must be given by the assignee" (Fadda, **op. cit.**, No. 166). And Fortunato Schiaffino, in his "**Cessione di crediti e di altri diritti**" — "Assignment of credits and other rights" — thus reasserts that obligation on the part of the assignee: "In the case of joint and several liability, notice of the assignment made must be served upon all the debtors; otherwise, payment made to the assignor by the debtor who has not been notified of the assignment will have the effect of releasing all the debtors concerned, including those upon whom notice of the assignment has been duly served". (**Digesto Italiano**, No. 49).

10

It is a fact (section 1553) that, before due notice is given, the assignment is non-existent in regard to third parties, and third parties include also the debtor (Collection of Judgments, Vol. XVI, II, 164). Indeed, the object of giving notice of the assignment is that of enabling the assignee to take possession of the credit (Troplong, **Vendita**, No. 882); and the debtor is thereby held answerable to the assignee. Briefly, it brings the assignment to completion also **vis à vis** third parties (Collection of Judgments, Vol. XIX, I, 106).

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It cannot be said that the assignment that has not been notified is non-existent only in so far as the consequences specified in Section 1554 (Civil Code). Those consequences are enumerated therein only by way of example, and not to the exclusion of other consequences, and, in fact, default of due notice may give rise to various other consequences, such as those of which Troplong makes mention in paras. 885 to 893 of his Treatise. Indeed, Troplong refers to and qualifies the consequences enumerated by the law as "the principal consequences" (para. 899).

30

The action, therefore, has been wrongly and prematurely instituted.

It has been wrongfully instituted also because the Plaintiff has claimed payment from the Defendants just as if the Defendants were directly his debtors, and regardless of the

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fact that they had always figured as the agents of the creditor firm, and had always qualified themselves as such **vis á vis** the third parties concerned, Blanc and Mazzitelli. It is a settled point that no personal obligation is undertaken by the individual who acts otherwise than on his own behalf (Collection of Judgments, Vol. XVI, III, 40); the principal has to look always to the third parties concerned as his direct debtors, and it is only against the third parties concerned that he must seek to enforce the **specific** fulfilment of the obligation. In fact, the agent represents the principal and it is therefore the principal that is entitled to the action; and the third parties, having dealt with the person whom they knew to be the agent — that is to say, with the person acting **on behalf** of the principal — cannot evade that action. (Sections 1972-1973, Civil Code), and this **a fortiori** when the agent goes beyond the trust placed in him, in that then he no longer represents the principal.

No. 24.
Defendants' Note
of Submissions.
—Continued.

The Plaintiff, once he considered that the Defendants had exceeded their mandate, could have brought an action against them only for the **recovery of damages** arising out of default (Section 1975, Civil Code.) This has been the practice in our Courts (Collection of Judgments, Vol. X, 432; XXI, II, 229); and this too is the teaching of the text-books. Butera, in considering a case similar to the one at issue, observes: "When the creditors are able to show that they had allowed the credit in view of the state of solvency made apparent by the simulation resorted to, have the right to bring **a collective action for the recovery of damages against the authors of the simulated act**" (*Simulazione nei Negozi Giuridici*, No. 138, p 452).

The attitude taken up by the Plaintiff goes to confirm the foregoing: He has sued the Defendants in their own name, just as if the orders had been placed by them with the assignor firm as third parties in the deal, whilst the business, on that firm's own showing, had been transacted with Blanc and Mazzitelli; and, therefore, if the Plaintiff considered that the Defendants had misled the assignor firm, and had brought that firm into contact with insolvent customers (which is denied), then the only action which he could have brought was an action for the recovery of damages.

The difference between the direct action and the action for the recovery of damages is obvious, in that the amount of

No. 24.
Defendants' Note
of Submissions.
—Continued.

damages depends upon the manner (**dolus or culpa**) in which they were occasioned; and, if the Defendants are held liable, their liability may not extend to the whole sum of the credit claimed, and may in fact prove much less.

Some doubts have been raised before this Court as to whether the foregoing pleas may be tendered at this stage, seeing that, even if allowed, the action may be brought again.

The Appellants submit that the foregoing are not **dilatory** but **peremptory** pleas, if not with regard to the merits, at least with regard to the **action**. In fact, Mattiolo holds that even pleas touching upon the action may be peremptory pleas. "Peremptory pleas are those that seek completely to extinguish the rights of the Plaintiff (i.e. the plea that payment has been made) or that seek to **vitiare** or **annul** the action (i.e. the plea of incompetence)". (**Diritto Giudiziario**, Vol. I., p. 41). This theory appears to receive confirmation also by the provisions of section 732 of the Laws of Procedure wherein it is laid down that peremptory pleas may be raised even before the Appellate Court although they may not have been raised before the Court of First Instance — which section of the law makes no distinction between peremptory pleas with regard to the merits and those with regard to the action. 10 20

On the merits: It has been established that Mazzitelli used to carry on trade on his own behalf, and that, before transacting the business in question, he had transacted other business with the Defendants. He was a messman who usually bought goods for the purpose of selling them again. In fact, he bought the fish in question in order to sell it again, and did in fact sell it to one Gialanze', who was himself a trader. As for Felix Blanc, he too was a known trader: he had several hotels and was continually engaged in business. When the consignment arrived, Felix Blanc refused to take delivery; and, thereupon, the Defendants, to save trouble, took over the goods. And none of these facts tends to establish against the Appellants the direct responsibility claimed by the Plaintiff. 30

The proposals and the negotiations for a settlement that took place cannot in any way prejudice the position of the Appellants.

As regards the recovery of the assigned credit, the right was exercised without prejudice to the other rights to which the Appellants are entitled. After all, once recovery was not agreed to by the Plaintiff, the steps taken left the position of the Appellants entirely unprejudiced and unimpaired. 40

The Appellants, again without prejudice to their other rights, hold and maintain that they are entitled to the exercise of the right of recovery. In fact, the debts in question are **unliquidated debts** in that their liquidation is subject to the measure of responsibility referred to above — which also renders them difficult of liquidation. Indeed, because of the fact that notice of the assignment had failed to be served upon Blanc and Mazzitelli, liquidation has to be effected in another suit. And it follows, therefore, that those debts may be considered as litigious debts.

No. 24.
Defendants' Note
of Submissions.
—Continued.

It makes no difference that the recovery in question does not arise from a commercial transaction. So far as the Defendants are concerned, Plaintiff's credit may be a credit only in respect of **damages**, which differs in character from the credit **ut sic**. And since that limitation is in the nature of an exceptional provision of the law, it is to be interpreted restrictively.

(Signed) A. MAGRI, Advocate,

(Signed) E.W. CORTIS, Legal Procurator.

This 17th February, 1948.

Filed by E.W. Cortis, L.P., without Exhibits.

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

No. 25.

Defendants' Application

No. 25.
Defendants'
Application.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**
vs.

Joseph and George Griscti **proprio et nomine.**

Defendants' Application.

Respectfully sheweth:—
The case is due to come up for judgment on the 15th March, 1948.

As regards the necessity of notifying the assignment to all the debtors, including debtors **in solidum**, the Defendants, besides the authoritative opinions quoted in their Note of

No. 25,
Defendants'
Applications.
—Continued.

Submissions of the 17th of the present month, wish to make reference to the following:—

- 1) Laurent — **Diritto Civile**, Vol. XXIV No. 503.
- 2) Pacifici Mazzoni — **Vendita**, Vol. II, Nos. 182 & 178.
- 3) Borsari — **Commentario Codice Civile**, art. 1539, 3596, B, p. 511, Col. 2 at foot and 512 Col. 1.

(Signed) A. MAGRI, Advocate,

(Signed) G. MANGION, Legal Procurator.

This twenty-third February, 1948.

Filed by G. Mangion L.P. without Exhibits.

10

(Signed) A. GHIRLANDO,
Dep. Registrar.

No. 26.
Judgment of H.M.
Court of Appeal.

No. 26.

Judgment, H.M. 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 Professor E. Ganado, LL.D.
The Honourable Mr. Justice L.A. Camilleri, LL.D.

20

Sitting held on
Monday, the fifteenth March, 1948.

No. 9.
Writ-of-Summons No. 254/1944.

Emmanuele Borg, in his own behalf
and for and on behalf of the Comptoir
Commercial Internationale, in his
capacity as assignee of Messrs. Allan
& Dey, of Aberdeen, Scotland, under
an instrument under private signature
dated 5th September, 1944.

30

vs.

Joseph and George Griscti, Merchants,
in their own behalf and in their
capacity as partners in the Firm of
Vincent Griscti & Sons.

The Court,

No. 26.
Judgment of H.M.
Court of Appeal.
—Continued.

Upon seeing the Writ-of-Summons, whereby the Plaintiff, submitting:—

10 That Messrs. Allan & Dey of Aberdeen were creditors of the Defendant Firm for the sum of £433.6.8, due in respect of two consignments of fish which were shipped and delivered to the Defendants in execution of Orders dated 2nd and 5th October, 1935, and which, in view of the fact that they had placed their Orders in the name of fictitious customers, they themselves had sold and disposed of — and the whole transaction had in fact been carried out solely in their own interests; — that, up to the 30th October, 1944, the interest accruing on the principal due to Messrs. Allan & Dey amounted to £225.6.3, whilst the sum of £26.6.0 was incurred in legal costs; — that, under the instrument aforesaid (“A”), the Firm in Aberdeen assigned the whole of their credit to the Plaintiff for the price of £108.6.8; — that notice of the assignment was served upon the Defendants by judicial letter dated 9th October, 1944 (“C”); — that, thereupon, the Defendants, by 20 judicial letter dated 27th October, 1944 (“D”), claimed that the credit assigned as above was a litigious right, and that, consequently, they were entitled to the recovery of the assignment; — that, by Lodgment Schedule dated 31st October, 1944 (“E”), the Defendants proceeded to make the respective deposit in Court; — and that, prior to the assignment, the Defendants had never questioned the credit aforesaid and had in fact repeatedly admitted their liability — and even now they have failed to specify any grounds for controversy; — prayed that — every necessary declaration being prefaced and any 30 expedient direction being given; — said Defendants be condemned to pay to him the sum of £685.18.11 in respect of the principal, interest and costs of the assigned credit. — With further interest thereon from 1st November, 1944, and with costs, including the costs of the judicial letter dated 9th October, 1944.

40 Upon seeing the Defendants’ Statement of Defence, pleading: — that the credit of £433.6.8 claimed by the Plaintiff as principal due to Messrs. Allan & Dey is made up of the sum of £260 in respect of goods sold to one Mazzitelli — who himself sold and received payment for the goods — and of the sum of £173.6.8 in respect of goods ordered to the name of Felix Blanc and taken over by the Defendants as guarantors of the said Blanc who defaulted in making payment; — that, therefore, the

No. 26.
 Judgment of H.M.
 Court of Appeal.
 —Continued.

Defendants are answerable only in respect of the latter sum of £173.6.8; — that as the assignor Firm was about to sue Blanc for the recovery of that amount, the respective credit is of a litigious nature and, consequently, the Defendants have the right to the recovery thereof by making reimbursement of the actual price of the assignment, that is to say, of the sum of £43.11.8, which they are prepared to pay subject to subrogation of rights; — that the Defendants never undertook to pay Messrs. Allan & Dey the debt of Mazzitelli; that they made only conditional offers which the exporting Firm did not accept, and those offers are therefore to be considered as withdrawn by the Defendants; that in any case the Defendants are always entitled to obtain their release from the Plaintiff assignee by reimbursing to him the actual price of the assignment which, as already submitted, they are prepared to do if adjudged debtors of the amount; — that, although it is stated in the instrument of assignment that the Plaintiff had acquired the interest due according to law, it is quite clear that the assignors never had the intention of assigning that interest, which in fact they had never taken into account — and that (without prejudice to the foregoing pleas) the Plaintiff is therefore entitled only to the price of the goods, to the exclusion of the interest accruing thereon; — that the Defendants cannot be held liable for the legal costs included in the assignment, amounting to £26.6.0, considering that they are not the debtors of the assignors for that amount, which in fact represents an expenditure which they, the assignors, thought fit to incur out of Court in their own interests; — that, as shown by the letter marked Exhibit “A”, there is a possibility of the assignment made to the Plaintiff being rescinded by the assignors, and that, therefore, the necessity arises for holding up the present proceedings for a reasonable period of time so as to enable the assignors to take the necessary steps.

Upon seeing the judgment given by His Majesty's Commercial Court on the 22nd April, 1947, allowing Plaintiff's claim, with costs.

That Court having considered:—

Plaintiff's credit represents two outstanding debts assigned to him by Messrs. Allan & Dey for the price of £108.6.8.

The assigned credit is made up as follows: £173.6.8, plus interest thereon, price of a consignment of fish ordered by the Defendants on behalf of Felix Blanc — which the Defendants have acknowledged as their own debt; £26.0.0,

costs; and the balance, price of another consignment of fish sold to Mazzitelli — who had signed and accepted Bills of Exchange, sold the goods to John Gialanze', received payment for them by cheque drawn on Scicluna's Bank and then left Malta without paying the Defendants.

No. 26.
Judgment of H.M.
Court of Appeal.
—Continued.

10 The Defendants themselves left Malta on account of certain debts which they were unable to meet and, afterwards, they tried to come to an arrangement with the exporting firm, but failed. Meantime, the exporting firm continued to hold the Defendants answerable to them for the amount.

Mazzitelli was a tailor by occupation and only did a little trade as and when opportunity offered. He was employed with the Defendants, and when the Defendants ordered the goods on his behalf, he was actually in a state of bankruptcy. In fact, the order was dated 24th September, 1936, and, at that time, Mazzitelli had already failed to honour one Bill of Exchange (**vide** Exhibit fol.100/1); and, shortly after, he failed to honour other bills.

20 That notwithstanding, the Defendants, in forwarding the Order on his behalf, described Mazzitelli as one of their best customers and as "an important firm". Thus, by means of information which was false and which they knew to be false, they deceived the firm in Aberdeen. Not only that, but later they persuaded that Firm to give Mazzitelli three months time in which to make payment, and thus Mazzitelli had the opportunity to take delivery and dispose of the goods and abscond with the money. It is therefore a reasonable suspicion that Mazzitelli was merely a **prête-nom** of the Defendants, in whose employ he was at the time. In point of fact, Felix Blanc
30 refused to take delivery of the goods that had allegedly been ordered on his behalf, stating that he had not ordered those goods — whereupon the Defendants themselves sold the goods, cashed the price eventually failed to pay Messrs. Allan & Dey; and something of the kind had occurred also in connection with a transaction with another Firm, Messrs. William E. Rees & Co., Ltd. (**vide** Exhibit fol.100). It was on the 9th December, 1945, that the Defendants had informed Messrs. Allan & Dey that Mazzitelli was about to leave the island, whilst Gialanze',
40 according to the evidence at fol. 123, had paid Mazzitelli some time in January.

Meantime, the Defendants also absconded because of their

No. 26.
Judgment of H.M.
Court of Appeal.
—Continued.

debts. When they came back, they tried to come to a compromise with Messrs. Allan & Dey by paying a certain percentage of their debt, pleading that they were bankrupt and unable to pay more. And it stands to reason that they would not have made that proposal if they had really been convinced that they were under no obligation to pay the debt.

It follows, therefore, that even if they themselves had not benefited by the Mazzitelli transaction, the Defendants would still be liable for the price of the goods, considering that they had by means of false and misleading information induced the exporting Firm to give credit to a man who had gone bankrupt and who was undeserving of trust. 10

It cannot be held, therefore, that Plaintiff's credit was of a litigious nature.

As to the matter of obtaining release from the assignee by means of reimbursement, the credit is not to be deemed a litigious right within the meaning of section 1565 of the Civil Code, for it was not an unliquidated debt and there was no contested suit as to the existence thereof. Furthermore, according to section 122 of the Commercial Code, that right cannot be exercised where the litigious right arises from a commercial transaction. 20

Upon seeing the Defendants' Note of Appeal, and their Petition, praying that that judgment be varied, in the sense, that is, that it be reversed in so far as they were condemned to pay the sum of £516.6.3 and all the costs of the case, and that it be affirmed in so far as they were condemned to pay the sum of £69.12.8, corresponding to 25 per cent of the credit against Felix Blanc, and the costs of the assignment proportionately to the amount of the credit assigned. — With costs. 30

Upon seeing Plaintiff's Answer, praying that the Appeal be dismissed. — With Costs.

Upon seeing all the acts filed in the Record.

Upon seeing the Defendants' Note of Submissions.

Having heard Counsel on both sides.

Considering:—

The Appellants have submitted: (1) that the fact that no notice of the assignment was served upon Blanc and Mazzitelli is of hindrance to the present action; — 2) that it has been wrongly instituted in that it has been brought directly against 40

the Defendants as the persons directly responsible — when in fact they had acted merely as intermediaries or agents; 3) on the merits, that the two debts, that of Mazzitelli and that of Blanc, are separate and independent; 4) that they exercised the right of recovery by reimbursement.

No. 26.
Judgment of H.M.
Court of Appeal.
—Continued.

10 On the first point: The Respondent submits that dilatory pleas are to be raised **in limine litis** and cannot be raised at the present stage of the proceedings. The respective provision of the law is based on the fact that all such pleas are preliminary
15 pleas, touching upon the action, but not upon the merits. They are therefore to be raised and dealt with in the first instance, failing which economy of time and juridical logic require that they be waived altogether. The law is categorical on the point and requires that dilatory pleas shall be raised **in limine litis** both in the written pleadings and at the hearing.

20 For their part, the Appellants submit that that plea is not a dilatory but a peremptory plea, and that peremptory pleas may be raised both on the merits and with regard to the action — and that therefore the plea at issue is a peremptory plea with regard to the action.

30 However, the provision of the law that establishes that dilatory pleas are to be raised **in limine litis** refers to pleas that are not peremptory with regard to the merits, that is to say, to pleas that do not kill the merits, but that are simply dilatory with regard thereto. If it were otherwise, that provision of the law would be both useless and groundless, for the law, as stated earlier, requires that, before raising their pleas on the merits, the parties should first make their submissions with regard to the action; and it would obviously run counter to that provision of the law if, after the case has been dealt with on the merits in the Court below, and no plea raised with regard to the action, the parties should, in the appeal stage, proceed to submit their pleas with regard to the action, just as if the proceedings were being initiated before this Court of Appeal. Such a course would be repugnant to the underlying motive of appeal, which is that of subjecting the proceedings in the Court below — possibly even so far as the merits are concerned — to no more than the mere revision of a Court having superior jurisdiction. In fact, the most important part
40 of the proceedings is that of the **contestatio litis**, when the grounds of the controversy are set out and the issue established, and it was because of that that those new provisions of the law were recently introduced into the Laws of Procedure.

No. 26.
Judgment of H.M.
Court of Appeal.
—Continued.

Therefore, the plea that the action is hindered by reason of the fact that no notice of the assignment had been served upon Mazzitelli and Blanc cannot be raised at this stage: it is not a plea that touches upon the merits, but a plea that concerns the action itself, and, as such, it is, for the purposes of the law, a dilatory plea. In fact, even the plea as to **beneficium excussionis** has always been disallowed by this Court on the ground that it is a dilatory plea which should be raised **in limine litis** (*vide* Appeal Judgments, Collection Vol. V, p. 398, 8th January, 1912; Vol XXI, p. 294, and the judgments therein quoted; and Vol. VIII, p. 465). 10

The Court, therefore, declares that, at this stage, the plea is inadmissible, with costs against the Appellants.

Considering:—

On the second plea. —

This is a plea that touches upon the merits and may therefore be considered on the merits. In fact, if they are not directly responsible, for the reasons and on the grounds set out in the Writ-of-Summons, the Defendants may well resist the claim, saving, however, any indirect responsibility on their part **si et quatenus**. 20

On the merits of that plea, as well as on the merits: the claim is made against the Defendants and it is for the payment of the price of two consignments of fish ordered by the Defendants, together with the interest accruing thereon. According to the Writ-of-Summons, the Defendants, having ordered the goods on behalf of fictitious customers, had themselves sold and disposed of the two consignments — and the whole transaction had in fact been carried out solely in their own interests. Afterwards, the respective credit was assigned to the Plaintiff. As, prior to the assignment, the Defendants had never questioned the credit, and had in fact repeatedly admitted their liability — and had (even now) failed to specify any grounds for controversy — the Plaintiff prayed that the Defendants be condemned to pay to him the credit in question. Therefore, the cause of the claim is (1) that the fish was sold to the Defendants, inasmuch as Mazzitelli and Blanc were but **prête-noms**, and (2) that the debt had been repeatedly admitted by the Defendants. This, therefore, is a direct, as distinct from an indirect, action, and there are no grounds for the second plea raised by the Defendants. 30 40

On the merits of the case.

The evidence heard and the documents produced in the Court below have established beyond doubt that Blanc had never ordered the goods imported on his behalf. He himself declared on the arrival of the goods that he had never made the order and the Defendants admitted their liability in respect of the consignment. As regards the other goods, it is true that, according to the evidence of the Appellants, the consignment belonged to Mazzitelli; and it is true also that Gialanze', as established by his own evidence, had paid Mazzitelli. Nevertheless, the circumstances set out in the judgment on appeal show clearly that Mazzitelli could not have been but a **prête-nom** of the Defendants. Any doubts in regard thereto were removed by the Defendants when, in offering to pay the exporting Firm so much per cent, they repeatedly admitted that they assumed liability also for the Mazzitelli debt. The Appellants contend that that happened in the course of negotiations for a settlement, and that, consequently, they cannot be held as having admitted their liability for that debt. However, the evidence adduced, and, more particularly, the evidence given by Dr. John Pullicino — as well as the letters written by the Defendants — show that it was no admission made in the spirit of compromise, but that they had accepted responsibility for the two debts — and that, being almost bankrupt, and having previously absconded, they had sought to pay the Firm 20 per cent thereof. It was nothing short of an acceptance of their liability and, as such, it established their direct and personal responsibility.

No. 26.
Judgment of H.M.
Court of Appeal.
—Continued.

Considering, —

As to the question regarding the right of recovery by reimbursement, the view taken by the Court below is to be endorsed and adopted.

On these grounds:

The Court

Disallows the pleas and dismisses the appeal and affirms the judgment given by His Majesty's Commercial Court on the 22nd April, 1947, with costs against the Appellants.

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

No. 27.
 Defendants'
 Petition for leave
 to appeal to H.M.'s
 Privy Council.

No. 27.

Defendants' Petition for leave to appeal to H.M.'s Privy Council.

Emmanuele Borg, in his own behalf
 and for and on behalf of the Comptoir
 Commercial Internationale, in his
 capacity as assignee of Messrs. Allan
 & Dey, of Aberdeen, Scotland, under
 an instrument under private
 signature dated 5th September, 1944. 10

vs.

Joseph and George Griscti,
 Merchants, in their own behalf and
 in their capacity as partners in the
 Firm of Vincent Griscti & Sons.

Defendants' Petition.

Respectfully sheweth:—

That by Writ-of-Summons filed in His Majesty's
 Commercial Court, whereby the Plaintiff, submitting:—

That Messrs. Allan & Dey of Aberdeen were creditors of 20
 the Defendant Firm for the sum of £433.6.8, due in respect
 of two consignments of fish which were shipped and delivered
 to the Defendants in execution of two orders dated 2nd and
 5th October, 1935, and which, in view of the fact that they
 had placed their Orders in the name of fictitious customers,
 they themselves had sold and disposed of — and the whole
 transaction had in fact been carried out solely in their own
 interests; — that, up to the 30th October, 1944, the interest
 accruing on the principal due to Messrs. Allan & Dey amounted 30
 to £225.6.3, whilst the sum of £26.6.0 was incurred in legal
 costs; — that, under the instrument aforesaid (“A”), the Firm
 in Aberdeen assigned the whole of their credit to the Plaintiff
 for the price of £108.6.8; — that notice of the assignment was
 served upon the Defendants by judicial letter dated 9th
 October, 1944 (“C”); — that, thereupon, the Defendants, by
 judicial letter dated 27th October, 1944 (“D”), claimed that
 the credit assigned as above was a litigious right, and that,
 consequently, they were entitled to the recovery of the
 assignment; — that, by Lodgment Schedule dated 31st 40
 October, 1944 (“E”), the Defendants proceeded to make the
 respective deposit in Court; — and that, prior to the assignment,

the Defendants had never questioned the credit aforesaid and had in fact repeatedly admitted their liability — and that even now they have failed to specify any grounds for controversy; — prayed that, — every necessary declaration being prefaced and any expedient direction being given, — said Defendants be condemned to pay to him the sum of £685.18.11 in respect of the principal, interest and costs of the assigned credit. — With further interest thereon from 1st November, 1944, and with Costs.

No. 27.
Defendants'
Petition for leave
to appeal to H.M.'s
Privy Council.
—Continued.

- 10 In their Statement of Defence, the Defendants submitted as follows: The credit of £433.6.8 claimed by the Plaintiff as principal due to Messrs. Allan & Dey is made up of the sum of £260 in respect of goods sold to one Mazzitelli — who himself sold and received payment for the goods — and of the sum of £173.6.8 in respect of goods ordered to the name of Felix Blanc and taken over by the Defendants as guarantors of the said Blanc who defaulted in making payment. Therefore, the Defendants are answerable only in respect of the latter sum of £173.6.8; and as the assignor Firm was about to sue
- 20 Blanc for the recovery of that amount, the respective credit is of a litigious nature and the Defendants have the right to the recovery thereof by making reimbursement of the actual price of the assignment, that is to say, of the sum of £43.11.8, which they are prepared to pay subject to subrogation of rights. — The Defendants never undertook to pay Messrs. Allan & Dey the debt of Mazzitelli. They only made conditional offers which the exporting Firm did not accept, and, therefore, those offers are to be considered as withdrawn by the Defendants. In any case, the Defendants are always
- 30 entitled to obtain their release from the Plaintiff assignee by reimbursing to him the actual price of the assignment — which, as already submitted, they are prepared to do if adjudged debtors of the amount. — Although it is stated in the instrument of assignment that the Plaintiff had acquired the interest due according to law, it is quite clear that the assignors never had the intention of assigning that interest, which in fact they had never taken into account; and (without prejudice to the foregoing pleas) the Plaintiff is therefore entitled only to the price of the goods, to the exclusion of the interest accruing
- 40 thereon. — The Defendants cannot be held liable for the legal costs included in the assignment, amounting to £26.6.0, considering that they are not the debtors of the assignors for that amount, which in fact represents an expenditure which they, the assignors, thought fit to incur out of Court in

No. 27.
 Defendants,
 Petition for leave
 to appeal to H.M.'s
 Privy Council.
 —Continued.

their own interests. — As shown by the letter marked Exhibit "A", there is a possibility of the assignment made to the Plaintiff being rescinded, and therefore the necessity arises for holding up the present proceedings for a reasonable period of time so as to enable the assignors to take the necessary steps.

His Majesty's Commercial Court, by judgment given on the 22nd April 1947, allowed Plaintiff's claim, with Costs.

The Defendants entered appeal therefrom by Minute and Petition filed respectively on the 29th April, 1947 and 13th May, 1947. 10

This Court of Appeal, by judgment given on the 15th March, 1948, dismissed the appeal and the pleas of the Defendants and affirmed the judgment given by His Majesty's Commercial Court on the 22nd April, 1947, with costs against the Defendants.

The Defendants deem themselves aggrieved by the judgment given by this Court of Appeal on the 15th March, 1948, and wish to appeal therefrom to His Majesty's Privy Council. 20

The Defendants humbly maintain that the pleas raised and the submissions tendered in their petition and in their note of submissions, together with the evidence produced in the case, establish the fact that the debt was not their own, but was owing by Mazzitelli and Felix Blanc, respectively to the extent of £260 and £173.6.8. Mazzitelli took delivery of the goods, sold them and absconded with the money. Felix Blanc would not accept the goods which, consequently, were taken over by the Defendants, notwithstanding that the Defendants were not responsible therefor. It therefore follows that the Defendants are not responsible for the debt of Mazzitelli inasmuch as Mazzitelli was the direct debtor of the exporting Firm. Further, in view of the fact that the debtors were jointly and severally responsible, notice of the assignment should have been served upon all the debtors, including the direct debtors; consequently, the proceedings were instituted prematurely. Finally, the Defendants were entitled to exercise the right of recovery by reimbursement, their responsibility being of a Civil and not of a Commercial nature. 30 40

Wherefore the Petitioners humbly pray that this Honourable Court may be pleased to grant them leave to appeal from

the aforesaid judgment, given on the 15th March, 1948, to the Judicial Committee of His Majesty's Privy Council, thereby to seek to obtain variation of that judgment both as regards the merits and the head of Costs — in that they be absolved from the instance, and, in default, that they be ordered to pay only the actual price of the assignment of the credit against Felix Blanc, the rest of the claims against them being dismissed, and an order being made for the costs to be borne by the Plaintiff Respondent in view of the deposit made by the Appellants.

No. 27.
Defendants'
Petition for leave
to appeal to H.M.'s
Privy Council.
—Continued.

(Signed) J. XUEREB, Advocate,

(Signed) G. MANGION, Legal Procurator.

This 17th March, 1948.

Filed by G. Mangion, L.P., without Exhibits.

(Signed) S. BUGEJA,
Dep. Registrar.

No. 28.

The Answer of the Plaintiff

No. 28.
The Answer of
the Plaintiff.

In His Majesty's Commercial Court.

20 Emmanuele Borg, **proprio et nomine**
vs.

Joseph and George Griscti **proprio et nomine.**

The Answer of the Plaintiff Respondent, Emmanuele Borg
proprio et nomine.

The said Emmanuele Borg respectfully submits that he will abide by the decision of this Honourable Court.

(Signed) V. CARUANA, Advocate,

(Signed) G. GALDES, Legal Procurator.

The sixth April, 1948.

30 Filed by G. Galdes, L.P., without Exhibits.

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

Defendants' Application.

In His Majesty's Commercial Court.

Emmanuele Borg, **proprio et nomine**
vs.

Joseph and George Griscti **proprio et nomine.**

The Application of the Appellants, Joseph and George Griscti **proprio et nomine.**

Respectfully sheweth:—

On the 17th March, 1948, the Appellants filed a Petition 10
praying for leave to appeal to His Majesty's Privy Council
from the judgment given by this Court in the above case on the
15th March, 1948.

It is in the interests of the Appellants that the enforcement
of the judgment appealed from be stayed during the
prosecution of the appeal, especially in view of the fact that,
to safeguard the rights of the Respondent, there is the sum of
£700 lodged in his favour by Schedule No. 31 dated 31st
October, 1944, in addition to which, the Appellants, to make 20
up the whole sum due to him in terms of the aforesaid
judgment, including interest and costs, are prepared to leave
on deposit the sum of £151.12.2 out of the sum of £829.0.5
which they likewise lodged in his favour by Schedule No. 116
dated 23rd March, 1948, in pursuance of the Warrant which
he sued out against them — and in view of the fact that the
enforcement of the judgment would be of greater detriment
to the Appellants than the suspension thereof would be to the
Respondent, particularly if the latter fails to produce the
guarantee bond required by law.

Wherefore the Appellants respectfully pray that, in 30
granting them leave to appeal, this Court, in terms of Section
5 of the Order-in-Council of the 22nd November, 1909, as
amended by the Order-in-Council of the 5th November, 1942,
may be pleased to order a stay of execution of the judgment
appealed from, subject to all such directions as may be deemed
opportune.

(Signed) A. MAGRI, Advocate,
(Signed) G. MANGION, Legal Procurator.

This 7th April, 1948.

Filed by G. Mangion, L.P. without Exhibits.

Plaintiff's Answer.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**

vs.

Joseph and George Griscti, **proprio et nomine.**

The Answer of the Respondent, Emmanuele Borg **proprio et nomine.**

Respectfully sheweth:—

10 The judgment given by this Court on the 15th March, 1948 affirmed that given by His Majesty's Commercial Court and therefore it is the Court below that is the competent Court to deal with the question of the enforcement or the suspension of the enforcement of the judgment (Section 263, Laws of Procedure).

It is a fact that this Court, in granting leave to appeal to His Majesty's Privy Council, may order that the enforcement of the judgment appealed from be suspended; but leave to appeal has not so far been granted and therefore the competent
20 Court is still the Court below.

The sum due to the Plaintiff exceeds that stated by the Defendants in their Application. In fact, the Plaintiff was adjudged creditor for the sum of six hundred and eighty-five pounds eighteen shillings and eleven pence (£685.18.11), together with interest thereon from 1st November, 1944, which interest up to 15th March, 1948, amounts to One hundred and thirty-eight pounds seventeen shillings and ten pence £(138.17.10), not including judicial costs, amounting to
30 (Seventy-seven pounds nineteen shillings and one penny (£77.19.1) — or a total sum of £902.12.10, saving further interest and costs.

Without prejudice to the foregoing, the right of the Plaintiff to enforce the judgment against a guarantee bond cannot be gainsaid.

(Signed) V. CARUANA, Advocate,

(Signed) G. BORG, Legal Procurator.

This 12th April, 1948.

Filed by G. Borg, L.P., without Exhibits.

(Signed) A. GHIRLANDO,
Dep. Registrar.

No. 31.
Decree granting
conditional leave
to appeal.

No. 31.

Decree granting conditional leave to appeal.

His Majesty's Court of Appeal

Judges:—

His Honour Sir George Borg, M.B.E., LL.D., President
The Honourable Mr. Justice Professor E. Ganado, LL.D.
The Honourable Mr. Justice L.A. Camilleri, LL.D.

Sitting held on

Friday, the thirtieth April, 1948.

Writ-of-Summons No. 254/1944.

10

Emmanuele Borg, in his own behalf
and for and on behalf of the Comptoir
Commercial Internationale, in his
capacity as assignee of Messrs. Allan
& Dey, of Aberdeen, Scotland, under
an instrument under private
signature dated 5th September, 1944.

vs.

Joseph and George Griscti,
Merchants, in their own behalf and
in their capacity as partners in the
Firm of Vincent Griscti & Sons.

20

The Court,

Upon seeing the Judgment given by this Court on the
15th March, 1948, dismissing the pleas raised by the Appellants
and affirming the judgment given by His Majesty's Commercial
Court on the 22nd April, 1947 — and therefore dismissing the
Appeal;

Upon seeing the Petition filed by the Defendant
Appellants **proprio et nomine** on the 17th March, 1948, praying
for leave to appeal to His Majesty's Privy Council from the
judgment given by this Court on the 15th March, 1948;

30

Upon seeing the Minute filed by the Plaintiff Respondent,
declaring that he will abide by the decision of this Court;

Upon hearing Counsel on both sides;

Considering,—

According to the Order-in-Council of the 22nd November,
1909, an appeal shall lie as of right from any final judgment

of this Court where the matter in dispute on the Appeal amounts to or is of the value of five hundred pounds sterling or upwards, or when the Appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of five hundred pounds sterling or upwards.

No. 31.
Decree granting
conditional leave
to appeal.
—Continued.

It is beyond doubt that the value of the matter in dispute exceeds five hundred pounds sterling.

On these grounds:

- 10 Allows the Petition and, in terms of the Order-in-Council aforesaid, grants the Appellants leave to appeal to His Majesty in His Privy Council from the aforementioned judgment of this Court of the 15th March, 1948, subject to the condition of their entering into good and sufficient security, within one month, in a sum of three hundred pounds (£300), and subject to the condition that they shall take the necessary steps to procure, within three months, the preparation, translation and despatch of the Record to the Judicial Committee of the Privy Council. Costs reserved to the final Order.

20

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

No. 32.

Decree suspending enforcement of Judgment.

No. 32.
Decree suspending
enforcement of
Judgment.

His Majesty's Court of Appeal

Judges:—

His Honour Sir George Borg, M.B.E., LL.D., President
The Honourable Mr. Justice Professor E. Ganado, LL.D.
The Honourable Mr. Justice L.A. Camilleri, LL.D.

30

Sitting held on
Friday, the thirtieth April, 1948.

Writ-of-Summons No. 254/1944.

Emmanuele Borg, in his own behalf
and for and on behalf of the Comptoir
Commercial Internationale, in his

No. 32.
Decree suspending
enforcement of
Judgment.
—Continued.

capacity as assignee of Messrs. Allan & Dey, of Aberdeen, Scotland, under an instrument under private signature dated 5th September, 1944.

vs.

Joseph and George Griscti, Merchants, in their own behalf and in their capacity as partners in the Firm of Vincent Griscti & Sons.

The Court,

10

Upon seeing the Application of the Defendant Appellants **proprio et nomine**, filed on the 9th April, 1948, praying that, in granting them leave to appeal to the Judicial Committee of His Majesty's Privy Council, this Court, in terms of section 5 of the Order-in-Council of the 22nd November, 1909, as amended by the Order-in-Council of the 5th November, 1942, may be pleased to order a stay of execution of the judgment appealed from, subject to all such directions as may be deemed opportune.

Upon seeing the Answer of the Plaintiff Respondent, submitting: (a) the judgment given by this Court on the 15th March, 1948 affirmed that given by His Majesty's Commercial Court, and therefore it is the Court below that is the competent Court to deal with the question of the enforcement or the suspension of the enforcement of the judgment (Section 263, Laws of Procedure); (b) it is a fact that this Court, in granting leave to appeal to His Majesty's Privy Council, may order that the enforcement of the judgment appealed from be suspended, but leave to appeal has not so far been granted and therefore the competent Court is still the Court below; (c) the sum due to the Plaintiff exceeds that stated by the Defendants.

20

30

Upon seeing the decree given on the 14th April, 1948, ordering that the Application be put on the case-list for hearing at the Sitting of the 19th April, 1948.

Considering.—

By Decree given at today's Sitting, this Court granted the Defendant Appellants conditional leave to appeal to His Majesty's Privy Council. Therefore, in terms of section 5 of the Order-in-Council aforesaid, this Court is the Competent Court to determine whether or not to allow the Application, and, in the affirmative case, under what conditions.

40

According to the Plaintiff Respondent, the sum due to him is of £902.15.10, being: £685.18.11 principal, £138.17.10 interest from 1st November, 1944, to 15th March, 1948, and £77.19.1 costs. The Defendant Appellants claim that, to safeguard the rights of the Plaintiff, there is the sum of £700 lodged in his favour by Schedule No. 31 of the 31st October, 1944, in addition to which, to make up the whole sum due to him in terms of the aforesaid judgment, including interest and costs, they are prepared to leave on deposit the sum of

10 £151.12.2 out of the further sum of £829.0.5 which they likewise lodged in his favour by Schedule No. 116 dated the 23rd March, 1948, in pursuance of the Warrant which he sued out against them.

No. 32.
Decree suspending
enforcement of
Judgment.
—Continued.

On these grounds, —

The Court

Allows the Application of the Defendant Appellants for a stay of execution of the judgment, subject to the condition that the sum of £700 lodged by Schedule No. 31 of the 31st October, 1944, and the sum of £202.15.10 out of

20 Schedule No. 116 dated 23rd March, 1948, shall continue to be held on deposit as a guarantee in favour of the Plaintiff Respondent until the issue is finally determined before His Majesty's Privy Council — provided that the Plaintiff Respondent may apply for the enforcement of the judgment if and when he produces a suitable surety **in solidum**. The costs hereof reserved to the Order for final leave.

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

No. 33.

30 **Defendants' Application.**

No. 33.
Defendants'
Application.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**

vs.

Joseph and George Griscti **proprio et nomine.**

Defendants' Applications.

Respectfully sheweth:—

This Court, by Decree given on the 30th April, 1948, allowed the Application filed by the Defendant Appellants

No. 33. on the 7th April, 1948, and ordered a stay of execution of the
 Defendants' judgment given in the present suit on the 15th March, 1948,
 Application. subject to the condition that the sum of £700 lodged by
 —Continued. Schedule No. 31 of the 31st October, 1944, and the sum of
 £202.15.10 out of Schedule No. 116 dated 23rd March, 1948,
 shall continue to be held on deposit as a guarantee in favour
 of the Plaintiff Respondent.

The two sums that are to continue to be held on deposit
 amount together to £902.15.10, which is the sum claimed by
 the Plaintiff, and which, according to the Plaintiff, is made up 10
 as follows: £685.18.11 principal, £138.17.10 interest at 6 per
 cent up to 15th March, 1948, and £77.19.1 costs of the suit.

In computing that sum, however, an error has been
 incurred. The Plaintiff has not been adjudged creditor of the
 sum of £685.18.11 as principal. In fact, £225.6.3 are in respect
 of interest on the **real and actual principal of £433.6.8** (and
 that interest has not been capitalised), whilst £26.6.0 are in
 respect of judicial costs. It follows that interest is not to be
 reckoned on the sum of £685.18.11, but only on the sum of 20
 £433.6.8, and therefore the interest due up to the 15th March,
 1948, amounts to £87.14.2, and not to £138.17.10.

According to the above computation, therefore, the sum
 adjudged to the Plaintiff Respondent stands at £851.12.2, as
 against the sum of £902.15.10.

Wherefore the Defendant Appellants respectfully pray
 that, after making all necessary verifications, this Court may
 be pleased to rectify the Decree given on the 30th April, 1948,
 ordering that, instead of the sum of £202.15.10, the sum of
 £151.12.2 shall continue to be held on deposit out of Schedule
 No. 116 dated 23rd March, 1948. 30

(Signed) J. XUEREB, Advocate,

(Signed) A. MAGRI, Advocate,

(Signed) G. MANGION, Legal Procurator.

This 26th May, 1948.

Filed by Gius. Mangion, L.P., without exhibits.

(Signed) J. DINGLI, Dep. Registrar.

Plaintiff's Answer.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**
vs.

Joseph and George Griscti **proprio et nomine.**
The Answer of the said Emmanuele Borg **proprio et nomine.**

Respectfully sheweth:—

10 Contrary to Defendants' allegation, no error of computation has been incurred in the Decree given on the 30th April, 1948. In the Writ-of-Summons initiating the present proceedings, the Plaintiff asked that he be adjudged creditor for the total sum of Six Hundred and Eighty-five Pounds Eighteen Shillings and Eleven Pence. That involved capitalisation of interest which, consequently, has been correctly considered as principal by the Court both of the First and of this Second Instance, and interest should therefore accrue on the total sum.

20 The matter has once before come up before the Court. No question arises as to an error of computation, since the computation in question is correct. The point at issue is whether or not the interest due should have been capitalised, and procedure by way of Application is therefore inadmissible.

The Plaintiff Respondent therefore enters objection thereto.

(Signed) V. CARUANA, Advocate,

(Signed) G. GALDES, Legal Procurator.

The first June, 1948.

Filed by G. Galdes, L.P., without Exhibits.

30

(Signed) S. BUGEJA, Dep. Registrar.

No. 35.
Decree on
preceding
Application.

No. 35.**Decree on preceding Application.**

His Majesty's Court of Appeal
(Commercial Hall)

Judges:—

His Honour Sir George Borg, M.B.E., LL.D., President.
The Honourable Mr. Justice Professor E. Ganado, LL.D.
The Honourable Mr. Justice L.A. Camilleri, LL.D.

Sitting held on
Monday, the Twenty-eighth June, 1948. 10

No. 7.

Emmanuele Borg **proprio et nomine**
vs.

Joseph and George Griscti **proprio et nomine.**

The Court,

Upon seeing the Application filed by the Defendant Appellants on the 26th May, 1948, praying that a correction be made in the Decree given by this Court on the 30th April, 1948, to the effect that the sum of £151.12.2, **vice** the sum of £202.15.10 therein mentioned, shall continue to be held on deposit out of Schedule No. 116 dated 23rd March, 1948. 20

Upon seeing the Answer of the Plaintiff Respondent, entering objection thereto.

Considering, —

In their aforesaid Application, the Defendant Appellants submitted:

That this Court, by Decree given on the 30th April, 1948, allowed the Application filed by them on the 7th April, 1948, and ordered stay of execution of the judgment given in the present suit on the 15th March, 1948, subject to the condition that the sum of £700 lodged by Schedule No. 31 of the 31st October, 1944, and the sum of £202.15.10 out of Schedule No. 116 dated 23rd March, 1948, shall continue to be held on deposit as a guarantee in favour of the Plaintiff Respondent. 30

That the two sums that are to continue to be held on deposit amount together to £902.15.10, which is the sum

claimed by the Plaintiff, and which, according to the Plaintiff, is made up as follows: £685.18.11 principal, £138.17.10 interest at 6 per cent up to 15th March, 1948, and £77.19.1 costs of the suit.

No. 35.
Decree on
preceding
Application.
—Continued.

10 That, however, in computing that amount, an error has been incurred. The Plaintiff has not been adjudged creditor of the sum of £685.18.11 as principal. In fact, £225.6.3 are in respect of interest on the real and actual principal of £433.6.8 (and that interest has not been capitalised), whilst £26.6.0 are in respect of judicial costs. It follows that interest is not to be reckoned on the sum of £685.18.11, but only on the sum of £433.6.8, and therefore the interest due up to the 15th March, 1948, amounts to £87.14.2, and not to £138.17.10.

That, therefore, according to the above computation, the sum adjudged to the Plaintiff Respondent stands at £851.12.2, as against the sum of £902.15.10.

20 The Defendant Respondents are therefore correct in holding that the total sum that should have been deposited is that of £851.12.2. In fact, Plaintiff's claim in the Writ-of-Summons was for the sum of £685.18.11, being: £433.6.8 principal, £225.6.3 interest up to 30th October, 1944, and £26.6.0 costs therein specified. The claim therein made in respect of "further interest from 1st November 1944" refers to interest on the sum of £433.6.8 claimed as principal. If the case were otherwise, it would not have been called "further" interest and it would not have been claimed with effect from 1st November, 1944 (the interest having been computed up to the 30th October, 1944), but would have accrued from the date of the judgment or at least from the date of the filing of
30 the Writ-of-Summons. And the Court allowed that claim.

On these grounds,

The Court,

Allows the Application of the Defendant Respondents and orders that the appropriate correction be made.

Orders further that each party shall bear its own costs in connection therewith.

And in this sense varies the Decree given on the 30th April, 1948.

40

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

Defendants' Minute.

In His Majesty's Commercial Court.

Emmanuele Borg **proprio et nomine**

vs.

Joseph and George Griscti **proprio et nomine.**

Defendants' Minute.

Said Defendants produce the annexed copy of the Lodgment Schedule respecting the deposit made by them in compliance with the Decree given by this Court on the 30th April, 1948. 10

(Signed) A. MAGRI, Advocate,

(Signed) JOS. H. XUEREB, Advocate,

(Signed) G. MANGION, Legal Procurator.

The 10th September, 1948.

Filed by G. Mangion, L.P., with one Exhibit.

(Signed) J. DINGLI,

Schedule of Deposit.

In His Majesty's Court of Appeal. 20

Writ-of-Summons No. 254/1944.

Emmanuele Borg, for and on behalf of the Comptoir Commercial Internationale, in his capacity as assignee of Messrs. Allan & Dey, of Aberdeen, Scotland, under an instrument under private signature dated 5th September, 1944.

vs.

Joseph and George Griscti, 30
Merchants, in their own behalf and

in their capacity as partners in the Firm of "Vincent Griscti & Sons".

No. 37.
Official Copy
Schedule of
Deposit.
—Continued.

Schedule of Deposit of the said Joseph and George Griscti **proprio et nomine.**

Respectfully sheweth:—

10 That by Decree given on the 30th April, 1948, this Court granted the Defendants leave to appeal to His Majesty's Privy Council from the judgment given by this Court on the 15th March, 1948, allowing them the period of one month within which to enter into good and sufficient security as required by the appropriate section of the Order-in-Council of the 22nd November, 1909, and establishing the amount of that security at Three Hundred Pounds.

In compliance, the Defendants hereby deposit under the authority of this Court the sum of Three Hundred Pounds.

(Signed) A. MAGRI, Advocate,

(Signed) JOS. H. XUEREB, Advocate,

(Signed) G. MANGION, Legal Procurator.

This 29th May, 1948.

20 Filed by G. Mangion, L.P., without Exhibits and with the sum of Three Hundred Pounds.

(Signed) S. BUGEJA,
Dep. Registrar.

I hereby certify that, on the 30th May, 1948, through Acting Usher Alfred Abdilla, I effected service upon Emmanuele Borg, delivering to him a copy hereof, together with extracts from Section 22 of the Laws of Procedure.

This 1st June, 1948.

30 (Signed) NAZ. AQUILINA,
Marshal.

True copy,

(Signed) V. PANDOLFINO,
Dep. Registrar.

Defendants' Application.

In His Majesty's Court of Appeal

Emmanuele Borg, **proprio et nomine**
vs.

Joseph and George Griscti, **proprio et nomine.**

The Application of the Defendants (Appellants).

Respectfully sheweth:—

The Defendants have time up to the end of the present month for the filing of the translation of the Record. 10

In the course of collating and examining the translation — which has been completed — one of the documents which the Plaintiff filed by Minute on the 15th June, 1945, during the sitting of the Court below, has been found missing from the original Record. It appears that the document in question was mislaid before the pages of the Record were numbered in the Registry, since the official numbering thereof is in proper consecutive order.

However, according to Plaintiff's own numbering of the documents in question, it would appear that the document that is missing is document No. 40, which should follow and go in immediately after the document at fol. 76 of the Record. 20

Reference to the missing document is made in the evidence of the Defendant Joseph Griscti and the fact that it is missing may also be ascertained by comparing the actual number of documents which the Plaintiff declared he was producing by the abovementioned Minute dated 15 June, 1945.

It is desirable that the translation should be filed and the record printed after that the Court shall have given appropriate directions as regards the missing document under reference, considering especially that the matter involves the numbering of the documents in question and of the whole record. 30

The Defendants, therefore, reserving all the rights to which they are entitled in respect of the above discrepancy, and praying that the Court may be pleased to give such directions thereanent as may be deemed opportune, respectfully pray

that they be granted a further extension of time for the preparation and printing of the translation of the Record.

No. 38.
Defendants'
Application.
—Continued.

(Sd.) E. MAGRI, Advocate.

(Sd.) J.H. XUEREB, Advocate.

(Sd.) G. MANGION, Legal Procurator.

The twenty-sixth October, 1948.

Filed by G. Mangion, L.P. without Exhibits.

(Sd.) S. BUGEJA,
Dep. Registrar.

10

No. 39.

No. 39.
Decree on
preceding
Application.

Decree on preceding Application.

His Majesty's Court of Appeal
(Commercial Hall)

The Court,

Upon seeing the Application;

Extends the time for the filing of the translation up to the end of November, 1948.

20 Orders that service be made of the Application and of the present Decree on the Plaintiff, and that the Application be put on the case-list of the 5th November, 1948, in order that evidence may be heard as regards the document alleged to be missing.

Orders that the present Decree be communicated to the Registrar.

This 27th October, 1948.

(Sd.) VINC. PANDOLFINO,
Dep. Registrar.

No. 40.
Plaintiff's
Answer.

No. 40.

Plaintiff's Answer.

In His Majesty's Court of Appeal.

Emmanuele Borg **proprio et nomine**

vs.

Joseph and George Griscti, **proprio et nomine.**

Plaintiff's Answer.

Respectfully sheweth:—

The document, numbered No. 40, filed by the Plaintiff together with other documents on the 15th June, 1945, is to be found in the Record at fol. 65 in between the documents marked by the Plaintiff Nos. 29 and 30. 10

It is beyond doubt that that document was put in and bound up in the wrong place and that it has formed part of the Record throughout the whole proceedings.

There are no grounds therefore for any directions thereanent.

(Sd.) V. CARUANA, Advocate.

(Sd.) G. GALDES, Legal Procurator.

This first December, 1948. 20

Filed by G. Galdes, L.P. without Exhibits.

(Sd.) J. MICALLEF,
Dep. Registrar.

No. 41.
Defendants'
Rejoinder.

No. 41.

Defendants' Rejoinder

In His Majesty's Court of Appeal

Emmanuele Borg, **proprio et nomine,**

vs.

Joseph and George Griscti, **proprio et nomine.**

The Rejoinder of the Defendants (Appellants). 30

Respectfully sheweth:—

The Defendants are unable to accept the explanation given by the Plaintiff in his Answer of the 1st December, 1948,

regarding the missing document which, as they submitted, should follow the document at fol. 76 of the Record.

No. 41.
Defendants'
Rejoinder.
—Continued.

In fact, the document mentioned by the Plaintiff, which is at fol. 65 and which is stated to be bound in the wrong place, is not marked as document No. 40. This apart, the contents show that it is not the document to which reference has been made in the evidence.

Wherefore the Defendants respectfully submit that it is necessary to have the Court's directions thereanent.

10

(Sd.) J.H. XUEREB, Advocate.

(Sd.) E. MAGRI, Advocate.

(Sd.) G. MANGION, Legal Procurator.

This 31st December, 1948.

Filed by G. Mangion, L.P., without Exhibits.

(Sd.) S. BUGEJA,
Dep. Registrar.

No. 42.

Plaintiff's Evidence

No. 42.
Plaintiff's
Evidence.

In His Majesty's Court of Appeal.

20

21st January, 1949.

The Plaintiff, Emmanuele Borg, produced by the Defendants, states on oath:—

The documents filed in the Record were handed over to me by Dr. John Pullicino and I have no other documents in my possession relating to this case.

At one of the Sittings, Counsel appearing for me, Professor Carauana, filed a Minute together with fifty documents; and these fifty documents, duly numbered, are to be found in the Record, together with the Minute I have mentioned.

30

As regards the document at fol. 76 of the Record — letter to Messrs. Allan & Dey, stating that Dr. John Pullicino had sent a judicial letter to the Griscitis in order to interrupt the course

No. 42.
Plaintiff's
Evidence.
—Continued.

of prescription — I do not know that a copy of the judicial letter therein referred to was attached to that letter to Messrs. Allan & Dey.

I remember positively that the documents produced numbered fifty. I cannot say whether or not the documents have been correctly numbered, but I have no doubts as regards the documents themselves.

The numbers in ink on the documents were made by me.

Question: Could you say whether the two documents at fol. 62 are to be counted as one? *

10

Answer: I think these two documents, the Bill of Exchange and the respective Protest, were considered as one document. I myself had pinned them together and I never removed the pin.

When these two documents, the Bill of Exchange and the Protest, are counted as one document, I think the number of documents filed by the Minute referred to remains fifty.

I declare that I have never removed any documents from the Record, and that, whenever I had occasion to consult the Record, I always consulted the Record in the presence of the clerk attached to the Court.

20

I always drew the attention of the Court official concerned to any paper in the Record that seemed about to come loose.

I have now, in Court, counted the number of the documents in question, and I find that, counting the Bill of Exchange and the Protest as one document, the documents number forty-six.

The documents I have just counted are those that were filed originally and I affirm on my oath that I have never at any time since they were filed substituted one document for another.

Joseph Griscti gave his evidence eleven months after the documents were filed.

30

(Signed) E. BORG.

Read over to the witness.

(Sd.) J.N. CAMILLERI,
22. 1. 49.

* Vide p. 110.

The Evidence of Prof. J. Xuereb.

In His Majesty's Court of Appeal.

21st January, 1949.

Professor J. Xuereb states on oath:—

In his evidence, Joseph Griscti mentioned that he had gone to see Dr. Pullicino following a Judicial Letter which had been served upon him, and I remember that, at the moment, he made reference to the date of the Judicial Letter.

10 The Judicial Letter referred to is kept in the Registry, that is to say, it was sent, and, if I remember rightly, it was dated 25th November, 1943; and I remember about it because, whilst in the letter which he sent to Messrs. Allan & Dey on the 17th November, 1943 (now at fol. 76 of the Record), Dr. Pullicino stated that he had already sent that Judicial Letter, in actual fact the Judicial Letter had not yet been sent on that date.

In support of this, I should mention that it was pointed out to me that the evidence of Joseph Griscti, as it stands, is not very intelligible, seeing that reference is made therein to a document which is at variance with the evidence itself.

20 I gave the matter my attention lately when I was going over the translation and I remembered that there had been this Judicial Letter. I remembered that there had been a discrepancy between the date of that letter and the document at fol. 76 of the Record.

I tried to find the Judicial Letter in the Record, but it was not in the Record. I then made enquiries at the Registry and found that I had remembered rightly.

(Sd.) J.H. XUEREB, Advocate.

Read over to the witness.

30

(Sd.) J.N. CAMILLERI,
Dep. Registrar.

The Evidence of Dr. John Pullicino.

In His Majesty's Court of Appeal.

21st January, 1949.

Dr. John Pullicino states on oath:—

In giving the documents to Borg, I do not remember I gave him also a copy of the Judicial Letter which I had sent to Griscti.

Nor is this to be presumed, seeing that, in the ordinary course of events, I do not keep copies of Judicial Letters: when it is necessary for me to consult any Judicial Letter sent by me, I look up the original in the Registry. 10

Once I wrote to Messrs. Allan & Dey, in the letter filed at fol. 76 of the Record, that I had caused service to be made of a Judicial Letter, it may be taken for certain that that Judicial Letter had been filed, or written by me, on the same day I wrote my letter to Messrs. Allan & Dey.

If the Judicial Letter bears the date of the 26th November, 1943, it is possible that my letter to Messrs. Allan & Dey, though dated 17th, was sent on the 27th of the month.

(Sd.) J. PULLICINO, 20

Read over to the witness.

(Sd.) J.N. CAMILLERI,
Dep. Registrar.

Decree on Defendants' Application.No. 45.
Decree on
Defendants'
Application.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 the 7th February, 1949.

10

Emmanuele Borg, **proprio et nomine**,
vs.Joseph and George Griscti, **proprio et nomine**.

The Court,

Upon seeing Defendants' Application, praying that directions be given in regard to a document allegedly missing from the Record, namely, document No. 40 which should go in after the document at fol. 76 of the Record;

Upon seeing the Decree given on the 27th October, 1948;

20 Upon seeing Plaintiff's Answer, submitting that no document is missing from the Record and that therefore there are no grounds for any directions thereanent;

Upon seeing Defendants' Rejoinder;

Having heard Plaintiff's evidence;

Having heard the evidence given by Professor J. Xuereb,
LL.D.;

Having heard Counsel on both sides;

Considering, —

30 In the Court below, the Plaintiff, by the Minute at fol. 35, filed the whole correspondence exchanged on the subject of the claim at issue in the case.

It is stated in that Minute that the documents filed thereby are numbered 1 to 50. The Deputy Registrar to whom the Minute and the documents were handed over certified he had received 46 documents numbered 1 to 50. Actually, there are 46 documents. The numbers in ink from 1 to 50 were made by the Plaintiff before filing the correspondence.

Considering, —

40 It is a fact that, between the documents numbered in ink 39 and 41, document No. 40 appears to be missing. However, the Plaintiff has submitted that that document is the document at

No. 45.
Decree on
Defendants'
Application.
—Continued.

fol. 65, on which the abbreviation "Nru." only, without the number itself, is written in ink. So far as this is concerned, the Defendants are right, for it would not appear that that was the document which should have been marked No. 40 and which should have gone in between the documents numbered 39 and 41 — the latter having nothing to do with the former. On the other hand, it is certain that the Deputy Registrar declared he had received 46 documents, and there are 46 documents in actual fact, numbered 1 to 50, although No. 40 is missing and there is one document which is un-numbered. It is a fact also that, in giving his evidence (fol. 95), Joseph Griscti made reference to fol. 76 of the Record and the document filed therein. This shows that at that moment the Record had been officially numbered, in red pencil, by the Registrar of the Court, through the officials on his staff. If it were otherwise, it would not have been possible for the witness Joseph Griscti to make reference to fol. 76 of the Record. The official enumeration in red appears to be consecutive, and No. 76 is followed by No. 77, which is the folio wherein the document marked No. 41 in ink is filed. If, as the Defendants allege, there had been another document between those documents, the upshot would have been for the official numbering to fail to tally.

10

20

This shows clearly that the Court below gave judgment in the case on the documents as officially numbered, and that this Court heard the Appellants and gave judgment on the Appeal on those documents; and it would not appear therefore that Defendants' claim rests on good grounds.

It is true that Professor Xuereb's evidence seems to indicate that the document in question had been in the Record. In the first place, however, Professor Xuereb, according to his evidence, draws his argument from the facts which he himself stated in evidence, namely, that that document should have been in the Record. In the second place, according to the official numbering, it is certain that the document was not in the Record at the time of the preparation and pronouncement of the Judgment of the Court below — or, indeed, long before then, when Joseph Griscti gave his evidence and the documents were already numbered officially.

30

It should be added that, on the 22nd January, 1949, Professor Xuereb, revising the transcription of the shorthand notes of his evidence, corrected the date of the Judicial Letter in question to read "25th" instead of "26th" November, 1943. This lends colour to the argument that the copy of that letter was not before the Defendant at the time the Defendant was giving his

40

evidence. If the case were otherwise, it is quite likely that the date of the letter would have been taken down in the notes and placed on record, particularly when the Defendant stated (fol. 94): "I remember that we were served with a Judicial Letter". If a copy of the Judicial Letter had been in the Record, it would have been more correct, from the point of view of procedure, for the witness to make reference to it, especially if he had it before him at the time; and in that case the date of the letter would have been taken down in the notes.

No. 45.
Decree on
Defendants'
Application.
—Continued.

10 The discrepancy between the date of the Judicial Letter (25th November) and the date of the letter at fol. 76 (17th November), to which the Defendants make reference, had necessarily to come out in the hearing of the case: At fol. 94, the Defendant stated in his evidence that he and his brother had called upon Dr. Pullicino the **day after** they received the Judicial Letter, and, later, at fol. 95, he made reference to the private letter which Dr. Pullicino wrote to the Plaintiff Firm, which is dated 7th November; whilst according to fol. 94 overleaf, the Defendants had gone to see Dr. Pullicino on the 26th November,
20 1943, which was just the day after they had received the Judicial Letter. Dr. Pullicino stated that once he wrote to the Firm that he had caused service to be made of a Judicial Letter, it was to be taken for certain that he had in fact done so; and once the letter at fol. 76 is simply a copy of his private letter, it may well be that an error was incurred in copying out the date — that is to say, that "17th" should read "27th", which is the day following that on which he was interviewed by the Griscti brothers. This is more likely. There is also that part of the evidence of
30 Dr. Pullicino wherein he stated that it was not probable that the documents which he gave to the Plaintiff included a copy of the Judicial Letter in question, since he does not keep copies of the Judicial Letters which he files in Court from time to time.

On these grounds:

Declares that there are no grounds for any directions to be given on Defendants' Application.

The costs to be borne by the Defendants (Appellants).

(Sd.) J.N. CAMILLERI,
Dep. Registrar.

Defendants' Further Application

In H.M. Court of Appeal.

Emmanuel Borg **proprio et nomine**

vs.

Joseph and George Griscti **proprio et nomine**

The Further Application of the Defendants (Appellants).

Respectfully sheweth:—

The Defendants, by Application filed on the 26th October, 1948, prayed that this Court may be pleased to give all necessary directions as regards the document that has been found missing in the Record. 10

This Honourable Court, by Decree given on the 7th February, 1949, declared that there was no evidence to show that any document had been removed from the Record and that therefore there were no grounds for any directions to be given on Defendants' Application.

In reaching that decision the Court considered, **inter alia**, that the documents filed by the Minute dated 15th June, 1945 (fol.35) were 46 in number, as stated by the Deputy Registrar's entry, and that if the Judicial Letter dated 25th November, 1943 had been included among those documents, express reference to the date of that Judicial Letter would have been made. 20

The defendants have since ascertained that if the documents at fol.62 of the Record were to be considered as one — and the Plaintiff Respondent, in giving evidence on the 21st, January, 1949, himself admitted that they were to be considered as one — then the number of the documents filed as above would be 45, and not 46. 30

It has further been ascertained by the Defendants that the figure "25" followed by the figure "43" appears in the shorthand notes, which leads the Defendants to believe that express reference is made therein to the Judicial Letter dated 25th. November, 1943.

Whether or not that view is correct may be ascertained through the explanations of the stenographer concerned, who

may also be in a position to throw light on the transcription of the shorthand notes in question.

Wherefore the Defendants respectfully pray that this Honourable Court may be pleased to revoke **contrario imperio** the Decree given on the 7th February, 1949, and — after due verification of the facts as above stated — to give all necessary directions in accordance with the Application filed on the 26th October, 1948.

No. 46.
Defendants'
Further
Application.
—Continued.

10 (Signed) A. MAGRI,
Advocate.
(Signed) JOS. XUEREB,
Advocate.
(Signed) G. MANGION,
Legal Procurator.

This 22nd. April, 1949.

Filed by G. Mangion L.P. without Exhibits.

(Signed) J. MICALLEF,
Dep. Registrar.

No. 47.

20 **Decree on Preceding Application.**

No. 47.
Decree on
Preceding
Application.

His Majesty's Court of Appeal.

Emmanuele Borg **proprio et nomine**,
vs.

Joseph and George Griscti **proprio et nomine**.

The Court,

Upon seeing the Application.

Orders that service thereof be made upon the Plaintiff Respondent, who is given four days within which to file an Answer.

30 This 25th April, 1949.

(Signed) J. MICALLEF,
Dep. Registrar.

No. 48.**Plaintiff's Answer.**

In H.M. Court of Appeal.

Emmanuele Borg **proprio et nomine,**

vs.

Joseph Griscti **proprio et nomine**

The Answer of the Plaintiff Respondent.

Respectfully sheweth:—

The Defendants had every opportunity, before this Court gave the Decree dated 7th February, 1949, to submit the arguments that they have now submitted, and their Application, which rests on futile grounds, amounts to want of respect towards the Court. 10

It is true that the Plaintiff stated that, in his view, the documents at fol.62 were to be considered as one. In actual fact, however, the documents were two in number, or at least they were considered as two for the purpose of the D/Registrar's entry and enumeration.

The Plaintiff cannot imagine the end that the Defendants have in view in bringing up questions such as these. The document under reference is completely innocuous and in no way relevant to the judgment given by this Court, as shown by an official copy thereof which is being produced (Exhibit "A") and it was not of the slightest advantage to the Plaintiff that that document should be removed from the Record — if anything, it tells rather against the Defendants than the Plaintiff. 20

Wherefore the Plaintiff resists the Application.

(Signed) V. CARUANA,
Advocate. 30

(Signed) G. GALDES,
Legal Procurator.

This 4th. May, 1949.

Filed by G. Galdes L.P. with one Exhibit.

(Signed) J. MICALLEF,
Dep. Registrar.

No. 49.

Decree on Defendants' Further Application

No. 49.
Decree on
Defendants'
Further
Application.

His Majesty's Court of Appeal.

Emmanuele Borg **proprio et nomine**,

vs

Joseph and George Griscti **proprio et nomine**.

The Court,

Upon seeing the Application filed on the 22nd April, 1949.

Upon seeing Plaintiff's Answer.

10 Whereas the question raised was gone into by the Court
after hearing the evidence of the parties and after hearing
Counsel on both sides; and whereas it was determined by the
Decree given on the 7th February, 1949.

Whereas there are no reasons to re-open a question that
has been so determined after an exhaustive study.

Disallows the Application.

This 7th. May, 1949.

(Signed) J. DEBONO,
Dep. Registrar.

20

No. 50.

Minute approving Translation.

No. 50.
Minute
approving
Translation.

In H.M. Court of Appeal.

Emmanuele Borg **proprio et nomine**,

vs

Joseph and George Griscti **proprio et nomine**.

The Minute of the contending parties.

Whereby, to meet all the ends and purposes of the law, they
declare that they agree to and approve the Translation of the
Record.

30

(Signed) V. CARUANA,
Advocate — for the Plaintiff.

(Signed) A. MAGRI,
Advocate — for the Defendants.

(Signed) G. MANGION,
Legal Procurator.

This 28th. May, 1949.

Filed by G. Mangion L.P. without Exhibits.

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

No. 51.
Appellants'
Application for
Final Leave.

No. 51.

Appellants' Application for Final Leave

In H.M. Court of Appeal

Emmanuele Borg **proprio et nomine**,
vs
Joseph and George Gristi **proprio et nomine**.

Appellants' Application

Respectfully sheweth:—

By Decree given on the 30th. April, 1948, this Honourable Court granted the Defendant Appellants conditional leave to appeal to the Judicial Committee of His Majesty's Privy Council. 10

The Appellants have fulfilled all the conditions required and have completed the translation of the Record.

Wherefore the Appellants respectfully pray that this Court may be pleased to grant them final leave to appeal to His Majesty in His Privy Council.

(Signed) A. MAGRI,
Advocate.

(Signed) G. DEGIORGIO,
Advocate. 20

(Signed) G. MANGION,
Legal Procurator.

This 28th. May, 1949.

Filed by G. Mangion L.P. without Exhibits.

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

Decree granting Final Leave

His Majesty's Court of Appeal

Judges:—

His Honour Sir George Borg M.B.E., LL.D., President
The Honourable Mr. Justice Professor E. Ganado LL.D.
The Honourable Mr. Justice L.A. Camilleri LL.D.

Sitting held on Monday the 27th. June, 1949.

Writ-of-Summons No. 254/1944.

10 Emmanuele Borg, in his own behalf and
for and on behalf of the Comptoir
Commercial International, in his capacity
as assignee of Messrs. Allan & Dey, of
Aberdeen, Scotland, under an instrument
under private signature dated 5th.
September, 1944.

vs.

20 Joseph and George Griscti, Merchants,
in their own behalf and in their capacity
as partners in the Firm of Vincent
Griscti and Sons.

The Court,

Upon seeing the Decree given on the 30th. April, 1948,
whereby the Defendants **proprio et nomine** were granted
conditional leave to appeal to His Majesty's Privy Council from
the judgment given by this Court on the 15th March, 1948 —
costs reserved to the final Order.

Upon seeing Defendant Appellants' Application for final
leave.

30 Upon seeing the Minute filed on the 22nd. May, 1949,
whereby the parties declared that they agree to the translation
made of the Record of the case.

Having heard Counsel.

Allows the Application and grants the Defendants **proprio
et nomine** final leave to appeal to the Judicial Committee of

No. 52. His Majesty's Privy Council from the aforesaid judgment of
Decree granting this Court.
Final Leave.
—Continued.

The costs in respect of the present Decree, and of the Decree granting conditional leave, to be borne by the Defendants **proprio et nomine**, saving recovery thereof, or part thereof, from the Respondent, as may be ordered by the Judicial Committee of His Majesty's Privy Council.

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

EXHIBITS

PLAINTIFF'S EXHIBITS

EXHIBITS**Plaintiff's Exhibits.****Documents filed with Writ-of-Summons.**

Plaintiff's
Exhibits.
Documents filed
with Writ-of-
Summons.

Exhibit "A"**Instrument of Assignment.**

Exhibit "A"
Instrument of
Assignment.

This fifth day of September one thousand nine hundred and forty-four (1944).

10 AGREEMENT between Mr. John Pullicino, Advocate, son of Sir Philip, born and residing in Sliema, Malta, as representative and on behalf of Messrs. Allan & Dey, Fish Merchants of Poynerock Road, Aberdeen, Scotland, of the one part — and Mr. Emmanuele Borg, son of the late Joseph, born in Valletta and residing at Sliema, in his own name and for and on behalf of the firm Comptoir Commercial Internationale of Valletta, Malta, of the other part.

20 1. WHEREBY the said Mr. John Pullicino in his capacity aforesaid does transfer, cede and assign to the said Mr. Emmanuele Borg, **proprio et nomine**, who accepts, the credit of four hundred and thirty-three pounds, six shillings and eight pence (£433.6.8), due to the abovementioned Messrs. Allan & Dey, by the firm Messrs. Vincent Griscti and Sons, of Valletta, Malta, for the price of goods supplied.

2. TOGETHER with the said credit the said Mr. Pullicino nomine hereby cedes and assigns all accessories and privileges to the said credit together with interest due according to law.

3. The said Mr. John Pullicino nomine guarantees the existence of the abovementioned credit.

30 4. AS the price of the said transfer the said Mr. Borg hereby pays the sum of one hundred and eight pounds, six shillings and eight pence (£108.6.8), for which due receipt is hereby given.

5. FURTHERMORE the said Mr. Borg is hereby paying to Mr. John Pullicino nomine the following expenses incurred by the said Messrs. Allan & Dey in connection with their said credit, to wit —

To Messrs. Henry J. Gray & Connochio, Advocates, of 41 1/2 Union Street, Aberdeen, the sum of six guineas (£6.6.0).

Exhibit "A"
Instrument of
Assignment.
—Continued.

To Mr. John Pullicino, Advocate, of Valletta, Malta, the sum of ten pounds (£10.0.0).

To Dr. Salvatore Schembri (Now Mr. Justice Schembri) of Valletta, the sum of ten pounds (£10.0.0).

WHEREFORE the said Mr. John Pullicino does transfer to the said Mr. Borg who accepts all rights in respect of the recovery of the said expenses in so far as such expenses are recoverable from the debtors.

(Signed) BORG E. (Signed) J. PULLICINO.
5.9.44.

10

Exhibit "B"
Detailed
Statement of
the assigned
credit.

Exhibit "B"

Detailed Statement of the assigned credit.

Statement of the amount due by Messrs. Vincent Griscti & Sons, to Messrs. Allan & Dey, of Aberdeen, Scotland, which amount has been transferred to Messrs. Comptoir Commercial International of Valletta, together with all commercial interests according to law, and other accessories.

1) Value of goods supplied as per two Invoices and order sheets of the 2nd and 5th October, 1935, respectively	£433.	6.	8	20
2) Commercial interest according to law from 1st March, 1936, up to the last October, 1944.	225.	6.	3	
3) Legal costs incurred by creditors.	26.	6.	0	
Total amount due by debtors	<u>£685.</u>	<u>18.</u>	<u>11</u>	

Exhibit "C"
Notice of
Assignment.

Exhibit "C"

Notice of Assignment.

In His Majesty's Court of Appeal.

9th October, 1944.

To: Joseph Griscti, in his own name and for and on behalf of the Firm "Vincent Griscti & Sons."

30

Emmanuele Borg hereby gives you notice that by instrument dated 5th September, 1944, Messrs. Allan & Dey,

Fish Merchants, of Poynerook Road, Aberdeen, Scotland, assigned to him their credit against you for the sum of £433.6.8, together with the interest accruing thereon, and together with the costs incurred; and he produces herewith copy of the instrument of assignment and a detailed statement of the assigned credit, marked Exhibits "A" and "B", which it is his intention to withdraw within two days.

Exhibit "C"
Notice of
Assignment.
—Continued.

And thus due notice of the assignment is being served upon you to meet all the ends and purposes of the law.

10

(signed) J. PULLICINO.
Advocate.

(signed) G. BORG,
Legal Procurator.

Exhibit "D"

Defendants' Judicial Letter in Reply

"Exhibit E"
Defendants'
Judicial Letter
in Reply.

In His Majesty's Court of Appeal.

27th October, 1944.

To: Emmanuele Borg.

20 Joseph and George Griscti, in their own behalf and in their capacity as partners in the Firm of Vincent Griscti & Sons, replying to your judicial letter dated 9th October, 1944 (served upon Joseph Griscti), hereby inform you that, as the debtors in the obligation, they intend to avail themselves of the right accorded them by law of reimbursing to you the sum paid in respect of the assignment of the credit which Messrs. Allan & Dey, Fish Merchants, of Aberdeen, Scotland, hold against them — to wit, the sum of £108.6.8, and expenses, amounting to £26.6.0, as per instrument of assignment.

30 Therefore, whilst cautioning you against incurring any expenses in connection with the recovery of the debt so assigned to you, they hereby call upon you to advise them as to the manner in which they may effect payment as above.

At the same time, they inform you that, if you consider they are not entitled to obtain their release by the reimbursement of the actual price of the assignment of the litigious right, they would be prepared to deposit in Court the entire sum covering the assigned credit, thus guaranteeing full payment thereof in the event of it being adjudged and determined that

"Exhibit D"
Defendants
Judicial Letter
in Reply.
—Continued.

they are not in fact entitled to pay only the actual price of the assignment — and they therefore caution you against taking any other steps in connection with the safeguarding of your credit and hereby hold you answerable for any unnecessary costs so incurred and for any damages that they may sustain in consequence thereof.

In default of an answer within two days, the said Joseph and George Griscti shall understand that you claim payment of the whole sum assigned to you, together with interest thereon as per Exhibit "B", and shall proceed to effect the deposit of the whole sum within the period established by law. 10

So much for your information and guidance and as a formal offer of reimbursement both of the price actually paid and of the incidental expenses incurred.

(signed) JOS. H. XUEREB, Advocate,

(signed) G. GALDES, Legal Procurator.

Exhibit 'E'
Schedule of
Deposit.

Exhibit "E"

Schedule of Deposit.

In His Majesty's Court of Appeal.

Joseph and George Griscti, in their own behalf and as former partners in the Firm of "Vincent Griscti & Sons"; and Angelo Camilleri. 20

vs.

Emmanuele Borg, personally and for and on behalf of the "Comptoir Commercial International".

Schedule of Deposit of Joseph and George Griscti and Angelo Camilleri.

Respectfully sheweth:— 30

That by judicial letter dated 9th October, 1944, Emmanuele Borg informed Joseph and George Griscti that Messrs. Allan & Dey, Fish Merchants, of Aberdeen, Scotland, had assigned to him, at the price and under the conditions therein stated, the credit which they had against the Firm of Vincent Griscti & Sons.

That, as the debtors in the obligation, Joseph and George Griscti have the right themselves to take over the above assignment by reimbursing to the assignee the actual price of the assignment.

Exhibit "F"
Schedule of
Deposit.

—Continued.

10 That, by judicial Letter dated 27th October, 1944, Joseph and George Griscti informed the assignee that they wanted to avail themselves of the right thus accorded them by law, adding that, if no reply were forthcoming within two days, they would understand that that right was being challenged and that they would therefore proceed to make a Court deposit of the whole amount of the assignment, thus gauranteeing payment of the credit in accordance with the judgment of the competent. Court.

That the assignee, Emmanuele Borg, has made no reply to the above judicial letter.

That, consequently, Joseph and George Griscti have obtained from Angelo Camilleri the required sum to be deposited in Court.

20 Wherefore, in order that Joseph and George Griscti may be exempt from all responsibility, the said Angelo Camilleri, in accordance with the agreement entered into with the said Joseph and George Griscti, is hereby depositing, under the authority of this Court, the sum of £700, which sum is to be withdrawn, wholly or in part, as determined and adjudged in the case which Emmanuele Borg, as assignee of Messrs. Allen & Day, is to bring before the competent Court — saving that Emmanuele Borg is hereby authorised to withdraw from the sum so deposited the sum actually paid by him in respect of the assignment, amounting to a total of £134.12.8, together
30 with interest thereon at 6 per cent per annum from 5th September, 1944 (the date of the assignment) to the present day, provided however, that the said Emmanuele Borg shall make out a receipt in full settlement of the credit assigned to him and that he shall at the same time give his consent for the balance to be withdrawn by the depositor, Angelo Camilleri.

(signed) JOS. H. XUEREB, Advocate,

This 31st October, 1944.

40 Filed by Dr. Jos. H. Xuereb without Exhibits and together with the sum of £700.

(signed) CARM. VELLA,
A/Registrar.

Exhibit "F"

Correspondence and one other document filed by Minute
date 15th June, 1945.*

MANUFACTURERS

AGENTS

VINCENT GRISCTI & SONS
Veges Buildings 40 Strada Zecca
Valletta — Malta.

ORDER

2nd October, 1935.

10

No. Veges 35/630/1.

From Messrs. Vincent Griscti & Sons.
Strada Zecca, Valletta.

To Messrs. Allan & Dey,
Aberdeen.

Delivery as soon as possible.

Remarks C.I.F. MALTA — to be declared for custom essential
requests on all invoices.

Payments 90-days draft.

Marks — Cases, crates, bundles, parcel post, bales and others 20
to be marked as follows.

VEGES MALTA No. 35/630/1.

Quantity	Number	Goods Description	Price	
300—cases	1 stone	Kippers	at 6/- per case.	
300	„ 1 stone	Bloaters	at 6/- per case.	
300	„ 1 stone	Fresh Herrings	at 5/4 per case.	30

WIRE BOUND CASES.
PACKING AS USUAL.

*Original in English.

SALES:— For conditions of Sales please turn over:—

VINCENT GRISCTI & SONS

Conditions of Sale Contracts

1. Damages caused in transit, at Buyers Risk and claims in due course referring to quality, shades, designs etc. etc. May entitle the buyer to return to ourselves the goods but **without compensation whatever.**
 2. Payments must be made at our office or through the bank only.
 - 10 3. No claims are recognised and no goods returnable after three days from date of delivery.
 4. Excluding all claims arising from inability to deliver due to War, strikes or any other unforeseen or exceptional circumstances, but every effort will be made to adhere to the time fixed for the delivery as quickly as possible.
 5. All orders are subject to the acceptance of manufacturers, our principals whole or part.
 6. Orders subject to no cancellation once remitted or cabled.
 - 20 7. Should any disagreement arise concerning shipments, if we consent to take the goods back the contract is considered cancelled without any further claim.
 8. Default of payments can authorise us to cancel orders or sales.
 9. Landing charges to be paid according to the rates of Malta Tariff of Landing Charges.
 - 10 10. Claims regarding leakages, shortage of contents, and goods damaged in any way, from steamers to quay and whilst lying under the verandahs are to be made to the agent discharging the goods.
 - 30 11. The date of shipment and delivery are approximate and subject to force majeure and we cannot if late accept any responsibility.
 12. No claims will be entertained in respect of damages in the event of non-delivery through force majeure of the order in part or whole.
-

AGENTS
MANUFACTURERS

VINCENT GRISCTI & SONS
Veges Buildings 40 Strada Zecca
Valletta — Malta.

ORDER

8th October, 1935.

No. Veges 35/644/1.

From Messrs. Felix Blanc

12 Psaila Street, Birchircara. 10

To Messrs. Allan & Dey,
Aberdeen.

Delivery 600. November. 600. December. 600. January.
Remarks C.I.F. MALTA — to be declared for custom essential
requests on all invoices.

Payments 90-day drafts from arrival of goods.

Marks — Cases, crates, bundles, parcel post, bales and others
to be marked as follows.

VEGES MALTA No. 35/644/1.

Quantity	Number	Goods Description	Price	20
200—cases		Kippers	at 6/- per case.	
200	„	Bloaters	at 6/- per case.	
200	„	Fresh Herrings	at 5/4 per case.	

Each shipment as above.
Three shipments of 600-cases
each. Total 1800 cases.

PACKING AS USUAL. 30

SALES:— For conditions of Sales please turn over:—

VINCENT GRISCTI & SONS

Conditions of Sale Contracts

1. Damages caused in transit, at Buyers Risk and claims in due course referring to quality, shades, designs etc. etc. May entitle the buyer to return to ourselves the goods but **without compensation whatever.**
 2. Payments must be made at our office or through the bank only.
 - 10 3. No claims are recognised and no goods returnable after three days from date of delivery.
 4. Excluding all claims arising from inability to deliver due to War, strikes or any other unforeseen or exceptional circumstances, but every effort will be made to adhere to the time fixed for the delivery as quickly as possible.
 5. All orders are subject to the acceptance of manufacturers, our principals whole or part.
 6. Orders subject to no cancellation once remitted or cabled.
 - 20 7. Should any disagreement arise concerning shipments, if we consent to take the goods back the contract is considered cancelled without any further claim.
 8. Default of payments can authorise us to cancel orders or sales.
 9. Landing charges to be paid according to the rates of Malta Tariff of Landing Charges.
 - 10 10. Claims regarding leakages, shortage of contents, and goods damaged in any way, from steamers to quay and whilst lying under the verandahs are to be made to the agent discharging the goods.
 - 30 11. The date of shipment and delivery are approximate and subject to force majeure and we cannot if late accept any responsibility.
 12. No claims will be entertained in respect of damages in the event of non-delivery through force majeure of the order in part or whole.
-

VINCENT GRISCTI & SONS.
Manufacturers' Agents

"Veges" Buildings
40, Strada Zecca,
VALLETTA,
MALTA.

24th September, 1935.

Our Ref.
GG/EM/P.1.

Messrs. Allan & Dey,
Poynerook Road,
ABERDEEN, SCOTLAND.

10

Dear Sirs,

Reverting to your favour dated 19th August, and 24th same month, we beg to inform you that we have secured from one of our best customers an indent for 300-cases of Kippers 300-cases Bloaters, and 300-cases Fresh Herrings, we shall request you to quote us on receipt of this letter subject to our commission included.

We herewith give you the names of our customers so that you may draw on them for 90-days bill from arrival of goods, and we trust that you shall be agreeable with such conditions, so that we shall start trade relations altogether.

20

Mr. John Mazzitelli. 20, Strada Tesoreria. Valletta.

Trusting that we shall hear from you in due course by wire, you can use Bentleys Code, and with our best interest to supply dealers, who are supplying the Mediterranean Fleet here, we beg to remain,

Yours truly,
VINCENT GRISCTI & SONS.

30

(Sd). (Illegible).
Secretary.

VINCENT GRISCTI & SONS.
Manufacturers' Agents

"Veges" Buildings
40, Strada Zecca,
VALLETTA,
MALTA.

8th October, 1935.

Our Ref.
GG/EM/P.1.

10 Messrs. Allan & Dey,
Poynerook Road,
ABERDEEN, SCOTLAND.

Dear Sirs,

We acknowledge receipt of your favour dated 30th ult. as well yours of 1st and both of 3rd instant, the contents of these have had our best attention, and for which we beg to thank you.

20 We are glad to find everything in order with regard to the first sale we have concluded on your behalf and as regards as our commission we expect to receive this every quarter according to our usual custom.

Having in the meantime another enquiry for a large sale for shipment November, December and January we are very pleased to forward you herewith order No. 35/644/1. We are appreciating to hear from you, if you could obtain usual space and in this manner keep this important firm supplied in the manner they are supplying their customers. We herewith pass you all details in our order sheet.

30 Looking forward to hear your news on this indent, and assuring you that we shall do our very best as to secure you this contract if the space could be booked, with our very best attention, we beg to remain,

Yours truly,
VINCENT GRISCTI & SONS.

(Sd). (Illegible).
Secretary.

VINCENT GRISCTI & SONS.
Manufacturers' Agents

"Veges" Buildings
40, Strada Zecca,
VALLETTA,
MALTA.

9th December, 1935.

Our Ref.
GG/EM/P.1.

Messrs. Allan & Dey,
Poynerook Road,
ABERDEEN, SCOTLAND.

10

Dear Sirs,

We have in our possession of the 3rd and 4th inst. and we have to confirm what we have wrote you on the 7th of this month.

We regret that we could not hold the customer in question responsible for any loss you may incur, as we have found out in the meantime that the customer, is proposing to leave the island, so to follow your wishes, we have to issue proceedings, and we shall be only prepared to do this if we hear from you that you will refund us the expenses. 20

You must not think that we are not prepared to help you, but once we have been placed in this position, we have to co-operate to see what we could successfully do altogether, and see the fish sold to other customers, at your price, or at any other figure, which will be meeting with your approval.

The customer whom we have accepted orders from, had in mind of making a partnership with a provision firm to supply the Fleet, with provision good, for this reason, we have agreed to forward you the order, and immediately as soon as this was not done, we cabled you not to forward any shipment, as we, like your goodselves, we do not like all this trouble we have come across. 30

We suggest once more, that you will try to make some arrangements, with the steamship companies, for the freight, you have paid in advance, perhaps, you could arrange, to have this transferred for a later shipment during 1936.

Hoping to hear further from you, and assuring you that we shall do all what you instruct us to, and in the meantime we are doing all our best, and beg to remain,

Yours truly,
VINCENT GRISCTI & SONS.
(Sd). (Illegible).
Secretary.

VINCENT GRISCTI & SONS.
Manufacturers' Agents

10

"Vege's" Buildings
40, Strada Zecca,
VALLETTA,
MALTA.

16th December, 1935.

Our Ref.
GG/EM/P.1.

Messrs. Allan & Dey,
Poynerook Road,
ABERDEEN, SCOTLAND.

20 Dear Sirs,

Acknowledging yours of 5th instant, we are glad to hear that you have arranged to cancel the shipment you had in mind to forward according to our customers indents. We are at a loss to understand, why you are asking ourselves how we are going to compensate for any loss incurred you have to understand that we have been acting as intermediary as your agents, and we are in no way responsible for our customers although we had every hope that this trouble would have not been reached.

30 We are extremely sorry but we could not obtain any satisfaction from the customer in question we have understood that he is not of good means and it has been better that we have not delivered.

We have been offered for 100-cases 4/- per case, of course as this is rather low next to what you have invoiced, we have not cared to wire you. Please note that you will have to

refund us for the local expenses incurred and also for the Cold Stores expenses, which are paid every end of the month.

This is the best we could do and we now await to have your further instructions, with our best efforts, we beg to remain,

Yours truly,
VINCENT GRISCTI & SONS.

(Sd). (Illegible).
Secretary.

VINCENT GRISCTI & SONS.
Manufacturers' Agents

10

"Veges" Buildings
40, Strada Zecca,
VALLETTA,
MALTA.

20th December, 1935.

Our Ref.
GG/EM/P.1.

Messrs. Allan & Dey,
Poynerook Road,
ABERDEEN, SCOTLAND.

20

Dear Sirs,

Acknowledging receipt of your favour dated 13th instant, we regret that it is not possible to hold the customer responsible, as it came to our knowledge that he has no means, and you will therefore understand that we could not take any other steps against him. When we have booked the business he persuaded us to form a partnership with another gentleman, and after the association to form this firm failed.

We have therefore the fish at your disposal here, and we are satisfied that he has not withdrawn, as in this manner you are fully covered with the value of your goods as they are lying here.

30

We regret to advise you that your prices are rather high, we could not operate on them, and as the expenses, we have made, have to be refunded to us, from the proceeds we are ashamed to let you hear of the prices ruling out here. We have been offered 3/- per case and Hull houses who have

consignments here, are selling at this price so you will understand why we could not succeed with your figures.

Of course we have no objection to hold the goods in the hope that in a near date we shall be offered a more reasonable figure, but in the meantime the expense mounts up, and with the usual practice, to withdraw the fish from the Cold Stores they have to be paid.

This is the present situation we shall now act in the way you will instruct us, and we will await your news.

10

Yours truly,
for and on behalf of
VINCENT GRISCTI & SONS.
(Sd). (Illegible).
Secretary.

27th April, 1936.

Messrs. Vincent Griscti & Sons,
40, Strada Zecca,
Valletta Malta.

Dear Sirs,

20

Felix Blanc, Valletta — £173.6.8.

Your firm acting as our Agents at the date of this order being executed, we hereby instruct you to hand over to S. Schembri, LL.D., Valletta — Malta, all the documents in your possession relating to this transaction, and to give S. Schembri all the information possible, to enable our legal adviser to determine what action shall be taken to recover the value of the fish.

Mazzitelli, Valletta — £260.

30 Our instructions are similar to the above regarding "Blanc".

Please report to us when you have complied with these instructions.

Yours faithfully,

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynerook Road,
Aberdeen,
27th April, 1936.

S. Schembri, Esq., LL.D.
Advocate,
Valletta,
Malta.

10

Dear Sir,

Mazzitelli, Valletta — £260.

The official order for the fish was sent us by Messrs. Vincent Griscti & Sons, 40, Strada Zecca, Valletta, who were our Agents, and still are, they not having resigned the position so far.

Enclosed is the official order No. 35/630/1 dated 2nd October 1935, but please read Griscti's letter dated 24th September last, an excerpt from which reads "we have secured from one of our best customers an Indent for" and then follows the details which represent the sum of £260. 20

What do you think of such an order, and the remarks about it being from one of their best customers?

Felix Blanc, Valletta — £173.6.8.

Enclosed is the official order for the above, which was executed, and Blanc protested the Bill when the fish was offered to him. Griscti has undertaken to sell the fish, but we have not any advice of what progress is being made, nor can we get any reply from them.

We only executed the order for November 12th last, and of course ignored the order for the subsequent two months. Order No. 35/644/1. 30

Note again Griscti's remarks on the firm in their letter of 8th October last, also their remarks in their letter of 9th December last, 16th December last, and 20th December last.

Both these transactions have aroused our suspicion, as these two firms are not and have not been of financial

strength to warrant acceptance of any order, and in our opinion, all this was well known to Griscti & Sons.

Can you associate Griscti with responsibility and hold them for payment?

Yours faithfully,
(Sd.) ALLAN & DEY.

4th May, 1936.

Messrs. Allan & Dey,
Poynernook Road,
10 Aberdeen.

Dear Sirs,

In reply to your letter of the 27th ult. I am sorry to inform you that the partners of the firm Vincent Griscti & Sons escaped from the Island on account of debts and of legal proceedings instituted against them.

As regards Mazzitelli, as I wrote you in my last letter, he left the Island and besides this he is not solvent.

Felix Blanc referred to in your letter is not reliable. I wrote him inviting him to call to my office, in order to find
20 out how the order was placed.

I made enquiries to ascertain whether any fish exists deposited with the Malta Cold Stores, in the name of Messrs. Vincent Griscti & Sons, and I have been informed that during the month of January the fish deposited in the said name has been sold to several customers of the Firm.

I have to inform you that the said Firm has many debts and in my opinion is not advisable to take legal steps against the said Firm, because such legal steps would involve useless expenses.

30 I beg you to give me your instructions on the subject.

Yours truly,

S. SCHEMBRI, LL.D.
Avvocato
Valletta — Malta.

4. 5. 36.

Signor Felix Blanc
Ho bisogno di vedervi con premura.*

Dev. mo
(sd.) S. SCHEMBRI.

6th May, 1936.

Messrs. Allan & Dey,
Poynerook Road,
Aberdeen.

10

Dear Sirs,

I beg to inform you that the documents in possession of Messrs. Vincent Griscti & Sons have not been handed over to me.

I advise you to make enquiries in order to ascertain whether your letter of the 27th ult. addressed to the said Firm has been delivered, and in the affirmative to whom.

You can make such an enquiry by addressing a letter to 20 the Postmaster General Malta.

The letter addressed by me to Mr. Felix Blanc has not been delivered to him, on account of change of address, and I am finding out his new address.

Yours truly,

*Trans. "I must see you urgently."

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynernook Road,
Aberdeen,

11th May, 1936.

10 S. Schembri, Esq., LL.D.
Advocate,
Valletta,
Malta.

Dear Sir,

We thank you for your letter of 4th May, regarding the various firms in Malta, with whom we have been doing business, including Vincent Griscti & Sons. This latter firm was very highly recommended to us and bankers also pronounced them financially sound, and you will see from their letters and the orders they sent us they appeared to give everything the Hall mark of substance, now we know differently.

20 You ask for our instructions. What we would ask you to consider is this point. Is the whole procedure on behalf of Vincent Griscti & Sons not one of fraud. In any case they have acted as our agents, have disposed of the fish we sent to Felix Blanc, and retained the money or in other words defrauded us of it. Is therefore this not a case where the Crown Authorities should be informed and allow them to incur all the expense of bringing them to justice. That is what happens in this country if there is deliberate fraud. It does not become a civil action prosecuted by your goodself
30 but the whole of the documents are handed over to the Crown Authorities in this country and they do the necessary, and of course any expense incurred is defrayed by them.

We observe you do not mention if Felix Blanc called upon you and what was the result of the interview.

We shall be glad to have your observations again, because it seems to us legal proceedings instituted by us through you, would only be throwing good money after bad but if on the other hand the Crown Authorities in Malta, can prosecute at their own expense we see no reason why they should not be

instructed to do so but you will be better informed as to the procedure than we are and we shall be guided by your suggestions.

Yours faithfully,
(Sd.) ALLAN & DEY.

23rd May, 1936.

Messrs. Allan & Dey,
Poynernook Road,
Aberdeen.

Dear Sirs,

10

I am in receipt of your letter of the 11th inst.

I agree with you that Messrs. Vincent Griscti & Sons have committed fraud, and they are liable of criminal proceedings. Your claim for the recovery of the price of fish, can only form the matter of civil proceedings.

As I advised you in my previous letters, it is not worth while to take legal steps against the said firm for the payment of their debt, because they would only amount to throwing away money.

To institute criminal proceedings it is first necessary to trace the place where the partners of the said firm have gone; then an application for their extradition will follow. 20

As regards Mr. Felix Blanc I am sorry to inform you that he did not call in my office and he has neither acknowledged receipt of my second letter.

I wrote to him another letter in his new address. Knowing however the person, I am afraid that he shall not take notice of any letter.

Yours truly,

9th June, 1936.

Messrs. Allan & Dey,
Poynerook Road,
Aberdeen.

Dear Sirs,

I am in receipt of your letter of the 1st. inst.

I am surprised how the Post Master General did not reply to your letter.

10 I had an interview with Mr. F. Blanc, who told me, that he was at the employment of Messrs. Griscti and never placed any order for goods.

I could not trace where Mr. Mazzitelli has gone, and it is not easy to find the place of his new residence abroad.

I am doing my best for you, but I am sure that you can see the great difficulties.

Yours truly,

20 ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.
Aberdeen.

1st June, 1936.

S. Schembri, Esq., LL.D.
Advocate,
Valletta,
Malta.

Dear Sir,

Thanks for your letter 23rd May.

30 Unfortunately we have not received a reply from the Postmaster General about the registered letter we sent to Vincent Griscti & Sons on 27th April, and we have written again to him today just to see if the information will enable you to trace them.

Felix Blanc. Would a personal call on the party not do some good seeing he is ignoring your letters.

Mazzitelli. Have you made any progress with tracing that firm.

Yours faithfully,
(Sd.) ALLAN & DEY.

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynerook Road,
Aberdeen, 10
15th June, 1936.

* S. Schembri, Esq., LL.D.
Advocate,
Valletta,
Malta.

Dear Sir,

We thank you for your letter of 9th June and since writing you on the 1st instant we have received a reply from the Postmaster at Valletta but no trace of our registered letter can be got and we have now submitted our enquiry through the Postmaster at Aberdeen who ought to be able to trace the document into the hands of the addressee. 20

As soon as the information comes to hand, we shall communicate with you again.

We fully appreciate the difficulties you have in tracing the defaulters, but please do not incur too much unnecessary expense if there is not a reasonable chance of our getting something of the debt.

Yours faithfully,
(Sd.) ALLAN & DEY. 30

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynerook Road,
Aberdeen,

13th July, 1936.

S. Schembri, Esq., LL.D.
Advocate,
Valletta,
10 Malta.

Dear Sir,

Griscti & Sons

Your letter of 2nd inst. We hope you will keep a hold of the partners now that you have them on the Island.

At this point of our negotiations, we are not prepared to agree to the proposal of accepting 20 per cent of our debt in full settlement of our account.

20 You must take into account we have incurred a lot of expense because of their action toward us, which up to the present has every evidence of fraud, and the sentence for that is we presume imprisonment.

If they wish to escape that, they will require to be much more generous to us. Please do not overlook, they sent us an order to be executed to Felix Blanc, which the latter has told you he never ordered. It was executed, and refused on arrival of the vessel. Griscti was given permission to sell it on our behalf, and they did so, and absconded with the proceeds, instead of paying the money over to the Banker.

30 Then there is the order we executed for Mazzitelli, which you have in hand for collection. Did he order the fish?

Will you get Griscti to produce the official orders for both clients?

We suggest you had better see their Mother, and let her know just how matters stand with this firm, and let us have some amended proposal, showing a considerable advance on the figure you mention, and it will be considered. We think a rather firm attitude should be adopted by you in our interests, and while we have no desire to put anyone in Prison, we are not just complacent philanthropists.

Please don't forget your legal costs when driving any settlement for our consideration.

Yours faithfully,
(Sd.) ALLAN & DEY.

29th July, 1936.

Messrs. Allan & Dey,
Aberdeen.

Dear Sirs,

In reply to your letter of the 13th inst. I beg to inform you that I had an interview with Messrs. Griscti to whom I made clear that you have decided to take against them legal steps, and that you are not prepared to accept 20 per cent in settlement of your credit. 10

I am endeavouring to persuade them to increase the percentage and to make a reasonable offer. I hope to succeed.

I am leaving the Island for my summer holidays during August.

Messrs. Griscti insist that they have nothing to do with the order of Mazzitelli to whom the fish was delivered.

Yours truly, 20

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynerook Road,
Aberdeen,
5th August 1936.

10 S. Schembri, Esq., LL.D.
Advocate,
Valletta,
Malta.

Dear Sir,

Griscti & Sons.

Thanks for your letter of 29th July and from which we gather the outlook is more hopeful.

With reference to the order executed for Mazzitelli. You have in your possession the order sent us by Griscti & Sons, and it is perfectly absurd for them to assert they have nothing to do with the order.

20 We asked you to request them to produce the order they got from Mazzitelli, as it might be Griscti & Sons again ordered the fish under similar conditions as they did with that for Felix Blanc.

The latter party told you he never gave any order for the fish to be sent to him.

30 Please take care of the official orders we sent you, and confront Griscti & Sons with them, so that their full liability may be established. Do not overlook Griscti & Sons' statement in their letter covering the order "that Mazzitelli was one of their best customers". The results do not justify these statements and amount to fraud if proved untrue.

We note you are on Holiday during August, but trust you are leaving in charge one of your staff competent to deal with so urgent a matter as this.

Awaiting receipt of the amended offer for our consideration without delay,

Yours faithfully,
(Sd.) ALLAN & DEY.

22nd September, 1936.

Messrs. Allan & Dey,
Poynerook Road,
Aberdeen.

Ref. Messrs. Griscti & Sons.

Dear Sirs,

With reference to your letter of the 5th August I beg to inform you that I had an interview with Messrs. Griscti with a view to persuading them to make a better offer, and I made to them clear that otherwise legal steps will be taken 10
against them.

I pointed out to them that in passing the order for Mr. Mazzitelli they described him as one of their best customers. They observed that they considered him solvent, as they had the opportunity to see bills accepted by the said Mazzitelli and drawn by Messrs. Bradford Worsted Co., by Messrs. R.M.C. Textiles of Bradford and by other Firms, besides Mr. Mazzitelli carried business as a Messman upon Ships.

As I told you in my previous correspondence the mother of Messrs. Griscti is prepared to have on loan a sum of money 20
to pay the percentage offered. To this effect I had an interview with her and with the Architect entrusted with the valuation of the immovable property belonging to her and to the daughters with a view to make the partition of this property, in order to separate the share belonging to her, from that of her daughters, and in this way the lender of money will have her property mortgaged.

I have given to the said Architect the necessary instructions to execute the task entrusted to him.

I will inform you of all progress in connection with the 30
above.

Yours truly,

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynerook Road,
Aberdeen,
29th September, 1936.

10 S. Schembri, Esq., LL.D.
Advocate,
Valletta,
Malta.

Dear Sir,

Griscti & Sons.

Your letter of 22nd inst. Re Mazzitelli. Has Griscti produced the order from that party for the fish? If not, ask them to do so now.

F. Blanc — You will note, you advised us you had seen Blanc and he denied giving any order to Griscti. It may be that Mazzitelli will do likewise, if only you could see him to ascertain the truth.

20 One important point arises as to Mazzitelli being a man of substance. Griscti states they had the opportunity of seeing Bills accepted drawn by certain firms mentioned in your letter, but were these orders passing through Griscti, and can Griscti honestly say the Bills were met by Mazzitelli?

Architect's Valuation. — We hope you are safeguarding yourself for your Fees for such work, which must be paid by Griscti & Sons.

30 Griscti through his mother should have done all this and placed before you the valuation and submitted their proposal for payment of our account. Then you could have examined the proposed settlement, and submitted it to us with your own recommendation.

One fact is clear, and that is, that Griscti has defrauded us, and if payment is not made on our terms, then it is for us to consider our next step, whether the papers be sent to the Crown for prosecution, and what we must do to obtain payment of our fish sent to Valletta, per Griscti & Sons orders.

Please deal quickly with the whole subject. We must have it settled at once.

Yours faithfully,
(Sd.) ALLAN & DEY.

(Protested 3.II.36 Expenses 20/6)
(Anglo-Maltese Bank, Malta)

(sd.) John Mazzitelli
4.11.35.

Exchange for £260.0.0.

At Ninety Days after sight pay this sum
second being unpaid to the order of Allan
The sum of Two Hundred and Sixty Poun
Value Per Goods S.S. "Baldanald" which pl
account.

10

To: Mr. John Mazzitelli,
20, Strada Tesoreria,
Valletta, Malta.

(sd.) ALLAN &

R. FRENDO RANDON, LL.D.
Notary Public
222, Strada Mercanti, Valletta,
Malta.

Bill of Exchange drawn on John Mazzitelli and
accepted by same.

20

Protested for want of payment by virtue of a deed
received by Notary R. Frendo Randon, LL.D., on the 3rd
February 1936 not having said Notary succeeded in finding
the acceptor to demand the payment of the bill.

(sd.) R. FRENDO RANDON, LL.D.
Notary Public.

Expenses for Protest:
£1.0.6.

19th January, 1937.

Messrs. Allan & Dey,
Poynernook Road,
Aberdeen.

Dear Sirs,

Re. Griscti & Sons — Valletta.

10 Regarding the above matter, as I believe you have been informed, I have been asked by Mr. J. Schembri, Solicitor, to represent your interests. A letter of authorisation will be necessary for me to represent you.

I have been put in touch with the Griscti case and am able to inform you that the creditors of the firm are trying to arrive at an agreement by which each is to receive 20 per cent of their credits: I would be obliged to know your opinion on this proposed agreement.

I will inform you at once as soon as there is anything to report.

I am,
yours truly,

20

(signed) J. PULLICINO.

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynernook Road,
Aberdeen,
27th January, 1937.

J. Pullicino, Esq., LL.D.,
151, Strada Stretta,
Valletta, Malta.

30 Dear Sir,

Re. Griscti & Sons, Valletta.

Your letter of the 19th inst. In our letter of 26th October 1936 to J. Schembri, we appointed him to take charge of our

interests and you to act for us. Your letter of 19th inst. is therefore a little surprising.

However to again get a move on, you are authorised to represent our interests.

The offer of 20 per cent was made to us through S. Schembri on 2nd July 1936, and refused by us for reasons stated in our letters, which we presume you have before you.

Please read what S. Schembri wrote us in his letter of 23rd May 1936. Fraud has been committed, and they are liable of criminal proceedings. If they wish to avoid these, then they must put up a much better offer to us than 20 per cent of our total debt, brought about by their fraudulent actions. 10

Please go over our letters carefully, and note the points we have brought out in them, reflecting very grave fraudulent action by Griscti & Sons. We know now, Felix Blanc never ordered any fish, that he was an employee of Griscti & Sons. What about Mazzitelli — did he order the fish and have you the official order from both clients produced by Griscti & Sons. See our letter of 13th July 1936. 20

We await your full report quickly.

Yours faithfully,
(Sd.) ALLAN & DEY.

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.
Aberdeen.

20th September, 1937.

J. Pullicino, Esq., LL.D.,
151, Strada Stretta,
Valletta, Malta.
Dear Sir,

30

re Griscti & Sons.

Your letter of 28th August. For your information, we have no letter from Griscti as promised.

Do they intend to write us, or is the promise made just to be broken.

It would seem to us, the only course is to give them the decision of the Criminal Court, which will make no difference to us and our debt, as we shall still rank along with other Creditors.

We presume, there is no cost to us in Criminal proceedings, which is borne by the Crown. All they need is the documents to prove their case, all of which are in your possession.

Our patience is well-nigh exhausted, and Griscti deserves the indignity of imprisonment. They have not offered us
10 one reasonable basis of settlement.

Yours faithfully,
(Sd.) ALLAN & DEY.

4th November, 1937.

Messrs. Allan & Dey,
Aberdeen.

Dear Sirs,

re Griscti & Sons.

My efforts to try to make Griscti come to a favourable
20 settlement have been of no avail as the debtors have no money or property which can be attached, and even then you will have to rank with other creditors. I may add for your information that at present Griscti is scoring a term of imprisonment for Commercial debts.

I can quite understand that your patience is exhausted, and I can assure that if anything could be done, I would have proceeded to press your claims, but the only possible solution now is your acceptance of 20 per cent of the amount due to you, though even that agreement has not yet been approved by most of the creditors.

30 Should you accept this settlement I am quite willing to put forward your claim, but if you think such a settlement unacceptable to you then I am afraid that the matter for the present cannot go any further, saving of course your recourse to the Attorney General for Criminal Action to be taken against the debtor.

Yours faithfully,
(signed) J. PULLICINO.

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynerook Road,
Aberdeen.
1st November, 1937.

J. Pullicino, Esq., LL.D.,
Valletta, Malta.

Dear Sir,

re **Griscti & Sons.**

10

Enclosed is copy of a letter we have received to-day from
Griscti & Sons, written from the Civil Prison.

We have not replied to the letter, as you have the Debt
in hand for collection, and we make a point never to interfere
between our Agent and the client. What has to be done, must
be done through the Agent so long as he is acting.

You know our views on this debt, and they do not require
any supplementing by us. If Griscti & Sons wish to enlist
our good graces, then they had better start paying you now
all they can.

20

We are not entering into any contract with them now or
later.

They have our debt to pay, or they know what to expect
when the Crown Authorities have the papers handed to them,
and even then, they will not be relieved of their debt to us.

Our instructions are: — Please get all the money you can,
and at once if they wish to influence us from passing the
papers to the Crown for prosecution.

The only evidence we shall accept of their sincerity is
PAYMENT NOW of all they can, and regular payments 30
thereafter until the debt is fully paid.

Please let us know what you get. Promises carry no
weight with us now. Let us see something tangible.

Yours faithfully,
(Sd.) ALLAN & DEY.

Copy of Letter

Griscti Brothers,
Civil Prison
(Debtors Division)
Casal Paula, Malta.

25th October, 1937.

Messrs. Allan & Dey,
Aberdeen, Scotland.

Dear Sirs,

10 We very much regret that we could not come to an arrangement, with your firm, through your Solicitors out here for the amount due to your house.

We shall therefore appreciate to hear from you on what condition we could come to mutual agreement, assuring you that we are only too pleased to do all within our power.

If it shall be a question of Cash Payment, we regret that we could not oblige, more than 20 per cent as according to the loan that solicitors of our mother are trying to do, this could not be exceed to honour a settlement to all the Creditors.

20 We are not only penniless and homeless, but we are in the Civil Prison too, so you will understand the position of ourselves and our families, living under one roof with our mother.

We shall like to hear from you what you expect that we shall do, we shall be prepared to enter into contract, after out of prison, to pay something every year, not a large sum, as otherwise we shall never be able to fulfil our obligations.

30 We are regretting that we could not inform you better but this is our situation, and please advise us further, and shall take care, to let you have our reply as early as possible, as we are allowed.

Yours very truly,
(signed): GRISCTI GEORGE GRISCTI.

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynerook Road,
Aberdeen,
21st July, 1939

J. Pullicino, Esq., LL.D.,
Valletta, Malta.
Dear Sir,

re Griscti & Sons.

10

Your letter of 16th inst. You already told us one of the brothers was in Prison, and the Creditor who brought that about never received any payment.

What resulted when the youngest daughter came of age? Was any meeting held with the family after that date, to consider a payment?

We do not intend to throw good money after bad, if by putting the Debtors in Prison, we still got nothing paid to us, while we had to maintain them in Prison.

On the other hand, is this not a case for the Crown authorities to prosecute at their expense in the interests of the trading community, on the basis of a Charge for Fraud. You have all the documentary evidence in your possession to substantiate the case, but in any case, the Crown would determine the course to be followed after reading the papers.

20

We are not contributing anything, on the contrary we want something contributed to us as a legal right. Your letter conveys to us that the recovery of any portion of the debt seems hopeless. Is that the view of all the other Creditors please?

30

Your letter has greatly disappointed us, as former correspondence did appear more hopeful that some payment would be made.

What do you suggest now should be done?

Yours faithfully,
(Sd.) ALLAN & DEY.

29th September, 1939.

Messrs. Allan & Dey,
Poynerook Road,
Aberdeen.

re Griscti & Sons.

Dear Sirs,

I received your letter of the 28th August only yesterday owing to delay in the arrival of the English mail.

10 I understand you are not willing to take up Criminal proceedings unless all other means prove fruitless. I have therefore sent for Mr. Jos. Griscti (one of the Griscti Brothers) who has made the following proposal:—

20 The Griscti Brothers claim that they are the owners of a deposit in the Midland Bank (London) in the name of Vincent Griscti for the amount of £209.4.7 plus interest for about four years and would be willing to let you withdraw the said amount on account of your claims — as to the balance they ask that a public instrument (contract) be drawn up in which Messrs. Griscti brothers will bind themselves to pay the whole balance within ten years.

I await your views on this new proposal.

Yours faithfully,
(sd.) J. PULLICINO.

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynerook Road,
Aberdeen,
9th October, 1939.

J. Pullicino, Esq., LL.D.,
Valletta, Malta.
Dear Sir,

re Griscti & Sons.

10

Thanks for your letter of 29th September. The closing paragraph is what concerns us at the moment.

We are prepared to accept payment now in British Sterling the sum of £209.47 plus interest accrued for about four years, and the Balance to be paid in British Sterling within the next Ten Years — the Balance to include all expenses which we have incurred for which they can be held legally liable, judicial and extra-judicial costs, you will be able to determine the amount.

Acknowledgment to be granted by the Debtors as being due us the sum of £443.6.8 plus the legal costs incurred, already mentioned in this letter. 20

You can draw up the legal Contract incorporating these conditions, have it signed and witnessed by the Debtors, and forward it here for our signature, such Contract will only be signed after the payment of the sum stated in this letter has been made to us.

To simplify the payment, our Banker: — The North of Scotland Bank Ltd., Quayside Branch, Aberdeen is a Branch of the Midland Bank Ltd., London, and it will be sufficient if Messrs. Griscti instruct the Midland Bank Ltd., London, to pay the money into our Account with the North of Scotland Bank Ltd., Quayside Branch, Aberdeen. 30

We shall advise you at once when the money is placed to our Credit.

All financial transactions now and hereafter to be made in British Sterling until the debt and costs are fully paid.

If these terms are fulfilled, we undertake not to institute Criminal proceedings against the Debtors, and the offer is made without prejudice to our rights, privileges and pleas. 40

Yours faithfully,
(Sd.) ALLAN & DEY.

VINCENT GRISCTI & SONS
Manufacturers' Agents

Please Address
c/o 34 Dingli Street,
SLIEMA/MAI.TA.

Your ref. Our Ref.
19/Ops. GG. & JEG.

Registered Letter to Midland Bank Ltd.

Messrs. MIDLAND BANK LIMITED.
10 122 Old Broad Street,
LONDON, E.C.2, England.

5th December, 1939.

Dear Sirs,

DEPOSIT of £209.4.7.

plus interest — V. GRISCTI.

The immediate object of these lines to bring to your knowledge that we have now completed arrangement with Messrs. ALLAN & DEY Ltd. of Aberdeen/Scotland — through their local legal adviser Dr. J. PULLICINO LL.D. of Strada Stretta, Valletta — to transfer the sum above mentioned, with accumulated interest, to the firm of Messrs. Allan & Dey Ltd., and therefore request you, to pay on our behalf the amount mentioned, in the bank of Messrs. Allan & Dey Ltd. — NORTH OF SCOTLAND BANK Ltd. Quayside BRANCH, Aberdeen, Scotland.

We are submitting a copy of this request, to the lawyer of Messrs. Allan & Dey Ltd., to the Bank of the latter and a further copy of Messrs. Allan & Dey Limited. Should you require any other formalities to be filled up to enable you to proceed with the transfer of the sum we shall be glad if you will pass to us, such documents, with no delay, so that we shall affix our signature.

Yours faithfully,
VINCENT GRISCTI & SONS

(sd.) J.E. GRISCTI (sd.) GEORGE GRISCTI.

VINCENT GRISCTI & SONS,
Manufacturers' Agents.

Copy to Messrs. Allan & Dey, Ltd.
Registered too!

Submitted copy also to
North of Scotland Bank,
Aberdeen.

7th March, 1940.

Your ref.
19/Ops.

Our Ref.
GG. & JEG.

10

Registered Letter

Messrs. Midland Bank, Limited.
122, Old Broad Street,
LONDON, E.C.2., England.

Dear Sirs,

**re. Deposit of £209.4.7 plus
interest in the name of "Vincent Griscti".**

We beg to confirm our letter dated 5th Dec. 1939 regarding the above, in case this has not reached you, we are taking the liberty to submit you herewith enclosed a copy and shall appreciate, if you will be good enough to submit to us your reply, with all possible speed, preferable with an AIR MAIL post for which favour we thank you. You have permission to charge our account for the cost of air-mailing your reply. 20

If you have addressed your reply in the name of our firm "Vincent Griscti & Sons" this might have been held by the local Postal Authorities, owing that the delivery of mails addressed to the firm are held up, unless it has not been mislaid through the post, so may we suggest that you register your answer. 30

In view of the above please address your answer to
Mr. George Griscti,
47 Grenfell Street,
St. Julians, Malta.

and we hope that your communication shall bring us all details required, so as to transfer, the sum abovementioned, with all possible speed to the North of Scotland Bank 'Aberdeen' on the behalf of Messrs. Allan & Dey Limited of Aberdeen/Scotland,

Being strongly pressed by Messrs. Allan & Dey Ltd. for the sum deposited, it is our wish that we shall with all possible haste, given them a very early satisfaction, we beg you therefore most kindly to give us the utmost assistance in the best of your capacity and we may add that we are prepared to meet you immediately for any expense required, in order that the transfer of the deposit **shall be effected** immediately.

10 Is is a great assistance, if you will kindly do us the favour to submit a copy of your communications, with no responsibility on your part, to Messrs. Allan & Dey Ltd., addressed to us, as we hope that this will convince them that from our part we are not IDLE but we are doing whatever possible from our side to meet them and arrive to amicable settlement for their claim against ourselves.

Trusting that in course of a week or so we shall have the courtesy, of your immediate reply, we thank you, for the attention you shall be good enough to allocate to this request.

We are,

20

(sd.) J. E. GRISCTI

Yours faithfully,
(sd.) GEORGE GRISCTI.

Address REPLY to

George Griscti, 47, Grenfell Street, St. Julians.

ALLAN & DEY,
Wholesale Fish Merchants,
Curers & Exporters.

Poynerook Road,
Aberdeen,
6th April, 1940.

30 J. Pullicino, Esq., LL.D.,
13, Sda. Stretta,
Flat No. 13
Vincenti Buildings,
Valletta, Malta.

Dear Sir,

Messrs. Griscti & Sons.

Your letter of 28th March to hand. We do not think the Solicitors recommended by the Bank, namely, Messrs. Holmes

Sons & Pott will have an exorbitant charge as Solicitors fees in England are legalised by the Courts. We will accept the sum of £209.47 less these expenses as per Messrs. Griscti & Sons offer.

Yours faithfully,
(Sd). ALLAN & DEY.

J. PULLICINO, LL.D.

2 Largo S. Agata,
Notabile — Malta.
17th November, 1943. 10

Messrs. Allan & Dey,
Poynernook Road,
Aberdeen.

Dear Sirs,

re Griscti & Sons.

Since some years have elapsed since the Griscti partners have last seen me admitting their debt of £433.68 in your favour, I have taken the liberty of having an official letter served on the debtors so as to interrupt the run of Prescription.

You may perhaps think it worth while to obtain a Court decision on your claim and then it would be possible to have the credit registered against the debtors. This may come in useful if at any future date there are any assets from which payment would be forthcoming. It is possible that the debtors may have made some money out of the present abnormal conditions and that proceedings against them may bring about some settlement in due course. These proceedings would however cost about twenty to thirty pounds. 20

Yours faithfully,
(sd.) J. PULLICINO. 30

J. PULLICINO, LL.D.

8 Bastion Square,
Notabile,
4th May, 1944.

Messrs. Allan & Dey,
Poynerook Road,
Aberdeen.

Dear Sirs,

10 I enclose copy of a letter received to-day from Messrs.
Comptoir Commercial International of Valletta, Malta.

It is probable that Messrs. Griscti are now in a better position to pay than they have been for a long time and perhaps a higher percentage of your credit, if not the whole of it, could be realised.

20 On the other hand, the Grisctis have considerable liabilities many of which, being registered, would fall to be paid before your account, were other creditors to avail themselves of any action taken by you. As you are not prepared to take the proceedings necessary for the registration of your credit with a view to possible collection at some future date, I would suggest that some counter offer be made to Messrs. Comptoir Commercial International. This would appear to be the only remaining way to settle the matter once and for all. I will await your instructions before communicating with Messrs. Comptoir Commercial International.

Yours faithfully,
(Signed) J. PULLICINO.

COMPTOIR COMMERCIAL INTERNATIONAL

205, Old Bakery Street,
Valletta (Vincenti Buildings)
May 1st, 1944.

Sir,

In your capacity of representatives for Messrs. Allan & Dey of Poynerook Road, Aberdeen, we would like to know from you, if you are prepared to accept 25 per cent in settlement of your credit against the late bankrupt Vincent Griscti & Sons.

10

It would be of assistance if you will tell us the exact amount due to you, apart from your credit due for professional rights, which will be paid in full.

Your immediate answer will be appreciated.

Yours faithfully,
Comptoir Commercial International

(Signed) BORG.

Dr. John Pullicino, Esq., LL.D.
Notabile.

Henry J. Gray & Connochie
Advocates.

Crown Mansions,
41, Union Street,
Aberdeen.
10th June, 1944.

2/HSM
J. Pullicino, Esq.,
8, Bastion Square,
10 Notabile,
Malta.

Dear Sir,

Allan & Dey

Vincent Gristi & Sons

Our clients, Messrs. Allan & Dey, Fish Merchants,
Poynerook Road, Aberdeen, have consulted us regarding the
account due to them herein and have submitted to us the
correspondence you have had regarding matters. We note the
position and while appreciate that a higher offer to settle may
20 be got, our clients are of opinion that instead of delaying
matters further they should accept the offer made of 25 per
cent of their claim. Our clients accordingly instruct you to
effect a settlement of their claim, including all costs incurred
to you, as well as costs incurred to ourselves, which are stated
at £6.6.0. The amount of our client's claim is £433.6.8. We
shall be pleased to hear from you at your earliest convenience
letting us have a remittance in settlement of the amounts due.

Yours faithfully,
(sd.) HENRY J. GRAY & CONNOCHIE.

AIR MAIL.
Henry J. Gray & Connochie
Advocates.

Crown Mansions,
41, Union Street,
Aberdeen.
8th November, 1944.

J. Pullicino, Esq.,
8, Bastion Square,
Notabile,
Malta.

10

Dear Sir,

Allan & Dey, Aberdeen.

We duly received your letter of the 10th ultimo, enclosing copy of Bank Receipt for remittance of monies due herein. We have now received that remittance.

With regard to any interests payable on sums recovered by the transferee, our clients would be pleased to receive a remittance for their proportion thereof. We have received a communication from Mr. George Griscti advising us that an offer had been made to you to settle our clients' claim by a payment of 40 per cent and that they had made arrangements to remit monies to settle same. We are informed by Messrs. Allan & Dey that no communication was received from you advising them of this offer of 40 per cent and in view of your letter to them of 4th May last, informing them that an offer of 25 per cent was all that could be expected they instructed us to accept same. We cannot understand the suggestion that is now being made that an offer of 40 per cent of the claim had been tendered and if this is true then, of course, our clients acceptance of 25 per cent has been agreed through misrepresentation. Be good enough to let us hear from you by return advising us as to the position. The money meantime received by us is not to be accepted in settlement of the claim if the facts meantime submitted to us are correct.

20

30

Yours faithfully,
(sd.) HENRY J. GRAY & CONNOCHIE.

J. PULLICINO, LL.D.

8 Bastion Square,
Notabile.

Malta, 18th November, 1944.

Messrs. Henry J. Gray & Connochie
Crown Mansions,
41, Union Street,
Aberdeen.

Dear Sirs,

10

Allan & Dey.

I have received your letter of the 8th inst., and note that you have received my remittance.

I will take steps to collect and remit Messrs. Allan & Dey's proportion of any interest which may be recovered by the transferee from Messrs. Griscti.

As regards the communication to you from Mr. George Griscti, this is the first I am hearing of any offer made by Messrs. Griscti to settle the claim by payment of 40 per cent.

20 When Mr. Borg first wrote to me suggesting the transfer of Messrs. Allan & Dey's claim, I forwarded that letter to them under cover of mine of the 4th May, 1944, in which I remarked that it was probable "that perhaps a higher percentage of your credit if not the whole of it could be realised in view of the possible improvement in Messrs. Griscti's financial condition. I also suggested making a counter offer to Mr. Borg with a view to obtaining a higher price for the assignment of the claim. You replied to that letter on behalf of your clients saying: "While we appreciate that a higher offer to settle may be got, our clients are of opinion that instead of delaying matters
30 further they should accept the offer made of 25 per cent of their claim".

I have not seen or heard from Messrs. Griscti since November, 1943.

I would be grateful if Messrs. Allan & Dey could let me have a copy of the letter sent to them by Mr. George Griscti if they have no objection to doing so.

Yours faithfully,
(sd.) J. PULLICINO.

AIR MAIL.
Henry J. Gray & Connochie
Advocates.

Crown Mansions,
41, Union Street,
Aberdeen.

28th November, 1944.

2/HSM

J. Pullicino, Esq.,
8, Bastion Square,
Notabile,
Malta.

10

Dear Sir,

Allan & Dey, Aberdeen.

We are in receipt of your letter of the 18th curt. and note your remarks. The only intimation received by our clients regarding a compromise of their claim was in your letter to them of 4th May when you enclosed a copy of letter received from Mr. Borg. We presume that this was the only offer received by you from any person interested. The communication, however, from Griscti suggests that an offer of 30 per cent had been made by them and that this was ultimately increased to 40 per cent. For your information we enclose copy of letter which was received from Griscti and shall be pleased to receive your comments thereon.

20

Yours faithfully,
(sd.) HENRY J. GRAY & CONNOCHIE.

GEORGE GRISCTI,
40, Isouard Street,
Sliema, Malta.

30

28th October, 1944.

Messrs. Allan & Dey,
Aberdeen, Scoltand.

Dear Sirs,

**Re: "Vincent Griscti & Sons"
in liquidation.**

With a great deal of surprise and astonishment we have been recently informed legally by Mr. Emm. Borg in his name

and as owner of the firm "Comptoir Commercial International" Valletta that your legal adviser here Dr. John Pullicino, LL.D., have ceded and transferred your credit (pretention) for £433.6.8 against my firm in liquidation for the sum of £108.0.0 plus legal expenses incurred against my firm amounting to the sum of £26.6.0.

10 We are at a great loss to understand what you lead you to accept this lower offer of settlement than that we had made to your legal adviser Dr. John Pullicino, LL.D., on the day after of 23rd November, 1943. Which was accepted by him to be transmitted to your firm by airmail.

We explain:—

20 On the 23rd November, 1943, Dr. John Pullicino, LL.D., legally requested us to settle the debt, to avoid according to our Maltese laws, LAPSE OF PRESCRIPTION. We called upon to see him day after and after some discussion we offered him the rate of 30 per cent as a full settlement, your lawyer, considering this figure a doubtful one for your acceptance, we endeavoured with consultation from some of our friends and helpers to reach to an amicable and early settlement to raise the offer to 40 per cent.

We have done this, we increased our offer, and offered "forty per cent" on which percentage Dr. John Pullicino, LL.D. gave us his word, as the legal gentleman acting on your behalf that more than probably this will be accepted by your goodselves and we took it for granted, in which Dr. Pullicino shared our assumption that the matter is nearing to an immediate close.

30 We offered payment in cash at the moment our offer of 40 per cent was made but Dr. John Pullicino, LL.D. preferred to have your firm's acceptance and confirmation before collected the amount, which we were told at the time by him should reach him by AIR MAIL.

So, it was agreed between us that on receipt of your reply, we shall be immediately called to effect the payment of 40 per cent we repeat, which was agreed, subject to your firm's acceptance.

40 Now, we hasten to bring to your knowledge that MR. EMM. BORG, of the firm of "Comptoir Commercial International" of Valletta, is summoning us to recover from us and from our firm in liquidation the full sum (pretended) £433.6.8 plus accumulated 6 per cent commercial interest.

We offered him through our legal advisers the amount and sum in cash as paid to your lawyers, plus expenses mentioned, but naturally wishing to make this IMAGINARY HANDSOME PROFIT he refused. We have therefore been compelled to deposit the sum of £700.0.0 (seven hundred pounds) in Court, loaned to us by a generous gentleman having faith in ourselves and misfortunes. We are insisting that we should NOT pay a penny more than the sum you collected from Mr. Borg.

Should we WIN the Court case instituted, as we are led to believe, we are prepared to maintain our offer and we promise to submit you balance of remittance (from percentage sold to Mr. EMM. BORG to our offer of 40 per cent) through your banks in Scotland through the intermediary of a local banker. 10

We beg now the liberty to request you to enlighten us on the whole matter, by airmail, for which expenses we are enclosing you herewith postal-orders to cover your reply. We are in need of information in our hands as to how the deal was effected and WHY an offer less than 40 per cent as we offered had been preferred, as we are right to conclude that if you have not been able to recover the full sum as you suggest owing by our firm, in liquidation, you will NOT PERMIT a stranger to wear shoes and benefit upon your shoulders on his insinuations this very exaggerated profit. 20

We are passing copy of our letter to your lawyers in Aberdeen, and we are airmailing too, copy to our bankers, the Midland Bank Limited, London, as to have in hand for our defence in Court the fullest history of the sad affair.

Trusting that you will extend to us the courtesy of an early acknowledging, we assure you, that had been possible for us to offer you a greater percentage than FORTY PER CENT we would have done it, without hesitation, but the lapse of time passed and the difficulties to find persons to help us out of our very misfortune, will persuade you, we trust that we have done all we could and expected from us. 30

With our anticipated thanks, we are,

Yours very truly,

(Vincent Griscti & Sons)
— in liquidation —

(signed) GEORGE GRISCTI.

J. PULLICINO, LL.D.

8, Bastion Square,
Notabile.

Malta, 21st December, 1944.

Messrs. Henry J. Gray & Connochie,
Crown Mansions,
41, Union Street,
Aberdeen.

Dear Sirs,

10

Allan & Dey.

I am in receipt of your letter of the 28th ultimo in which you enclosed copy of the letter written by Mr. George Griscti on the 28th October, 1944.

The contents of Mr. Griscti's letter are a pure fabrication. I think you need only refer to my letter of the 4th May, 1944, and that further comments are unnecessary.

20 I may say that I have not seen or heard from Messrs. Griscti since November, 1943, on which occasion no offer was made to me. It is only since learning of the transfer of your claim that Messrs. Griscti have invented this offer with the obvious end of trying to obstruct proceedings against them for collection of the debt. Surely an offer being made by them in November 1943, the debtors would have not allowed nearly a year to pass without enquiring whether the offer had been accepted or not.

Yours faithfully,
(sd.) J. PULLICINO.

The evidence of Joseph E. Griscti in re "Borg v. Griscti"
(Writ-of-Summons No. 181G. 1944).

(Translation)

30

Taken from the original at fol. 13 overleaf, 14 and 14 overleaf of the Record of the case "Emmanuele Borg, Merchant vs. Joseph Edward Griscti".

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

All that was done by Camilleri was done of his own accord. I did not ask him to do it. I did not approve of what

he did. When he paid the Plaintiff, he told me: "I paid him, on condition, however, that he would settle the other outstanding matters". He did not tell me that he had promised to pay the costs. I bought the furniture mentioned in the writ-of-Summons from the Plaintiff at the price therein stated. I have not yet paid the price, but I have not paid it yet because Angelo Camilleri asked the Plaintiff to give me a year's respite. They did this without my asking them. The year elapsed January last, before the filing of the Writ-of-Summons against me. I did not pay after the lapse of the twelve months referred to because I had claims of my own against the Plaintiff. My claims have been paid. I admit that I owe him the sum which he claims in the Writ-of-Summons. I did not pay him because I resented the fact that he should have sued out a Warrant of Sequestration against me. Because I had paid his debt, he paid also the sum due to me by Messrs. Raven Confectionery Ltd. Nothing further is owing to me by the Plaintiff. The only matter outstanding between me and the Plaintiff is his claim against me for £700. The claim arose after the filing of the Writ-of-Summons: he bought for £100 a debt owing by me and my brothers, which debt was worth £400, — and now he is claiming £700. I hold that I should not be called upon to pay the costs of this case. The reason is that, before the commencement of the proceedings, I asked him through my Legal Adviser to set off the amount claimed by him in this suit against the sum of £142 which I was owing by Firms for whom I acted as the Agent. He would not agree to a set-off. We paid about a month after the commencement of the case. The debts held by the Plaintiff against me were to my name, but they were not all my own debts, and some were owing by Firms which I represent. The only debt I had was of about £14. Nor was this, properly speaking, my own debt. I mean to say I paid this debt to the Plaintiff so as not to lose the agency.

True copy.

(sd.) J.E. GRISCTI.

(sd.) A. GHIRLANDO,

Deputy Registrar.

Exhibit "X"

His Majesty's Commercial Court
Judge:—

The Honourable Mr. Justice Professor E. Ganado, LL.D.

Sitting held on
Thursday, the First October, 1936.

No. 14.

Writ-of-Summons No. 15/1936.

10

Ercole Valenzia, Legal Procurator,
in his capacity as attorney for Messrs.
William E. Rees & Co., Ltd., Bradford,
as per power annexed hereto.

vs.

Giorgio Griscti, for and on behalf of
Messrs. V. Griscti & Sons.

The Court,

Upon seeing the Writ-of-Summons, whereby the Plaintiff,
premissing: that the Defendant had induced the Plaintiff
nomine to sell to John Mazzitelli, on behalf of the Plaintiff
20 firm, goods to the value of Two Hundred and Ninety-seven
pounds one shilling and eleven pence (£297.1.11); — that the
sale had been made against acceptances signed by Mazzitelli
(Exhibits B.C.D.E.F.G.H.I.) after that the said Mazzitelli had
been virtually a bankrupt — provided the sale made to
Mazzitelli was a sale in actual fact and provided Mazzitelli
was not acting merely as a **prete-nom** of the Defendants, as
was the case on various other occasions; — that Mazzitelli is at
present insolvent and has long since given up his business, so
that it would serve no useful purpose to bring an action directly
30 against him; — prayed that — every necessary declaration
being prefaced and any expedient direction being given —
the Defendant be condemned to refund to him, as damages,
or otherwise, the aforesaid sum of £297.1.11, value of goods
which were forwarded to the Defendant and which the
Defendant apparently delivered to the said Mazzitelli; and (2)
that the Defendant be condemned to pay to the Plaintiff
nomine the sum of Fifty-seven pounds thirteen shillings and
five pence (£57.13.5), balance of a larger sum which he cashed
40 on behalf of the Plaintiff Firm and which he failed to pay to
that Firm; — and (3) that an order be made for his personal
arrest for debt. — With costs and with interest thereon
according to the commercial laws.

Upon seeing the **proces verbal** recorded this day;

Whereas the first two claims have been admitted;

Whereas the Defendant declares that he is a trader, but asks for a respite — which respite has been agreed to;

On these grounds:

Allows Plaintiff's claims with costs, provided however that the third head of the judgment in respect of the third claim shall not become enforceable except within two months from the present date.

(signed) J. DINGLI,
Deputy Registrar. 10

True copy.

(signed) J. DINGLI,
Deputy Registrar.

In His Majesty's Commercial Court.

Ercole Valenzia, L.P., **nomine**
vs.

George Griscti **nomine**.

List of Exhibits produced with the Writ-of-Summons
(No. 15/1936). 20

Exhibit "A" — Power of Attorney by Messrs. William E. Rees & Co., Ltd., of Bradford.

„	"B"	—	Bill of Exchange for £28. 19. 8 which matured for payment on	10. 12. 35	
„	"C"	—	do. £29. 0. 0	„ 10. 11. 35	
„	"D"	—	do. £27. 10. 4	„ 15. 9. 35	
„	"E"	—	do. £27. 10. 3	„ 15. 10. 35	
„	"F"	—	do. £19. 0. 11	„ 11. 9. 35	
„	"G"	—	do. £55. 0. 3	„ 18. 11. 35	
„	"H"	—	do. £55. 0. 3	„ 18. 12. 35	30
„	"I"	—	do. £55. 0. 3	„ 20. 2. 36	

(signed) CARLO MALLIA, Advocate.

(signed) A. VALENZIA, Advocate.

(signed) E. VALENZIA, Legal Procurator.

True copy.

(signed) J. DINGLI,
Deputy Registrar.

Exhibit "A" 1

No. 6616/46.

LIEUTENANT-GOVERNOR'S OFFICE.

Malta, 2nd October, 1946.

Sir,

With reference to your letter of the 10th September, 1946, regarding the date on which Mr. John Mazzitelli left Malta, I am directed to inform you that the Police records of departures previous to January, 1936, were destroyed by enemy action.

10 There is no record of Mr. Mazzitelli having left Malta after the date stated above.

I have the honour to be,

Sir,

Your obedient servant,

(signed) C. THAKE.

a/Secretary to Government.

Professor V. Caruana, LL.D.

Exhibit "A" 2
Exhibit filed by Minute dated 4th May, 1949.

25th. November, 1943.

To: George Griscti and Joseph Griscti, in their own behalf
and for and on behalf of Messrs. "Vincent Griscti &
Sons".

The undersigned, Dr. John Pullicino, in his capacity as
attorney for Messrs. Allan & Dey, Aberdeen, hereby calls upon
you to pay to him, within six days, together with the costs
hereof, the sum of Four Hundred and Thirty-three Pounds, six
shillings and eight pence (£433.6.8.), together with interest
thereon according to the Commercial laws: and he warns you
that, in default, he will take steps against you according to law. 10

(Signed) J. PULLICINO,
Advocate.

(Signed) G. SCHEMBRI,
Legal Procurator.

The twenty-fifth November, 1943.

Filed by G. Schembri, L.P. without Exhibits.

(Signed) CARM. VELLA, 20
Dep. Registrar.

I hereby certify that, on the 26th. November, 1943, through
Usher Henry L. Calleja, I effected service of the present
Judicial Letter upon Joseph Griscti **proprio et nomine**, deliver-
ing to him personally a copy thereof together with an extract
from section 30 of the Laws of Procedure.

This 29th November, 1943.

(Signed) V. SPITERI,
Marshal.

I hereby certify that, on the 8th January, 1944, through 30
Usher Henry L. Calleja, I effected service of the present Judicial
Letter upon George Griscti, leaving a copy thereof, together
with an extract from section 30 of the Laws of Procedure, with
his wife, Concetta, at the address at No. 40, Isouard Street,
Sliema.

This 10th. January, 1944.

(Signed) V. SPITERI,
Marshal.

True Copy.

(Signed) A. GHIRLANDO, 40
Dep. Registrar.

DEFENDANTS' EXHIBIT

Exhibit "A"

(copy)

AIR MAIL.

Henry J. Gray & Connochie
Advocates.Crown Mansions,
41, Union Street,
Aberdeen.

2/HSM

8th November, 1944.

10

Mr. George Griscti,
40, Isouard Street,
Sliema,
Malta.

Dear Sir,

Allan & Dey, Aberdeen.**re Vincent Griscti & Sons (in liquidation)**

We are in receipt of your letter of 28th ulto. with enclosure and note fully the position relative to debt due to our clients

20 At no time did Mr. Pullicino intimate to us that an offer had been made to settle by payment of 40 per cent of our clients' account. On 4th May last this gentleman wrote to our clients as per copy letter enclosed advising that 25 per cent was offered in regard to the debt and we replied to him on 10th June as per the enclosed copy letter agreeing to accept a settlement on this basis. On 10th October we received a communication from Mr. Pullicino forwarding to us the agreement entered into regarding the payment of the 25 per cent and we have now

30 received a remittance from him in settlement of the sum agreed to be accepted. If the facts as stated by you are correct then our clients have been misinformed as to the true position and have agreed to a settlement through misrepresentation. We are writing to Mr. Pullicino advising him as to the information now before us and asking for a full explanation. Our clients will, if the facts as stated by you are correct, repudiate the agreement come to and you might be good enough to advise us what progress is made regarding matters.

Yours faithfully,

Encls.

ERRATA — CORRIGE

Documents at Nos. 21, 23, 24, 25, 28, 29, 30, 33, 34 and 36 should read headed "In H. M. Court of Appeal" *vice* "In H. M. Commercial Court."