

Joseph and George Griscti *proprio et nomine* - - - *Appellants*

v.

Emmanuele Borg *proprio et nomine* - - - - *Respondent*

FROM

THE COURT OF APPEAL, MALTA

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL. DELIVERED THE 24TH JULY, 1950

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*Present at the Hearing:*

LORD NORMAND  
LORD OAKSEY  
LORD REID  
SIR JOHN BEAUMONT  
SIR LIONEL LEACH

[*Delivered by* LORD NORMAND]

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This is an appeal from a judgment of the Court of Appeal in Malta affirming the judgment of the Commercial Court for Malta, which had given judgment for the respondent for £433 6s. 8d. as the sum due under two contracts of sale and had also awarded him interest and legal expenses.

The issue is one of fact, whether the appellants were truly the purchasers of two parcels of fish from the firm of Allan & Dey in Aberdeen and the true debtors for the price. The respondent, who sued as assignee of Allan & Dey, has in his favour the concurrent findings of the trial judge and of the Court of Appeal that the appellants were the real purchasers under the contracts, notwithstanding that they put forward two other names, one for each contract, as purchasers. The only question for the Board, therefore, is whether there is evidence to support the findings.

The first order was for fish to the value of £260. On 24th September, 1935, the appellants wrote a letter to Allan & Dey saying that they had received from one of their best customers an order for 900 cases of fish, and requesting that a quotation should be sent. The letter also gave the name John Mazzitelli as the name of "our customer"—"so that you may draw on them for 90 days bill from arrival of goods". On 2nd October, 1935, the appellants, apparently after receiving a quotation from Allan & Dey, sent to them an order for the 900 cases at specified prices, noted "payment 90 days draft". When this parcel reached Malta the appellants were absent from the island, having absconded from their creditors. Mazzitelli took delivery and sold the fish. He accepted a bill drawn upon him by Allan & Dey, but the bill was protested and the price has never been paid.

The second order was sent by the appellants to Allan & Dey on 8th October, 1935. It was for fish of the value of £173 6s. 8d. The order was in the name of Felix Blanc and it was accompanied by a covering letter in which he was described as "this important firm". When this parcel was delivered it was not accepted by Blanc and the appellants took it over and sold the fish for their own account.

It is not in doubt that for some time the vendors believed that the appellants had obtained the orders as their agents and that Mazzitelli and Blanc were their debtors for the price. But there came a time when they suspected that the appellants were the true purchasers and that they had used Mazzitelli and Blanc as prête-noms and when they ultimately assigned the debt to the respondent it was as a debt owed by the appellants, and accordingly the respondent's suit as assignee is based on the contracts of sale as contracts in which the appellants were the purchasers.

The Board is satisfied that there was ample evidence upon which it could be found that the appellants were the true contracting parties and that Mazzitelli and Blanc were mere prête-noms. The conduct of the appellants in taking up the parcel under the Blanc contract is conclusive of the appellants' liability for the price under that contract, and it is indeed admitted that as regards it there is no defence. But it affords evidence on which it might not unreasonably be inferred that the appellants had made use of Mazzitelli's name in the other nearly contemporaneous contract and that they were the true debtors for the price under it also. There is, however, additional and more direct evidence. It appears that the Mazzitelli parcel was sold to a witness named Gialanze by a traveller named Abela who was working for Mazzitelli. It further appears that Abela and Blanc were in the employment of the appellants, that Mazzitelli was working in the appellants' office and that he was a man of straw who absconded from Malta to escape paying his debts soon after he had sold the fish. There is also evidence that the appellants on several occasions proposed or offered to pay or compromise the vendors' claims for the price of the two parcels without distinguishing between them and without attempting to deny their liability under either contract. It is not necessary to enter into the details of various proposals and offers, which were made in 1936, 1937 and 1939. A proposal made in November, 1943, deserves more attention. On 25th November, 1943, the vendors' solicitor in Malta sent to the appellants a Judicial Letter demanding payment of the whole debt. The purpose of the letter was, *inter alia*, to prevent the claims from being barred by lapse of time. After receipt of the letter the appellants called on the writer and said that they hoped to settle this and other debts by a composition with their creditors but they did not dispute their liability. On 9th October, 1944, the respondent gave notice to the appellants of the assignment by the vendors to him of the debt, and on the 27th October, 1944, the appellants' solicitor replied by Judicial Letter stating that the appellants "as the debtors in the obligation" intended to avail themselves of the right to relief under section 1565 of the Civil Code on paying to the respondent the sum which he had paid for assignment. On the following day the appellant George Griscti wrote to the vendors complaining of the assignment and of other matters but not disputing liability in respect of either contract. In supplement to this it need only be said that the appellants had ample time and opportunity to adduce the evidence of Blanc and of Mazzitelli if it would have helped them. Neither of them gave evidence, and no explanation was tendered by the appellants. Their Lordships are satisfied that the learned judge in the Commercial Court and the learned judges in the Court of Appeal not only had evidence to support their findings that the appellants were the true debtors under both contracts but that no other conclusion would have been reasonable.

The appellants put forward two pleas in law. The first was that the assignation ought to have been intimated to Blanc and Mazzitelli before the suit was begun. This plea is based on the supposition that the assignation was of a sum owed by Mazzitelli and Blanc, and it fell to the ground when it was established that they were mere prête-noms.

The other plea was based on section 1565 of the Civil Code, which gives the debtor in a litigious claim power to obtain his release from an assignee of the claims by re-imbursing to him the actual price of the assignment with interest and costs. Under section 122 of the Commercial Code, however, this right is not exerciseable when the right assigned arises from a commercial transaction. In this case the assigned right arose from a sale of goods. This plea, therefore, also fails.

Their Lordships will accordingly humbly advise His Majesty that the appeal should be dismissed. The appellants must pay the costs of the appeal.

In the Privy Council

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JOSEPH AND GEORGE GRISCTI

*proprio et nomine*

v.

EMMANUELE BORG

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DELIVERED BY LORD NORMAND