

In the Privy Council.

6 - 7

1950

30 MAR 1951

ON APPEAL

INSTITUTE OF ADVANCED
LEGAL STUDIES

From the Court of Appeal, Malta.

BETWEEN

JOSEPH AXISA AND OTHERS

Respondents (Plaintiffs).

AND

JOSEPH ZAMMIT BONETT AND OTHERS

Appellants (Defendants).

31276

UNIVERSITY OF LONDON
MAY 1953
17 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

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

BETWEEN

JOSEPH AXISA AND OTHERS

Respondents (Plaintiffs).

AND

JOSEPH ZAMMIT BONETT AND OTHERS

Appellants (Defendants).

RECORD OF PROCEEDINGS

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DESCRIPTION
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Proces verbaux recording adjournments, etc. ...
Applications for extension of time for translation and preparation of Record; and Decrees thereon.

DOCUMENTS

In

H. M. COMMERCIAL COURT

In the Privy Council.

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

BETWEEN

JOSEPH AXISA AND OTHERS

Respondents (Plaintiffs).

AND

JOSEPH ZAMMIT BONETT AND OTHERS

Appellants (Defendants).

RECORD OF PROCEEDINGS

DOCUMENTS

Translation

No. 1.

Writ-of-Summons.

No. 1.
Writ-of-Summons

In H.M. Commercial Court.
This Second May, 1947.
Filed by Robert Dingli L.P.
With Six Exhibits.

(Signed) S. BUGEJA, 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:— Joseph, John and
Carmelina Axisa, children of the late Emmanuele Axisa;
Vincenza, the widow of the said Emmanuele Axisa; Joseph,
Victor, Carmelo and Frank Camilleri, as parties concerned in
the issue in succession to their father, Peter Camilleri; and
Robert, Harry, Hector and Victor Pace, as successors to the share
previously held by their brother, Dr. Giuseppe Pace; — **You**

No. 1.
Writ-of-Summons
--Continued.

Shall Summon — Joseph, Paolo, Cettina, the widow of Charles Micallef, Rosaria sive Lucy, the wife of Henry Galea, and John, brothers and sisters Zammit Bonett, and Marietta, the widow of Alfredo Zammit, as the successors of Alfredo Zammit, deceased; Mary, the widow of Alfred Axisa, and Eugene, the wife of Michael Azzopardi, Dolores, the wife of Emmanuele Briffa, Vincent, Annie, Eddie, George, Robert and Joseph, brothers and sisters Axisa, as the successors of Alfredo Axisa, deceased; Marianna, the widow of Alfredo Debono, and Joseph, Mary the wife of Alfredo Lanzon, Doris, the wife of Joseph Mifsud, Amelia, the wife of Joseph Zammit Bonett, and Carmelo, brothers and sisters Debono, as the successors of Alfredo Debono, deceased; Emmanuele Grech, and his children, namely, Charles sive Carmelo, and Mary, the wife of David Smith, as the successors of their late mother Carmela, and in respect of their mother's share in the community of acquests between her and her said husband; Edgar Baldacchino; and, in so far as their interests may be concerned, George, Alexander, Edgar, John and Anthony, brothers Portanier, as parties concerned in the issue in so far as it affects the said Edgar Baldacchino; and Walter and Frank Debono and William Axisa, joined in the suit by Decree given on the 28th June, 1947; and, by Minute dated 17th October, 1947, Carmelo Debono, who took up the proceedings as attorney on behalf of his brothers Walter and Frank Debono, absent from these Islands; and, by Minute dated 27th February, 1948, the said Walter and Frank Debono who, having returned to Malta, have personally taken up the proceedings in the stead of Carmelo Debono; — to appear before this Court at the Sitting to be held on the Sixth June, 1947, at 9 a.m.

And there: every necessary declaration being prefaced and every expedient direction being given. —

Whereas, by contract enrolled in the Records of Notary Dr. Ettore Francesco Vassallo on the Twenty-Ninth July, One Thousand Nine Hundred and Thirty, Giuseppe Mangion, Legal Procurator, acting in his capacity as Testamentary Executor of Vincenza and Carmela Axisa, and duly authorized by the competent Court, leased to Alfredo Zammit, for the period of two years obligatory and two years optional, the "Axisa" cinematograph at No. 5, Tower Road, Sliema — on which occasion an inventory was made of the effects that were included in the lease (Exhibit "B"); —

And whereas, subsequently, by contract enrolled in the Records of the aforementioned Notary on the 2nd July, One

Thousand Nine Hundred and Thirty Four (Exhibit "C"), the lease in question — as a compromise of the issues involved in the case that was then pending before this Court between Alfredo Zammit and G. Mangion L.P. — was taken up by the parties of whom the present Defendants are the successors; — and whereas one of the covenants set out in the aforesaid contract was to the effect that nothing should be done to the detriment of the good-will of the "Axisa" cinematograph leased to the Defendants as above (Clause 7); — and whereas, therefore,
 10 the aforesaid cinematograph, together with the effects and equipment thereof, is at present being conducted by the Defendants who are in occupation of the premises by virtue of a tacit extension of lease that expires on the 30th April, One Thousand Nine Hundred and Forty Seven. —

And whereas, by Judicial Letter dated 26th March, 1947, the Plaintiffs, as successors of the first lessors, enjoined the Defendants to vacate and surrender the cinematograph by the 30th April, 1947. —

And whereas, this notwithstanding, the Defendants have
 20 not so vacated and surrendered the premises . —

Said Defendants to shew cause why an order should not be made directing them to vacate and surrender the "Axisa" cinematograph and to hand over the premises to the Plaintiffs together with the benches, projectors, and all the other equipment thereof.

With costs, including the costs of the Judicial Letter dated 26th March, 1947, and without prejudice to the action for the recovery of damages, assessable in separate proceedings.

You shall Summon said Defendants to appear so that a
 30 reference to their oath may be made.

You shall further give notice to the Defendants 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 case, file a statement of defence according to law, and that, in default of such statement of defence within the period aforesaid, and of their appearance on the day and at the hour and place aforesaid, the Court will proceed to deliver judgment on the action of the Plaintiffs on the said day, or any subsequent day, as the Court may direct.

And after service by delivery of a copy hereof to said
 40 Defendants, or their Agents according to Law, or upon your

No. 1. meeting with any obstacle in the said service, you shall forth-
 Writ-of-Summons with report to this Court.
 --Continued.

Given by our aforesaid Commercial Court.

Witness our faithful and well-beloved the Honourable
 Mr. Justice A. J. Montanaro Gauci, Doctor of Laws, Judge of
 our said Court.

This 3rd. May, 1947.

(Signed) A. J. MONTANARO GAUCI.

No. 2.
 Plaintiff's
 Declaration

No. 2.

Plaintiffs' Declaration

10

In H.M. Commercial Court.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

Plaintiffs' Declaration.

Respectfully sheweth:—

By virtue of a contract enrolled in the records of Notary Dr.
 Ettore Francesco Vassallo on the 29th July, 1930 (Exhibit "A"),
 Giuseppe Mangion L.P., acting in his capacity as one of the
 Testamentary Executors of Vincenzo and Carmela Axisa —
 appointed by H.M. Civil Court, Second Hall — leased to Alfredo
 Zammit, for the period of two years obligatory and two years
 optional, at the rent of £185 per annum, the "Axisa" (now
 "Alhambra") Cinematograph at No. 5, Tower Road, Sliema —
 on which occasion a description was made of all the effects that
 were to be found on the premises.

20

Subsequently, by virtue of a contract enrolled in the
 Records of the aforementioned Notary on the 2nd July, 1934,
 the parties concerned effected a compromise in respect of a suit
 then pending before the Court — "Alfredo Zammit and Others
 vs. G. Mangion L.P. and Others," withdrawn on the 7th July,
 1934 (Exhibits "D" & "E") — whereunder the holders of the
 lease undertook not to suspend the cinematographic and other
 shows except in the months of July, August and September and
 to do nothing that would prove detrimental to the good-will of
 the theatre, leased to them together with all the effects and
 equipment thereof.

30

The Defendants, as the successors of the parties who signed
 the aforesaid contract of 1934, continued to hold the tenancy

of the "cinematograph," together with the good-will, the effects and equipment thereof, by the title of a tacit extension of lease.

No. 2.
Plaintiff's
Declaration
--Continued.

By Judicial Letter dated 26th March, 1947 (Exhibit "F"), the Plaintiffs requested the Defendants to vacate the cinematograph on the termination of the tacit lease extension above referred to — that is, by the 30th April, 1947 — and to surrender the premises, together with the good-will, improvements and all the equipment thereof; and they held the Defendants answerable for any damages that they might sustain in consequence of any delay on their part.

The Defendants have not so far vacated the property.

The Plaintiffs have therefore sued out the present Writ-of-Summons — without prejudice to any other action to which they may be entitled.

According to local judicial practice, the restrictive rent laws are inapplicable in those cases where business premises are leased for business purposes together with the good-will thereof — and, as shown by the documents produced, that view of the Courts is applicable in the case at issue.

20 Witnesses:—

The parties on either side and G. Mangion L.P. — to give evidence as to the lease and the agreement made.

(Signed) G. PACE, Advocate.
" R. DINGLI,
Legal Procurator.

No. 3.

List of Exhibits

No. 3.
List of Exhibits

In H.M. Commercial Court.

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

- 30 **A.** Contract dated 29th July, 1930.
 B. Inventory of the effects that were to be found on the premises at the time when the theatre was leased to Alfredo Zammit.
 C. Contract dated 2nd July, 1934.

No. 3.
List of Exhibits
—Continued.

- D.** Official copy of Minute filed on the 26th April, 1934, in re “Alfredo Zammit versus G. Mangion L.P. and Others.”
- E.** Copy of Judgment dated 11th March, 1932.
- F.** Copy of Judicial Letter dated 26th March, 1947.

(Signed) G. PACE, Advocate.
 ,, R. DINGLI,
 Legal Procurator.

No. 4.
Statement of
Defence — 1.

No. 4.

Statement of Defence — 1.

10

In H.M. Commercial Court.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

The Statement of Defence of the Defendant Emmanuele Grech. Respectfully sheweth:—

The Plaintiffs have produced no evidence proving the capacity in which they are appearing and the Defendants should therefore be non-suited.

Subordinately, the claims should have been filed before the Rent Regulation Board. The present good-will belongs to the Defendants, for the Defendants, acting with Plaintiffs' consent, converted what used to be a “silent” cinematograph into a “talkie.”

Without prejudice to other pleas.

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

The Thirty-First May, 1947.

(Signed) A. GHIRLANDO,
 D/Registrar. 30

The Declaration of the Defendant Emmanuele Grech.

Originally, and at the time when the lease contracts in question were signed, the “Axisa” cinematograph showed only “silent” films and the respective good-will was that of a “silent”

cinematograph. Subsequently, with the consent and approval of the Plaintiffs, or their predecessors, the cinematograph was provided with sound equipment and converted into a "Talkie." Therefore a new good-will came into being, and it goes without a doubt that the new good-will belongs to those who contrived it, namely, the Defendants. The upshot is that at present the lease concerns only the building and not the building as a going business concern. Therefore this Court lacks the necessary competence to take cognisance of the case and the Plaintiffs should take the matter before the Rent Regulation Board.

No. 4.
Statement of
Defence — 1.
—Continued.

The claims are therefore untenable.

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

Witnesses:—

1. The contending parties — to give evidence in substantiation of the facts as set out in the foregoing Declaration, and, if necessary, to give further evidence.
2. Giuseppe Mangion L.P. — to give evidence as above.

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

No. 5.

Statement of Defence — 2.

No. 5.
Statement of
Defence — 2.

In H.M. Commercial Court.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

The Statement of Defence of the Defendants Joseph Zammit Bonett A. & C.E., Paolo, Cettina, the widow of Charles Micallef, Rosaria *sive* Lucy, the wife of Henry Galea, and John, brothers and sisters Zammit Bonett; — Marietta, the widow of Alfredo Zammit, Mary, the widow of Alfred Axisa, Dolores, the wife of Emmanuele Briffa, Vincent, Annie, Eddie, George, Robert and Joseph, brothers and sisters Axisa; — Marianna the widow of Alfredo Debono, Joseph, Mary, the wife of Alfred Lanzon, Doris the wife of Joseph Mifsud, Amelia the wife of Joseph Zammit Bonett A. & C.E., and Carmelo, brothers and sisters Debono; — Charles *sive* Carmelo, and Mary, the wife of

No. 5. David Smith, brother and sister Grech; — Edgar
Statement of Baldacchino; — George, Alexander, Edgar, John and Anthony,
Defence — 2. brothers Portanier. — the Wives acting with the consent and
—Continued. concurrence of their respective Husbands.

Respectfully sheweth:—

There are other parties concerned in the matter besides the Defendants mentioned in the Writ-of-Summons.

They are: William and Lily Axisa, children of the late Alfredo, and Frankie and Walter Debono, children of the late Alfredo. 10

It is therefore necessary for the better implementation of the case that the aforesaid parties be joined in the suit.

On the merits, the claims are untenable in that the lease includes neither the fittings nor the good-will.

Moreover, the term of the lease as originally established has expired, so that the case comes within the competence of the Rent Regulation Board.

The Defendants should therefore be non-suited.

Without prejudice to other pleas.

With costs. 20

(Signed) J. XUEREB, Advocate.
,, G. SCHEMBRI, Legal Procurator.

This Second June, 1947.

Filed by Giuseppe Schembri L.P. without Exhibits.

(Signed) S. BUGEJA, D/Registrar.

The Declaration of the Defendants aforesaid.

Respectfully sheweth:—

The case requires implementation in that the two children of the late Alfredo Axisa and the two children of the late Alfredo Debono are not included among the Defendants. 30

The Plaintiffs, or their predecessors, removed and took away all the furniture and fittings, so that the Defendants hold only the bare premises.

So far as the good-will is concerned, too, the present good-will appertains to no one else but the Defendants. In fact it was the Defendants who converted what was formerly a "silent"

cinematograph into a "Talkie". Further the Plaintiffs, through their fault, had kept the premises closed down for a considerable period of time, and it was as a result of the initiative and the activities of the Defendants that the present good-will was brought into being.

No. 5.
Statement of
Defence — 2.
--Continued.

In the agreement made with the Defendants for the supply of films, the brothers Pace, Plaintiffs in this case, held the Defendants liable to the forfeiture of the premises — something that goes to show that they were not then so convinced of the rights which they are now claiming.

Witnesses:—

1. The Defendants — to give evidence in substantiation.
2. The Plaintiffs — so that a reference to their oath may be made.
3. The Commissioner of Police — to give evidence as to the licence and the closing down of the premises in question.

(Signed) J. XUEREB, Advocate.
,, G. SCHEMBRI, Legal Procurator.

No. 6.

20

Statement of Defence — 3.

No. 6.
Statement of
Defence — 3.

In H.M. Commercial Court.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

The Statement of Defence of the Defendant Eugene, the wife of Michael Azzopardi, acting with her husband's consent and concurrence.

Respectfully sheweth:—

This Honourable Court lacks the necessary competence to take cognisance of the case in that the matter at issue concerns the tacit extension of a lease respecting bare premises devoid of good-will.

Without prejudice to other pleas.

(Signed) J. XUEREB, Advocate.
,, G. SCHEMBRI, Legal Procurator.

This Twenty-Fifth June, 1947.

Filed by Giuseppe Schembri L.P. without Exhibits.

(Signed) J. MICALLEF, D/Registrar.

No. 6.
Statement of
Defence — 3.
—Continued.

The Declaration of the Defendant, Eugene, the wife of Michael Azzopardi.

Respectfully sheweth:—

When the lease agreement in question was signed in 1934, the proprietor had completely dismantled the premises, and the premises themselves, which the proprietors had, through their own fault, kept closed for a considerable length of time, were devoid of any good-will.

The lease agreement above referred to has run out and at present the lease is being tacitly extended in terms of the Rent Regulation Law of 1931 — and it is therefore the Rent Regulation Board that is competent to take cognisance of the case. 10

Witnesses:—

1. The Defendant Eugene Azzopardi and the other Defendants — to give evidence in substantiation.

2. The Plaintiffs — so that a reference to their oath may be made.

3. The Police officer in charge of the issue of licences — to give evidence as to the licence of the premises in question.

(Signed) J. XUEREB, Advocate. 20
,, G. SCHEMBRI, Legal Procurator.

No. 7.
Decree joining
other parties
in the suit

No. 7.

Decree joining other parties in the suit

HIS MAJESTY'S COMMERCIAL COURT

Judge:—

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

Sitting held on Saturday,
the Twenty-Eighth, June, 1947.

No. 4.

Writ-of-Summons No. 190/1947.

30

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

The Court,

Whereas Dr. Xuereb has submitted on behalf of his clients that Walter and Frank Debono and William Axisa are con-

cerned in the matter in dispute and that it is therefore necessary that they be joined in the suit.

No. 7.
Decree joining
other parties
in the suit
—Continued.

Orders that the said Walter and Frank Debono and William Axisa be called as parties to the suit and that they be served with a copy of the Writ-of-Summons and accompanying Declaration.

Further, an intimation shall be given to the aforesaid parties that they are to appear at the Sitting to be held on the 17th October, 1947.

10 Costs reserved.

(Signed) J. DINGLI, D/Registrar.

No. 8

Statement of Defence — 4.

No. 8.
Statement of
Defence — 4.

In H.M. Commercial Court.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

Statement of Defence of the Defendants William Axisa (and Walter Debono).

20 Respectfully sheweth:—

That the matter at issue concerns the extension of the lease of business premises and that therefore this Honourable Court lacks the necessary competence to take cognisance of the case.

Without prejudice to other pleas.

(Signed) J. XUEREB, Advocate.

„ G. SCHEMBRI, Legal Procurator.

This Fourteenth October, 1947.

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

(Signed) J. CAMILLERI COCOPARDO,
D/Registrar.

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The Declaration of the Defendants William Axisa (and Walter Debono).

Respectfully sheweth:—

That personally they have no knowledge as to the actual facts relating to the lease of the premises in question.

No. 8.
Statement of
Defence — 4.
—Continued.

That such information as they have on the matter has been given to them by the other Defendants in the case, and that, therefore, they would make reference to the Declaration filed by said Defendants.

Witnesses:—

1. The above-named Defendants — to give evidence in substantiation.

2. The Plaintiffs — so that a reference to their oath may be made.

3. The other Defendants in the case — to give evidence as to the facts relating to the lease of the premises in question. 10

(Signed) J. XUEREB, Advocate.
,, G. SCHEMBRI, Legal Procurator.

No. 9.
The Minute of
Defendant
Carmelo Debono

No. 9.

The Minute of Defendant Carmelo Debono.

In H.M. Commercial Court.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

The Minute of Carmelo Debono, acting in his capacity as attorney on behalf of his brothers, Walter and Frank Debono, who are absent from the Islands. 20

The said Carmelo Debono acknowledges service of the Writ-of-Summons and takes up the proceedings on behalf of his brothers Walter and Frank Debono, tendering the same pleas which he submitted in his own behalf.

(Signed) J. XUEREB, Advocate,
,, G. SCHEMBRI, Legal Procurator.

This Seventeenth October, 1947.

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

30

(Signed) S. BUGEJA, D/Registrar.

No. 10.

The Minute of Defendants Frank and Walter Debono

No. 10.
The Minute of
Defendants
Frank and Walter
Debono

In H.M. Commercial Court.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonetti A. & C.E. & Others.

The Minute of the Defendants Walter and Frank Debono.

Whereby, having returned to the Island, they take up the proceedings in the stead of the attorney acting on their behalf,
Carmelo Debono.

10

(Signed) J. XUEREB, Advocate,
,, G. SCHEMBRI, Legal Procurator.

The Twenty-Seventh February, 1948.

Filed at the Sitting by Prof. J. XUEREB, LL.D.

(Signed) J. DINGLI, D/ Registrar.

No. 11.

The Evidence of Plaintiff Joseph Axisa.

No. 11.
The Evidence of
Plaintiff
Joseph Axisa

The Eighth April, 1948.

Joseph Axisa, Plaintiff, states on oath:—

20

I am the son of Emmanuele Axisa. I have known this cinematograph ever since it was taken over by the Defendants. I have not been in the place for about six months, but the stage is the same. The old benches have been replaced by chairs. I do not know what they did with the benches: I know only that they were there when the Defendants took over. The inventory filed at fol. II of the Record was made by Mr. Mangion and signed by him and by my father. My father was acting for my grandparents. Previously it was equipped with a silent projector. My father never said we received anything back; and I never saw
30 any of the things in my father's possession.

Cross-Examination

I do not know where those things are. They were taken by the Defendants who had to give them back to us. I always told them they should let us have them back. It is within my recol-

No. 11.
The Evidence of
Plaintiff
Joseph Axisa
—Continued.

lection that the premises were kept closed for some time. I do not know how long they were kept closed. The premises are known as "Axisa" and have always been so known. As no performances whatever are being held, the good-will is being greatly impaired.

Read over to the witness.

(Signed) JOSEPH AXISA.
,, S. BUGEJA, D/Registrar.

The Fourteenth April, 1948.

No. 12.
The Evidence of
Defendant
Emmanuele

No. 12.

10

The Evidence of Defendant Emmanuele Grech.

Ninth April, 1948.

Emmanuele Grech, Defendant, states on oath:—

The last lease contract of the cinematograph was made at the time when the property was being administered by Mr. Mangion. I was the other party in the agreement. The partnership sought to have the lease for sixteen years, but Mr. Mangion and Mr. Emmanuele Axisa said that they could not grant a sixteen years' lease on account of the minors concerned. They told us: the place is as good as yours and there is always the Rent Regulation Ordinance. They said they could not grant the lease for more than twelve years and the respective agreement was drawn up accordingly. A number of things were on the premises at the time the agreement was made, but these things belonged to the partnership. When we joined the partnership, there were no benches there, but armchairs; and the place had already been converted into a "Talkie." When I joined I did not find any of the things I mentioned before. The projectors, the chairs and the piano belonged to the "Sliema Cinema Union" and at that time the place had already been converted into a "Talkie."

20

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Cross-Examination

I am refering to the time when the contract was drawn up. We leased it from Mr. Mangion and Mr. Emmanuele Axisa. The lease was granted under the authorization of H.M. Civil Court, Second Hall, and this, according to them, was the reason why they would not let us have the lease for sixteen years. I remember there was a box-office and a number of benches. The stage

and the curtain were there too. So was a Simonds advertisement. There was also a projector. I do not remember whether there were chairs or benches in the balcony. The box-office is still there. The place is known as "Axisa," but it has been re-named "Alhambra." I know the Police Authorities refused to extend the licence unless the entrance were widened. Previously, it had been leased as a cinema to Baldacchino, Zammit and Axisa. After judgment had been given in the case concerning the widening of the door, the place was closed down so as to allow the necessary repairs to be carried out. When the work was done, we ourselves took out the licence. Previously, there was no licence for the sale of Wines and Spirits and we had one issued to us. We also secured an Entertainments licence, though the place held one before. The holder may endorse the licence to a substitute, provided the place is not run personally by the proprietor.

No. 12.
The Evidence of
Defendant
Emmanuele
Grech
--Continued.

Re-Examination

The licence of the cinematograph was suspended for some time and the place was closed down and we were not allowed to carry on with the shows.

Read over to the witness.

(Signed) EM. GRECH,
,, J. DINGLI, D/Registrar.

Twenty-First April, 1948.

No. 13.

The Evidence of Defendant Edgar Baldacchino

Ninth April, 1948.

No. 13.
The Evidence of
Defendant
Edgar
Baldacchino

Edgar Baldacchino, Defendant, states on oath:—

I was in the business at the outset. In fact I was the Manager of the Sliema Cinema Union, which was formed when we decided to amalgamate. We had the Cinema "Axisa". It was Axisa's property and we took over from him. Then, in accordance with the terms of a subsequent agreement, it was re-named "Alhambra." I ran the business jointly with Zammit and Alfred Axisa, one of the proprietors of the cinema. Then we formed a partnership between us. When we were in partnership, we thought it necessary to enlarge the cinema. The proprietors

No. 13.
The Evidence of
Defendant
Edgar
Baldacchino
--Continued.

would not agree and it was then decided to enlarge the "Majestic", then known by the name of "Conqueror". We had a case in Court with the proprietors who had granted us the lease of the cinematograph. The dispute arose out of the fact that the Police Authorities considered that the exit was not wide enough. The Police withheld the licence and we were closed down for about five months. Then the proprietors granted us a new lease subject to new conditions. Previously, the seating accommodation consisted of rows of benches and the cinema had a silent projector. We replaced the benches by chairs and converted the cinema into a "Talkie". We gave the things that were on the premises to all the proprietors, one of whom was Alfred Axisa. I am quite certain we handed them over to the proprietors, who were Emmanuele Axisa, Alfred and Spiro Axisa and Peter Camilleri. So far as I know, we handed them over to the proprietors I have mentioned. Delivery was made at the time when we refurnished the cinema and converted it into a "Talkie" before the Sliema Cinema Union was formed. The effects in question were no longer there at the time a compromise was made in regard to the litigation referred to. The silent projector was removed and replaced by a talking apparatus. The benches were replaced by chairs, new curtains were put up and the painting redone. I am certain that there is nothing left of the things mentioned in the inventory at fol. II, which, as stated, were handed over to the proprietors; and I make reference to the inventory. There was no refreshment room at the time and we provided one ourselves. The respective licence was made out in the name of one of us; I know we got it ourselves. I do not think it was in Axisa's name. The cinema licence was held by Fredu Zammit. The stage was left in its place. So far as the scenario is concerned, we never made use of it. The side-wings were not removed. I do not think there was a screen. After its conversion into a Talkies, we had framed canvases made for the affixing of posters. These were left in the place. The prompter's box was left there too. I think we ourselves made out the inventory in connection with the second contract. I make reference to what is stated therein. So far as I know, we did not return the stage properties, but if there is any written record that we returned any stage property, then it must be so. And I therefore make reference to any such written record. We could not have given the effects to Fredu Axisa, because he was one of the partners and the paid Manager. I have no idea as to what has become of the effects in question; nor do I know if and where we stored them. I think the piano was also handed over. I am certain we handed it over to one of

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the proprietors, but I do not remember exactly to whom. It had already been converted into a Talkie when the case concerning the widening of the entrance came up.

Read over to the witness.

(Signed) E. BALDACCHINO.
 „ J. DINGLI, D/Registrar.

The Twenty-First April, 1948.

No. 13.
 The Evidence of
 Defendant
 Edgar
 Baldacchino
 --Continued.

No. 14.

The Evidence of Plaintiff John Axisa.

No. 14.
 The Evidence of
 Plaintiff
 John Axisa

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Ninth April, 1948.

John Axisa, Plaintiff, states on oath:—

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I know of the inventory filed at fol. II of the Record. The cinema had already been converted into a Talkie when we came to Court about the widening of the entrance. My father was Testamentary Executor and I did everything for him. My father and I received none of the things mentioned in the inventory at fol. II, notwithstanding that we were Testamentary Executors and Administrators of the property. I know nothing about the piano or about the other things. I know only that they were in the place and that now they are not there any longer. The agreement was drawn up by my father and Mr. Mangion.

Cross-Examination

I know the benches were replaced by arm-chairs. I never enquired as to what happened to the benches, but I did tell my father that once the benches in question were on the inventory, there was no need to worry as to what had become of them. My father never told me that the benches had been returned to him.

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Answering the question put to me by Dr. Xuereb, I know that a fresh contract was drawn up in 1934 and I know that the new lease of the property was made "in its present state and as it stands at present." The effects in question were still there. The contract itself states that the renewal of the lease was being made subject to the same conditions governing the previous lease. No new conditions were inserted, except as regards the amount of rent. Apart from the benches, the piano

No. 14.
The Evidence of
Plaintiff
John Axisa:
--Continued.

and the balcony, there was a box-office, a stage and some pieces of scenery. The balcony projected all round the cinema.

Read over to the witness.

(Signed) JOHN AXISA.
,, J. DINGLI.
D/Registrar.

No. 15
The Evidence of
G. Mangion L.P.

No. 15.
The Evidence of G. Mangion L.P.

Ninth April, 1948.

Giuseppe Mangion, L.P., states on oath:—

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I was Testamentary Executor of the late Vincenzo and Carmela Axisa. The inventory filed at fol. II of the Record was drawn up by me. I do not remember whether the items on the inventory were returned and I would make reference to what is recorded in writing. I was still Testamentary Executor and Administrator after the case in Court came to an end. I know that a compromise was made and I myself drafted the respective contract. I never received any of the things in question, but I remember something was done about the matter with Emmanuele Axisa. Something was done with the piano and the benches. I do not know, however, whether they sold them or not. Nothing was ever handed to me as Administrator of the property. If any money had been realised from the sale of these effects, I would have made the respective entry in the books. The books used to be kept by the previous witness. We used to give him the details and he wrote them down.

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Read over to the witness.

(Signed) G. MANGION.
,, J. DINGLI, D/Registrar.

No. 16.**Judgment, 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 Fourth May, 1948.No. 16.
Judgment.
H.M.
Commercial
Court**No. 6.****Writ-of-Summons. No. 190/1947.**

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Joseph, John and Carmelina Axisa, children of the late Emmanuele Axisa; Vincenza, the widow of the said Emmanuele Axisa; Joseph, Victor, Carmelo and Frank Camilleri, as parties concerned in the issue in succession to their father, Peter Camilleri; and Robert, Harry, Hector and Victor Pace, as successors to the share previously held by their brother, Dr. Giuseppe Pace

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versus

Joseph, Paolo, Cettina, the widow of Charles Micallef, Rosaria **sive** Lucy, wife of Henry Galea, and John, brothers and sisters Zammit Bonett, and Marietta, the widow of Alfredo Zammit, as the successors of Alfredo Zammit, deceased; Mary, the widow of Alfredo Axisa, and Eugene, the wife of Michael Azzopardi, Dolores the wife of Emmanuele Briffa, Vincent, Annie, Eddie, George, Robert and Joseph, brothers and sisters Axisa, as successors of Alfredo Axisa, deceased; Marianna the widow of Alfredo Debono, and Joseph, Mary, the wife of Alfredo Lanzon, Doris, the wife of Joseph Mifsud, Amelia, the wife of Joseph Zammit Bonett, and Carmelo, brothers and sisters Debono, as the successors of Alfredo Debono.

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No. 16.
Judgment.
H.M.
Commercial
Court
—Continued.

deceased; Emmanuele Grech, and his children, namely: Charles **sive** Carmelo, and Mary, the wife of David Smith, as the successors of their late mother, Carmela, and in respect of their mother's share in the community of acquests between her and her said husband; Edgar Baldacchino; and in so far as their interests may be concerned, George, Alexander, Edgar, John and Anthony, brothers Portanier, as parties concerned in the issue in so far as it affects the said Edgar Baldacchino; and Walter and Frank Debono and William Axisa, joined in the suit by Decree given on the 28th June, 1947; — and, by Minute dated 17th October, 1947, Carmelo Debono, who took up the proceedings as attorney on behalf of his brothers Walter and Frank, absent from these Islands; and, by Minute dated 27th February, 1948, the said Walter and Frank Debono who, having returned to Malta, have personally taken up the proceedings in the stead of the said Carmelo Debono.

The Plaintiffs, in the Writ-of-Summons, premising that: By contract enrolled in the Records of Notary Dr. Ettore Francesco Vassallo on the Twenty-ninth July, 1930, Giuseppe Mangion L.P., acting in his capacity as Testamentary Executor of Vincenzo and Carmela Axisa, and duly authorized by the competent Court, leased to Alfredo Zammit, for the period of two years obligatory and two years optional, the "Axisa" cinematograph at No. 5, Tower Road, Sliema — and that, on that occasion, an inventory was made of the effects that were included in the lease (Exhibit "B"); that, subsequently, by contract enrolled in the Records of the aforementioned Notary on the Second July, 1934 (Exhibit "C"), the lease in question — as a compromise of the issues involved in the case that was then pending before this Court between Alfredo Zammit and G. Mangion L.P. — was taken up by the parties of whom the present Defendants are the successors; — that one of the covenants set out in the aforesaid contract was to the effect that nothing should be done to the detriment of the good-will of the Axisa cinematograph leased

to the Defendants as above (clause 7); — that, therefore, the aforesaid cinematograph, together with the effects and equipment thereof, is at present being conducted by the Defendants, who are in occupation of the premises by virtue of a tacit extension of lease that expires on the 30th April, 1947; — that, by Judicial Letter dated 26th March, 1947, the Plaintiffs, as successors of the first lessors, enjoined the Defendants to vacate and surrender the cinematograph by the 30th April, 1947; — and that, this notwithstanding, the Defendants have not so vacated and surrendered the premises; — prayed that an Order be made directing the Defendants to vacate and surrender the “Axisa” cinematograph and to hand over the premises to the Plaintiffs, together with all the benches, projectors and all the other equipment thereof. — With costs, including the costs of the Judicial Letter dated 26th March, 1947, and without prejudice to the action for the recovery of damages, assessable in separate proceedings.

The Defendant, Emmanuele Grech, pleaded:- The Plaintiffs have produced no evidence proving the capacity in which they are appearing and the Defendants should therefore be nonsuited. Subordinately, the claim should have been filed before the Rent Regulation Board: The present good-will belongs to the Defendants, for the Defendants, acting with Plaintiffs' consent, converted what used to be a silent cinematograph into a “Talkie”.

The Defendants Joseph Zammit Bonett, A. & C.E., Paolo, Cettina, the widow of Charles Micallef, Rosaria **sive** Lucy and John, brothers and sisters Zammit Bonett; — Marietta, the widow of Alfredo Zammit, Mary, the widow of Alfred Axisa, Dolores, the wife of Emmanuele Briffa, Vincent, Annie, Eddie, George Robert and Joseph, brothers and sisters Axisa; — Marianna, the widow of Alfredo Debono, Joseph, Mary, the wife of Alfred Lanzon, Doris, the wife of Joseph Mifsud, Amelia, the wife of Joseph Zammit Bonett, A. & C.E., and Carmelo, brothers and sisters Debono; — Charles **sive** Carmelo and Mary, the wife of David Smith, brother and sister Grech; — Edgar Baldacchino; — George, Alexander, Edgar, John and Anthony, brothers Portanier; — pleaded that:- There are other parties concerned in the matter besides the Defendants mentioned in the Writ-of-Summons. They are: William and Lily Axisa, children of the late Alfredo, and Frankie and Walter Debono, children of the late Alfredo. It is therefore necessary for the better implementation of the case that the aforesaid parties be joined in the suit. On the

No. 16.
Judgment.
H.M.
Commercial
Court
—Continued.

merits: the claims are untenable in that the lease includes neither the equipment nor the good-will. Moreover, the term of the lease as originally established has expired, so that the case comes within the competence of the Rent Regulation Board. The Defendants should therefore be non-suited; — With Costs.

The Defendant Eugene Azzopardi pleaded that this Court lacks the necessary competence to take cognisance of the case: The matter at issue concerns the tacit extension of a lease respecting bare premises devoid of good-will.

The Defendant William Axisa pleaded that the matter at issue concerns the extension of the lease of business premises and that therefore this Court lacks the necessary competence to take cognisance of the case. 10

The Defendant Carmelo Debono, on behalf of Walter and Frank Debono, absent from these Islands, acknowledged service of the Writ-of-Summons and tendered the same pleas put up in his own behalf.

The said Walter and Frank Debono themselves took up the proceedings by Minute filed at fol. 45 of the Record.

The Court heard the sworn evidence of Joseph Axisa, Emmanuele Grech, Edgar Baldacchino, John Axisa and Giuseppe Mangion L.P., examined the acts in the Record and heard Counsel on both sides. 20

It is established in evidence that, by contract enrolled in the Records of Notary Ettore Francesco Vassallo on the 29th July, 1930, the premises in question, together with the good-will and the equipment thereof, were originally leased to the late Alfredo Zammit as a Cinematograph. The equipment is inventoried in the document filed at fol. 11 of the Record. One of the conditions laid down in the lease contract was to the effect that all improvements made should be left to the benefit of the property, without any right on the part of the tenant to any compensation therefor; and the tenant undertook not to suspend the cinematographic performances in order not to impair the good-will (Exhibit fol. 9). This shows that Alfred Zammit had leased a going concern, and not just a building for use as a cinematograph; and the fact was stressed in the judgment given by this Court on the 11th March, 1932 (Exhibit fol. 24). Subsequently, by deed enrolled in the Records of the aforementioned Notary on the 2nd July, 1934, a compromise was made in respect of the dispute that arose between the parties and the predecessors of the Defendants were granted a new lease of the "Axisa" cinematograph. It was so leased to them 30 40

in the state in which it was at the time, without prejudice to the good-will and for the period of six years obligatory and six years optional. Other conditions were that the cinematograph was to be given another name subject to the proprietors' approval, and that the performances were not to be suspended except in the summer months or on good and sufficient grounds (fol. 19). It was further agreed that all improvements should go to the benefit of the proprietors without any right on the part of the tenants to any compensation therefor. Meantime, the "Axisa" cinematograph had been converted into a "Talkie" (Deposition Edgar Baldacchino, fol. 56, and John Axisa, fol 58); and the benches had been replaced by armchairs. (*ibid* fol. 56/57 et seq.). And this explains why it is laid down in the contract that the "Axisa" cinematograph was being leased "in its present state and as it stands." Apart from the fact that the conversion into a "Talkie" was but a development of the cinematographic industry, the second contract granted the lease of a cinematograph that had already been converted into a "Talkie," together with the good-will as a "Talkie" and with a name of its own — which had to be changed into another, it is true, but changed subject to the approval of the proprietors. What was given out on lease was not a building in which to run a "Talkies," but a "Talkies" together with the good-will thereof, so much so that it was stipulated that the performances should not be suspended so as not to impair the good-will. The lease therefore was in respect of a business concern, as distinct from a building destined for use as a cinematograph. And once that is so, the lease does not come within the provisions of Ordinance No. XXI of 1931, regulating the re-letting of urban property. That law affects halls which are used as cinematographs. In the case at issue, however, the lease was in respect of a hall or building together with the good-will thereof and in the state in which it was to be found at the time — that is to say, together with the improvements that had been introduced and subject to the condition regarding the continuance of the performances; and the lease of business concerns is not envisaged in that Ordinance. And, therefore, when the lease expired, and the Plaintiffs, by judicial letter dated 26th March, 1947, demanded the surrender of the premises and the good-will, that is to say, of the concern in question, the Defendants were not entitled to plead the extension of the lease *ope legis*, just as it was not necessary for the Plaintiffs to apply to the Rent Regulation Board for the recovery of the cinematograph; and in any case the proceedings for eviction had necessarily to be instituted before this Court,

No. 16.
Judgment,
H.M.
Commercial
Court
—Continued.

since this Court is the only competent Court to take cognisance of the case.

According to the evidence of the Defendant Baldacchino, the benches and the piano were returned and belonged to the proprietors. This appears to be borne out by the evidence of Giuseppe Mangion L.P. who stated that something had been done with them (fol. 59); Emmanuele Grech never saw them there since he joined the concern. Meantime, no reference whatever is made in the second contract as regards the return of the effects in question; and the parties declared in that contract that they had no other claims against each other beyond those therein settled to their mutual satisfaction. The projecting apparatus is not mentioned even in the inventory annexed to the first contract made in 1930. If an inventory was made on the occasion of the second contract, it has not been produced in this case.

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On these grounds:

The Court,

Dismisses the plea of incompetence, including the plea set up by Emmanuele Grech in the second paragraph of his Statement of Defence, with costs against the Defendants, and allows the claim for the eviction from and the surrender of the cinematograph in question — giving the Defendants fifteen days' time within which to vacate the premises and to return to the Plaintiffs all of such items out of those listed in the inventory at fol. 11 as are still to be found at the cinè-talkies, bar all others and bar the benches and the piano.

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The Costs shall be borne by the Defendants.

(Signed) J. DINGLI, D/Registrar.

Defendants' Note of Appeal

In H.M. Commercial Court.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

Note of Appeal of all the Defendants in their aforesaid capacity and of the parties joined in the suit.

10 The Defendants and the parties joined in the suit appear and, deeming themselves aggrieved by the judgment given by this Court on the Fourth May, 1948, hereby enter appeal therefrom to H.M. Court of Appeal.

(Signed) J. XUEREB, Advocate.

On behalf of all the parties excepting Emmanuele Grech.

(Signed) A. MAGRI, Advocate.

On behalf of Emmanuele Grech.

(Signed) G. SCHEMBRI, Legal Procurator.

The Eleventh May, 1948.

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

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(Signed) S. BUGEJA, D/Registrar.

In

H. M. COURT OF APPEAL

Defendants' Petition

In H.M. Court of Appeal.

Writ-of-Summons No. 190/1947.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

The Petition of all the Defendants in their aforesaid capacity and of the parties joined in the suit.

Respectfully sheweth:—

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By Writ-of-Summons filed in H.M. Commercial Court on the 2nd of May, 1947, the Plaintiffs, premising that:- By contract enrolled in the Records of Notary Dr. Ettore Francesco Vassallo on the 29th of July, 1930, Giuseppe Mangion L.P., acting in his capacity as Testamentary Executor of Vincenzo and Carmela Axisa, and duly authorized by the competent Court, leased to Alfredo Zammit, for the period of two years obligatory and two years optional, the Axisa cinematograph at No. 5, Tower Road, Sliema — and that, on that occasion, an inventory was made of the effects that were included in the lease (Exhibit "B"); — that subsequently, by contract enrolled in the Records of the aforementioned Notary on the Second of July, 1934 (Exhibit "C"), the lease in question — as a compromise of the issues involved in the case that was then pending before this Court between Alfredo Zammit and G. Mangion L.P. — was taken up by the parties of whom the present Defendants are the Successors; — that one of the covenants set out in the aforesaid contract was to the effect that nothing should be done to the detriment of the good-will of the Axisa cinematograph leased to the Defendants as above (clause 7); — that, therefore, the aforesaid cinematograph, together with the effects and equipment thereof, is at present being conducted by the Defendants, who are in occupation of the premises by virtue of a tacit extension of lease that expires on the 30th of April, 1947; — that, by Judicial Letter dated 26th of March, 1947, the Plaintiffs, as successors of the first lessors, enjoined the Defendants to vacate and surrender the cinematograph by the 30th of April, 1947; — and that, this notwithstanding, the Defendants have not so vacated and surrendered the premises; — prayed that an Order be made directing the Defendants to vacate and surrender the "Axisa" cinematograph and to hand over the premises to the Plaintiffs, together

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with all the benches, projectors and all the other equipment thereof. — With costs, including the costs of the Judicial Letter dated 26th of March, 1947, and without prejudice to the action for the recovery of damages, assessable in separate proceedings.

10 H.M. Commercial Court, by judgment given on the 4th of May, 1948, dismissed the plea of incompetence, including that set up by Emmanuele Grech in the second paragraph of his Statement of Defence, with costs against the Defendants, and allowed the claim for the eviction from and the surrender of the cinematograph in question — and gave the Defendants fifteen days' time within which to vacate the premises and to return to the Plaintiffs all of such items out of those listed in the inventory at fol. 11 as were still to be found at the cinè-talkies, barring the benches and the piano. — With costs against the Defendants.

The Defendants and the parties joined in the suit, deeming themselves aggrieved by that judgment, entered appeal therefrom to this Court of Appeal by Minute dated 11th May, 1948.

20 The grievance is manifest. It consists mainly in the fact that the Court below held that Ordinance No. XXI. of 1931 (Chap. 109, Revised Edition, Laws of Malta) is applicable only to halls used as a cinematograph, to the exclusion of buildings leased together with the good-will of a cinematograph. In fact the definition of a "shop" in article 2 of the law included "**sala da cinè**" ("any cinema hall" in the English text — "**qualunque locale adibito come sala di cinematografo**" in the original text of the Ordinance). This shows that bare premises, even though used at one time as a cinematograph, do not come within that definition of the law, and that it is necessary that at the time of the lease, the premises be actually used (**adibito**) as a cinematograph. It would otherwise be difficult to understand the word "**adibito**," which cannot mean anything else but **actual use** at the moment of the lease.

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Obviously, the law seeks to extend protection to the cinematographic industry in the actual exercise of its activities, so that the construction which the Court below has placed upon the relevant provision **renders nugatory** the ultimate end of the framers of the law. In fact, if that interpretation were to be held, bare premises intended eventually for use as a cinematograph would enjoy the protection of the law, whilst the lease of a cinematograph as a going concern would be out of it altogether.

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Further, the premises in their present state are different in every material respect from those originally leased to the

No. 18.
Defendants'
Petition
—Continued.

Defendants. They, the Defendants, converted a "silent" into a "talking" cinematograph, replaced the benches by arm-chairs and practically handed back everything to the lessors — so that nothing is left of the cinematograph originally leased to them except the building itself.

Finally, the premises, holding a licence for the sale of wines and spirits, and other refreshments, are to be considered as a "shop" within the meaning of the above definition of article 2 of the law in question.

And once the premises are a "shop," and once the original lease has expired, the Court below lacked the necessary competence to take cognisance of the case. 10

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 further reference to Plaintiffs' oath, for which said Plaintiffs are hereby summoned — the Appellants humbly pray that the judgment given by H.M. Commercial Court on the 4th May, 1948, be reversed and that Plaintiffs' claims be dismissed with the Costs of the First and of this Second Instance. 20

(Signed) A. MAGRI, Advocate.

„ G. MANGION, Legal Procurator.
on behalf of Em. Grech.

„ J. XUEREB, Advocate.
on behalf of the other Appellants.

„ G. SCHEMBRI, Legal Procurator.

This 26th May, 1948.

Filed by G. SCHEMBRI L.P. and G. MANGION L.P. without Exhibits. 30

(Signed) J. DINGLI, D/Registrar.

No. 19.**Defendants' Surety Bond**

No. 19.
Defendants'
Surety Bond

Joseph Vassallo, son of Richard and Georgina née Bartolo, born at St. Julian's, residing in Valletta, appears and hereby stands joint surety with the Appellant Joseph Zammit Bonett A. & C.E., and all the other Appellants, for the costs of this appeal, hypothecating the whole of his present and future property in general and renouncing every benefit accorded by law.

10 (Signed) JOSEPH VASSALLO.

The said Joseph Vassallo has affixed his signature hereto in my presence, this 26th May, 1948.

(Signed) V. PANDOLFINO, D/Registrar.

No. 20.**Plaintiffs' Answer**

No. 20.
Plaintiffs' Answer

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

20 The Answer of Plaintiff Respondents.

Respectfully sheweth:—

The judgment appealed from is fair and just and should be upheld.

Wherefore Plaintiff Respondents respectfully pray that Defendants' appeal be dismissed with costs.

(Signed) G. PACE, Advocate.

This Third June, 1948.

Filed by the Appearer Hector Pace without Exhibits.

(Signed) A. GHIRLANDO, D/Registrar.

No. 21.
Plaintiffs'
Application and
Decree thereon

No. 21.

Plaintiffs' Application and Decree thereon

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

The Application of Plaintiff Respondents.

Respectfully showeth:—

The Appeal involves only a point of law on which this Honourable Court has lately made a pronouncement — namely, whether it is the ordinary Court or the Rent Regulation Board that is to determine whether the Plaintiffs are entitled to recover possession of a business concern, together with the goodwill, equipment and accessories thereof. 10

As proprietors, it is in the interests of the Respondents that the Appeal be heard and determined before the Court goes into recess for the Law Vacations.

Wherefore the Respondents respectfully pray that this Court may be pleased to direct that the Appeal be put on the case-list for hearing at one of the Sittings to be held this month. 20

(Signed) G. PACE, Advocate.
,, ROB. DINGLI, Legal Procurator.

This 3rd June, 1948.

Filed by the Appearer Hector Pace without Exhibits.
(Signed) A. GHIRLANDO, D/Registrar.

His Majesty's Court of Appeal

The Court,

Upon seeing the Application.

Orders that service thereof be made upon the Appellants who are given two days within which to file an Answer. 30

This 4th June, 1948.

(Signed) A. GHIRLANDO, D/Registrar.

Defendants' Answer

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

The Answer of Defendant Appellants to the Application filed by the Plaintiffs on the 3rd June, 1948.

Respectfully sheweth:—

10 So far as the Defendants are aware, the Courts in Malta have never had occasion to deal with a case whose merits are identical to the merits of the present case. Consequently, it is opportune to ascertain whether or not the judgments to which the Respondents have made a generic reference are applicable to the case at issue — and this apart from the fact, referred to by the Appellants in their Petition, as to whether it can be truly said that the dispute involves the good-will, the equipment and the accessories of the premises.

20 Wherefore the Appellants submit that the present case, involving as it does questions concerning the interpretation of the law, and a close examination into the facts and circumstances bearing upon the agreement between the parties, is not so easy of solution as the Respondents suggest in their Application.

(Signed) J. XUEREB, Advocate.

” G. SCHEMBRI, Legal Procurator.

The Ninth June, 1948.

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

(Signed) S. BUGEJA, D/Registrar.

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Decree H.M. Court of Appeal**HIS MAJESTY'S COURT OF APPEAL**

The Court,

Upon seeing the Decree given by the Court on the 4th June, 1948.

Upon seeing the Answer filed by the Appellants.

Dismisses the Application filed by the Respondents on the 3rd June, 1948.

This Eleventh June, 1948.

(Signed) J. N. CAMILLERI, D/Registrar.

No. 24.

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 Prof. E. GANADO, LL.D.

The Honourable Mr. Justice L.A. CAMILLERI, LL.D.

Sitting held on Monday,
the Twenty-Ninth November, 1948. 10

No. 4.

Writ-of-Summons 190/1947.

Joseph, John and Carmelina Axisa, children of the late Emmanuele Axisa; Vincenza, the widow of the said Emmanuele Axisa; Joseph, Victor, Carmelo and Frank Camilleri, as parties concerned in the issue in succession to their father, Peter Camilleri; and Robert, Harry, Hector and Victor Pace, as successors to the share previously held by their brother, Dr. Giuseppe Pace; — 20

versus

Joseph, Paolo, Cettina, the widow of Charles Micallef, Rosaria sive Lucy, wife of Henry Galea, and John, brothers and sisters Zammit Bonett, and Marietta, the widow of Alfredo Zammit, as the successors of Alfredo Zammit, deceased; Mary, the widow of Alfredo Axisa, and Eugene, the wife of Michael Azzopardi, Dolores the wife of Emmanuele Briffa, Vincent, Annie, Eddie, George, Robert, and Joseph, brothers and sisters Axisa, as successors of Alfredo Axisa, deceased; Marianna the widow of Alfredo Debono, and Joseph, Mary, the wife of Alfredo Lanzon, Doris, the 30 40

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wife of Joseph Mifsud, Amelia, the wife of Joseph Zammit Bonett, and Carmelo, brothers and sisters Debono, as the successors of Alfredo Debono, deceased; Emmanuele Grech, and his children, namely: Charles **sive** Carmelo, and Mary, the wife of David Smith, as the successors of their late mother, Carmela, and in respect of their mother's share in the community of acquests between her and her said husband; Edgar Baldacchino; and, in so far as their interests may be concerned, George, Alexander, Edgar, John and Anthony, brothers Portanier, as parties concerned in the issue in so far as it affects the said Edgar Baldacchino; and Walter and Frank Debono and William Axisa, joined in the suit by Decree given on the 28th June, 1947; — and, by Minute dated 17th October, 1947, Carmelo Debono, who took up the proceedings as attorney on behalf of his brothers Walter and Frank, absent from these Islands; and, by Minute dated 27th February, 1948, the said Walter and Frank Debono who, having returned to Malta, have personally taken up the proceedings in the stead of the said Carmelo Debono.

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The Court,

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Upon seeing the Writ-of-Summons, whereby the Plaintiffs, premising that: By Contract enrolled in the Records of Notary Dr. Ettore Francesco Vassallo on the Twenty-Ninth July, 1930, Giuseppe Mangion L.P., acting in his capacity as Testamentary Executor of Vincenzo and Carmela Axisa, and duly authorized by the competent Court, leased to Alfredo Zammit, for the period of two years obligatory and two years optional, the Axisa cinematograph at No. 5, Tower Road, Sliema, and that, on that occasion, an inventory was made of the effects that were included in the lease (Exhibit "B"); that, subsequently, by contract enrolled in the Records of the aforementioned Notary on the Second July, 1934 (Exhibit "C"), the lease in question — as a

No. 24.
Judgment, H.M.
Court of Appeal
—Continued.

compromise of the issues involved in the case that was then pending before this Court between Alfredo Zammit and G. Mangion L.P. — was taken up by the parties of whom the present Defendants are the Successors; — that one of the covenants set out in the aforesaid contract was to the effect that nothing should be done to the detriment of the good-will of the Axisa Cinematograph leased to the Defendants as above (Clause 7); that therefore, the aforesaid cinematograph, together with the effects and equipment thereof, is at present being conducted by the Defendants, who are in occupation of the premises by virtue of a tacit extension of lease that expires on the 30th April, 1947; — that, by Judicial Letter dated 26th March, 1947, the Plaintiffs, as successors of the first lessors, enjoined the Defendants to vacate and surrender the cinematograph by the 30th April, 1947; — and that, this notwithstanding, the Defendants have not so vacated and surrendered the premises; — prayed that an Order be made directing the Defendants to vacate and surrender the Axisa Cinematograph and to hand over the premises to the Plaintiffs, together with all the benches, projectors and all the other equipment thereof; — With costs, including the costs of the Judicial Letter dated 26th March, 1947, and without prejudice to the action for the recovery of damages, assessable in separate proceedings.

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Upon seeing the Statement of Defence of the Defendant Emmanuele Grech, pleading that the Plaintiffs have produced no evidence proving the capacity in which they are appearing and the Defendants should therefore be non-suited; subordinately, the claim should have been filed before the Rent Regulation Board. The present good-will belongs to the Defendants, for the Defendants, acting with Plaintiffs' consent, converted what used to be a silent cinematograph into a "Talkie."

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Upon seeing the Statement of Defence of the Defendants Joseph Zammit Bonett, A. & C.E., Paolo, Cettina, the wife of Charles Micallef, Rosaria **sive** Lucy, the wife of Henry Galea, and John, brothers and sisters Zammit Bonett; — Marietta, the widow of Alfredo Zammit, Mary, the widow of Alfred Axisa, Dolores, the wife of Emmanuele Briffa, Vincent, Annie, Eddie, George, Robert and Joseph, brothers and sisters Axisa; — Marianna, the widow of Alfredo Debono, Joseph, Mary, the wife of Alfred Lanzon, Doris, the wife of Joseph Mifsud, Amelia, the wife of Joseph Zammit Bonett, A. & C.E., and Carmelo, brothers and sisters Debono; — Chares **sive** Carmelo, and Mary, the wife of David Smith, brother and sister Grech — Edgar Baldacchino; — George, Alexander, Edgar, John and Anthony, brothers Portanier; — pleading that:- There are other parties concerned

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in the matter besides the Defendants mentioned in the Writ-of-Summons. They are:- William and Lily Axisa, children of the late Alfredo, and Frankie and Walter Debono, children of the late Alfredo. It is therefore necessary for the better implementation of the case that the aforesaid parties be joined in the suit. On the merits: the claims are untenable in that the lease includes neither the equipment nor the good-will. Moreover, the term of the lease as originally established has expired, so that the case comes within the competence of the Rent Regulation Board. The

10 Defendants should therefore be non-suited. — With costs.

Upon seeing the Statement of Defence of the Defendant Eugene Azzopardi, pleading that this Court lacks the necessary competence to take cognisance of the case: the matter at issue concerns the tacit extension of a lease respecting bare premises devoid of good-will.

Upon seeing the Statement of Defence of William Axisa, pleading that the matter at issue concerns the extension of the lease of business premises and that therefore this Court lacks the necessary competence to take cognisance of the case.

20 Upon seeing the Statement of Defence whereby the Defendant Carmelo Debono, on behalf of Walter and Frank Debono, absent from these Islands, acknowledged service of the Writ-of-Summons and tendered the same pleas put up in his own behalf.

Upon seeing the judgment given by H.M. Commercial Court on the 4th May, 1948, dismissing the plea of incompetence, including the plea set up by Emmanuele Grech in the second paragraph of his Statement of Defence, with costs against the Defendants, and allowing the claim for the eviction from and the surrender of the cinematograph in question —

30 and giving the Defendants fifteen days' time within which to vacate the premises and to return to the Plaintiffs all of such items out of those listed in the inventory at fol. 11 as are still to be found at the cinè-talkies, bar all others and bar the benches and the piano. — And ordered the costs to be borne by the Defendants.

That Court having considered:

40 It is established in evidence that, by Contract enrolled in the Records of Notary Ettore Francesco Vassallo on the 29th July, 1930, the premises in question, together with the good-will and equipment thereof, were originally leased to the late Alfredo Zammit as a Cinematograph. The equipment is inventoried in the document filed at fol. 11 of the Record. One of the conditions

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 Judgment, H.M.
 Court of Appeal
 —Continued.

laid down in the lease-contract was to the effect that all improvements made should be left to the benefit of the property, without any right on the part of the tenant to any compensation therefor; and the tenant undertook not to suspend the cinematographic performances in order not to impair the good-will (Exhibit fol. 9). This shows that Alfredo Zammit had leased a going concern, and not just a building for use as a cinematograph; and the fact was stressed in the judgment given by this Court on the 11th March, 1932 (Exhibit fol. 24). Subsequently, by deed enrolled in the Records of the aforementioned Notary on the 2nd July, 1934, a compromise was made in respect of the dispute that arose between the parties and the predecessors of the Defendants were granted a new lease of the Axisa cinematograph. It was so leased to them in the state in which it was at the time, without prejudice to the good-will and for the period of six years obligatory and six years optional. Other conditions were that the cinematograph was to be given another name, subject to the proprietors' approval, and that the performances were not to be suspended except in the summer months or on good and sufficient grounds (fol. 19). It was further agreed that all improvements should go to the benefit of the proprietors without any right on the part of the tenants to any compensation therefor. Meantime, the Axisa cinematograph had been converted into a Talkies (Deposition Edgar Baldacchino, fol. 58, Emmanuele Grech, fol. 56, and John Axisa, fol. 58); and the benches had been replaced by arm-chairs (ibid fol. 56/57 et seq). And this explains why it is laid down in the contract that the "Axisa" cinematograph was being leased "in its present state and as it stands." Apart from the fact that the conversion into a "Talkie" was but a development of the cinematographic industry, the second contract granted the lease of a cinematograph that had already been converted into a "Talkie," together with the good-will as a "Talkie" and with a name of its own — which had to be changed into another, it is true, but changed subject to the approval of the proprietors. What was given out on lease was not a building in which to run a "Talkies," but a "Talkies" together with the good-will thereof, so much so that it was stipulated that the performances should not be suspended so as not to impair the good-will. The lease therefore was in respect of a business concern, as distinct from a building destined for use as a cinematograph. And once that is so, the lease does not come within the provisions of Ordinance No. XXI of 1931, regulating the re-letting of urban property. That law affects halls which are used as cinematographs. In the case at issue, however, the lease was in respect of a hall or building together with the good-will thereof

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and in the state in which it was to be found at the time — that is to say, together with the improvements that had been introduced and subject to the condition regarding the continuance of the performances; and the lease of business concerns is not envisaged in that Ordinance. And, therefore, when the lease expired, and the Plaintiffs, by Judicial Letter dated 26th March, 1947, demanded the surrender of the premises and the good-will, that is to say, of the concern in question, the Defendants were not entitled to plead the extension of the lease **ope legis**, just as it was not necessary for the Plaintiffs to apply to the Rent Regulation Board for the recovery of the cinematograph; and in any case the proceedings for eviction had necessarily to be instituted before that Court, since that Court was the only competent Court to take cognisance of the case.

No. 24.
Judgment, H.M.
Court of Appeal
—Continued.

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According to the evidence of the Defendant Baldacchino, the benches and the piano were returned and delivered to the proprietors. This appears to be borne out by the evidence of Giuseppe Mangion L.P. who stated that something had been done with them (fol. 59); and Emmanuele Grech never saw them there since he joined the concern. Meantime, no reference whatever is made in the second contract as regards the return of the effects in question; and the parties declared in that contract that they had no other claims against each other beyond those therein settled to their mutual satisfaction. The projecting apparatus is not mentioned even in the inventory annexed to the first contract made in 1930. If an inventory was made on the occasion of the second contract, it has not been produced in this case. —

Upon seeing the Minute of Appeal of the Defendants and the parties joined in the suit.

Upon seeing the Petition filed in this Court of Appeal, whereby the Defendants and the parties joined in the suit pray that the judgment given by H.M. Commercial Court on the 4th May, 1948, be reversed and that Plaintiffs' claims be dismissed with the costs of the First and of the Second Instance.

Upon seeing the Answer of the Plaintiffs, praying that the judgment appealed from be affirmed.

Having heard Counsel on both sides.

Having examined the acts in the Record.

Having considered:

The Court below decided the question as to the Court's jurisdiction in conformity with the view repeatedly upheld by this

No. 24,
 Judgment, H.M.
 Court of Appeal
 —Continued.

Court. Once the lease was not in respect of premises for use as a "Talkies," but concerned premises that had already been used as such, and, in fact, the business itself — and once that lease therefore includes the good-will, equipment and accessories mentioned in the respective contract — the ordinary Courts retain their jurisdiction.

Considering:

By no stretch of the imagination could it be said that the premises in question, which have for so long been known as a cinematograph, and which were later converted into a "Talkies," had enjoyed no good-will. It is true that as a result of the dispute that arose between the parties concerned, the authorities had closed down the premises for a certain period of time; but this does not mean that the good-will had been lost in consequence. No importance is to be attached to the fact that the good-will increased in value during the period of sixteen years that the premises had been held on lease: it is a development which the tenants could have very easily foreseen at the time when they rented the property. Nor is the Court prepared to accept Appellants' view that the premises have been turned into a "shop" because of the bar they introduced therein: There always remains the fact as to the good-will, the equipment and all the accessories.

On these grounds and on the grounds set out by the Court below.

The Court,

Dismisses the Appeal and affirms the judgment given by H.M. Commercial Court on the 4th May, 1948, with the costs against the Appellants — saving that the period of fifteen days established by that judgment shall begin to run from this day.

(Signed) J.N. CAMILLERI, D/Registrar.

No. 25.

Defendants' Petition for Leave to Appeal to H.M. Privy Council

In H.M. Court of Appeal.

Writ-of-Summons No. 190/1947.No. 25.
Defendants'
Petition for Leave
to Appeal to
H.M. Privy
Council

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Joseph, John and Carmelina Axisa, children of the late Emmanuele Axisa; Vincenza, the widow of the said Emmanuele Axisa; Joseph, Victor, Carmelo and Frank Camilleri, as parties concerned in the issue in succession to their father, Peter Camilleri; and Robert, Harry, Hector and Victor Pace, as successors to the share previously held by their brother, Dr. Giuseppe Pace; —

versus

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Joseph, Paolo, Cettina, the widow of Charles Micallef, Rosaria **sive** Lucy, the wife of Henry Galea, and John, brothers and sisters Zammit Bonett, and Marietta, the widow of Alfredo Zammit, as the successors of Alfredo Zammit, deceased; Mary, the widow of Alfredo Axisa, and Eugene, the wife of Michael Azzopardi, Dolores the wife of Emmanuele Briffa, Vincent, Annie, Eddie, George, Robert and Joseph, brothers and sisters Axisa, as successors of Alfredo Axisa, deceased; Marianna the widow of Alfredo Debono, and Joseph, Mary, the wife of Alfredo Lanzon, Doris, the wife of Joseph Mifsud, Amelia, the wife of Joseph Zammit Bonett, and Carmelo, brothers and sisters Debono, as the successors of Alfredo Debono, deceased; Emmanuele Grech, and his children, namely: Charles **sive** Carmelo, and Mary, the wife of David Smith, as the successors of their late mother Carmela, and in respect of their mother's share in the community of acquests between her and her said

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No. 25.
 Defendants'
 Petition for Leave
 to Appeal to
 H.M. Privy
 Council
 —Continued.

husband; Edgar Baldacchino; and, in so far as their interests may be concerned, George, Alexander, Edgar, John and Anthony, brothers Portanier, as parties concerned in the issue in so far as it affects the said Edgar Baldacchino; and Walter and Frank Debono and William Axisa, joined in the suit by Decree given on the 28th June, 1947; — and, by Minute dated 17th October, 1947, Carmelo Debono, who took up the proceedings as attorney on behalf of his brothers Walter and Frank, absent from these Islands; and, by Minute dated 27th February, 1948, the said Walter and Frank Debono who, having returned to Malta, have personally taken up the proceedings in the stead of the said Carmelo Debono.

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The Petition of the Defendants **proprio et nomine** and of the parties joined in the suit.

Respectfully sheweth:—

By Writ-or-Summons filed in H.M. Commercial Court on the 2nd of May, 1947, the Plaintiffs, premising that: by contract enrolled in the Records of Notary Dr. Ettore Francesco Vassallo on the Twenty-Ninth July, 1930, Giuseppe Mangion L.P., acting in his capacity as Testamentary Executor of Vincenzo and Carmela Axisa, and duly authorized by the competent Court, leased to Alfredo Zammit, for the period of two years obligatory and two years optional, the Axisa Cinematograph at No. 5, Tower Road, Sliema — and that, on that occasion, an inventory was made of the effects that were included in the lease (Exhibit "B"); — that subsequently, by contract enrolled in the Records of the aforementioned Notary on the 2nd July, 1934 (Exhibit "C"), the lease in question — as a compromise of the issues involved in the case that was then pending before this Court between Alfredo Zammit and G. Mangion L.P. — was taken up by the parties of whom the present Defendants are the Successors; — that one of the covenants set out in the aforesaid contract was to the effect that nothing should be done to the detriment of the good-will of the Axisa Cinematograph leased to the Defendants as above

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(clause 7); — that, therefore, the aforesaid cinematograph, together with the effects and equipment thereof, is at present being conducted by the Defendants, who are in occupation of the premises by virtue of a tacit extension of lease that expires on the 30th April, 1947; — that, by Judicial Letter dated 26th March, 1947, the Plaintiffs, as successors of the first lessors, enjoined the Defendants to vacate and surrender the cinematograph by the 30th April, 1947; — and that, this notwithstanding, the Defendants have not so vacated and surrendered the premises; — prayed that an Order be made directing the Defendants to vacate and surrender the Axisa Cinematograph and to hand over the premises to the Plaintiffs, together with all the benches, projectors and all the other equipment thereof. — With costs, including the costs of the Judicial Letter dated 26th March, 1947, and without prejudice to the action for the recovery of damages, assessable in separate proceedings.

H.M. Commercial Court, by judgment given on the 4th May, 1948, dismissed the plea of incompetence, including that set up by Emmanuele Grech in the second paragraph of his Statement of Defence, with costs against the Defendants, and allowed the claim for the eviction from and the surrender of the cinematograph in question — and gave the Defendants fifteen days' time within which to vacate the premises and to return to the Plaintiffs all of such items out of those listed in the inventory at fol. 11 as are still to be found at the cinè-talkies, barring the benches and the piano; — With costs against the Defendants.

The Defendants, together with the parties joined in the suit, entered appeal from that judgment, praying that it be reversed, with costs.

This Honourable Court, by judgment given on the 29th November, 1948, dismissed the Appeal and affirmed the aforesaid judgment given by H.M. Commercial Court on the 4th May, 1948, with the costs against the Appellants — saving that the period of fifteen days established by that judgment had to be reckoned from the 29th November, 1948.

The Petitioners deem themselves aggrieved by the judgment given by this Honourable Court as aforesaid and wish to appeal therefrom to His Majesty in His Privy Council.

It is an incontrovertible fact that the matter in dispute far exceeds the sum of Five Hundred Pounds.

Wherefore the Petitioners humbly pray that this Honour-

No. 25.
Defendants'
Petition for Leave
to Appeal to
H.M. Privy
Council
—Continued.

able Court may be pleased to grant them leave to appeal from the aforesaid judgment, given on the 29th November, 1948, to His Majesty in His Privy Council.

(Signed) J. XUEREB, Advocate.
" A. MAGRI, Advocate.
" G. MANGION, Legal Procurator.
" G. SCHEMBRI, Legal Procurator.

The Seventh December, 1948.

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

(Signed) J. DINGLI, D/Registrar.

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No. 26.
Defendants'
Application for
Stay of Execution

No. 26.

Defendants' Application for Stay of Execution

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

Defendants' Application — the wives acting with the consent and concurrence of their husbands.

Respectfully sheweth:—

The Defendants and the parties joined in the suit have this day filed a Petition praying for leave to appeal to H.M.'s Privy Council from the judgment given by this Honourable Court on the 29th November, 1948.

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It is of importance to them that the aforesaid judgment should not be enforced before the appeal is determined.

Obviously, enforcement would be far more detrimental to the Appellants than a stay of execution would be to the Plaintiff Respondents.

Wherefore Appellants respectfully pray that, 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, this Court may be pleased to order the suspension of the judgment appealed from, subject to all such directions thereanent as may be deemed opportune — and this particularly in view of the fact that the Appellants are prepared to tender such

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security as may be established by the Court in order to safeguard the interests of the Plaintiff Respondents in the event of the Appeal proving unsuccessful.

No. 26.
Defendants'
Application for
Stay of Execution
—Continued.

(Signed) J. XUEREB, Advocate.
 „ A. MAGRI, Advocate.
 „ G. MANGION, Legal Procurator.
 „ G. SCHEMBRI, Legal Procurator.

The Seventh December, 1948.

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

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(Signed) J. DINGLI, D/Registrar.

No. 27.

Decree on Defendants' Petition

No. 27.
Decree on
Defendants'
Petition

HIS MAJESTY'S COURT OF APPEAL

The Court,

Orders that service be made upon the Plaintiffs and that the Petition be put on the case-list for hearing at the Sitting to be held on the 10th January, 1949.

This Ninth December, 1948.

(Signed) S. BUGEJA, D/Registrar.

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No. 28.

Decree on Defendants' Application

No. 28.
Decree on
Defendants'
Application

HIS MAJESTY'S COURT OF APPEAL

The Court,

Upon seeing the Application:--

Orders that service thereof be made upon the Plaintiff Respondents who are given two days within which to file an Answer.

This Ninth December, 1948.

(Signed) S. BUGEJA, D/Registrar.

Plaintiffs' Answer to Application for Stay of Execution

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

Plaintiffs' Answer to the Application filed by the Defendants on the 7th December, 1948.

Respectfully sheweth:—

The matter at issue is the eviction of the Defendants from the Axisa Cinematograph on the ground that the premises were held by them by virtue of a tacit extension of lease which had to terminate on the 30th April, 1947 — and which the Plaintiffs, by Judicial Letter dated 26th March, 1947, refused to extend further. 10

According to Section 757 (2) of the Code of Civil Procedure, where the ejectment is demanded after the expiration of the lease, the value is determined by the amount of one year's rent.

The plea set up by the Defendants is that the case should have been brought before the Rent Regulation Board, in that it was with the consent of the landlords that they had converted what was a silent cinematograph into a "Talkie." 20

Nevertheless, the lease in question is still a lease of premises that were leased as a cinematograph, as distinct from a lease of premises that had never been used as a cinematograph and that were converted into a cinematograph, and therefore the rule applicable to the case is that the value of the matter in dispute is equal to one year's rent, i.e. £195. —

Therefore, once the matter in dispute is of the value of less than £500, and once, consequently, no appeal lies from the case at issue, the Plaintiffs resist the Application for suspending the enforcement of the judgment given by H.M. Commercial Court on the 4th May, 1948, and affirmed by this Honourable Court on the 29th November, 1948. 30

(Signed) G. PACE, Advocate.

„ C. GRECH ORR, Legal Procurator.

This Eighteenth December, 1948.

Filed by C. GRECH ORR, L.P., without Exhibits.

(Signed) S. BUGEJA, D/Registrar.

Plaintiffs' Answer to Defendants' Petition

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

Plaintiffs' Answer to the Petition filed by the Defendants on the 7th December, 1948.

Respectfully sheweth:—

10 The value of the matter in dispute is of less than Five Hundred Pounds. In fact, the Plaintiffs, in terms of the provisions of the ordinary law, asked that the Defendants be ordered to vacate the "Axisa" Cinematograph, which was leased to them for the annual rent of £195 — contending that the period of the lease as originally established had expired and that the Defendants were in the enjoyment of the property by virtue of a year by year extension of lease; — and that the Plaintiffs, by Judicial Letter dated 26th March, 1947, had informed the Defendants that they were not prepared to grant
20 them a further extension of the lease in question.

The Defendants maintained that at first the good-will of the "Axisa" Cinematograph leased to them was that of a silent cinematograph, and that, later, when silent pictures were superseded by Talkies, they had to introduce a "Talkies" apparatus so as to continue to exploit the good-will of the premises.

The cinematographic business leased to the Defendants must on termination of the lease be surrendered to the Plaintiffs.

30 The value involved in the case is that established in section 757 (2) of the Laws of Procedure: Where the ejectment is demanded after the expiration of the lease, the value is determined by the amount of the rent of one year — in the case at issue, £195.

Therefore, according to law, the Defendants are not entitled to appeal to H.M. Privy Council, and the Plaintiffs pray that that Petition for leave to appeal be dismissed with costs.

(Signed) G.PACE, Advocate.

„ ROB. DINGLI, Legal Procurator.

40 This Twentieth December, 1948.

Filed by ROB. DINGLI, L.P. without Exhibits.

(Signed) S. BUGEJA, D/Registrar.

Plaintiffs' Minute

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

Plaintiffs' Minute.

Respectfully sheweth:—

The proper measure of value for determining the appealable amount when the defendant is the appellant, is the amount which has been recovered by the plaintiff in the action and against which the appeal would be brought (Allan vs. Pratt 13. A.C. 780). — Bentwich, Practice of the Privy Council in Judiciary Matters, p. 142.

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It has been consistently held in local judicial practice that, where the appealable amount is indeterminate, the Court should, by analogy, apply the provisions of the Code of Civil Procedure envisaging the plea of incompetence on the ground of the uncertain or indeterminate nature of the value at stake. (App. Capt. Luke vs. Scicluna, 9th June, 1869, Vol. V, Collection of judgments, p. 108; Sant Cassia vs. Dr. Frendo, 28th June, 1872, Collection of Judgments, Vol. V, p. 246; Vallone vs. Nicosia, 7th Nov. 1874, Collection of Judgments, Vol. VII, p. 233; Huber vs. Col. A. Motter, 22nd February, 1915, Collection of Judgments, Vol. XXII, p. 229; Dimech vs. Critien, 5th Nov. 1928, Collection of Judgments, Vol. XXVII, p. 743).

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In the case at issue, the Plaintiffs sought to recover possession of the Axisa Cinematograph business which, by virtue of a tacit extension of the expired original lease, continued to be held by the Defendants from one year to another. This Court, affirming the judgment given by the Commercial Court, dismissed the plea that the premises were to be considered as leased without good-will and held that the lease was in respect of the premises as a business concern.

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The provisions of section 757 (2) of the Laws of Procedure are therefore applicable in the case at issue, and once the rent was of £195 per annum, the Defendants are not entitled to an appeal to H.M.'s Privy Council.

(Signed) G. PACE, Advocate.

The Twenty-Second December, 1948.

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Filed at the Sitting by Dr. G. PACE without Exhibits.

(Signed) J. MICALLEF, D/Registrar.

Defendants' Application

In H.M. Court of Appeal.

In the matter of the suit:

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A. & C.E. & Others.

The Application of the Defendants **proprio et nomine**.

Respectfully sheweth:—

10 Defendants' Petition for leave to appeal to His Majesty's Privy Council, and their Application for a stay of execution, are pending before this Court; and the case stands adjourned to the 10th January, 1949.

Meantime, the Plaintiffs have sued out a Warrant of Eviction through H.M. Commercial Court.

20 The Defendants filed an Application before that Court praying for the suspension of the Warrant in question, and that Court, by Decree given on the 22nd December, 1948, dismissed the Application "without prejudice to such other remedies as the law accords to the Applicants, to be sought before the competent Court" — referring no doubt to the proceedings pending before this Court for the suspension of the judgment given in the case.

Nevertheless, in terms of that Decree of H.M. Commercial Court, it will be possible for the Plaintiffs, pending this Court's pronouncement on the Application for stay of execution, to enforce the Warrant of Eviction.

30 In that manner, the provisions of section 5 of the Order-in-Council of 1909, whereunder this Court, even on its own motion, is empowered to grant a stay of execution pending the conclusion of the Appeal before the Supreme Court, would be circumvented.

Such a step, apart from the fact that it would prove greatly detrimental to the Defendants **proprio et nomine**, would paralyse the right of the Court itself to take the initiative in granting a stay of execution: a right which is established by the clear wording of section 5 of the Order-in-Council — which is different to that used in section 267 of the Laws of Procedure, wherein the benefit of a stay of execution is con-

No. 32.
Defendants'
Application
—Continued.

fined to the **debtor** only — and also by the construction that this Court has consistently placed upon that section of the Order-in-Council.

Wherefore the Defendants respectfully pray that this Court may be pleased to give all necessary directions in order to safeguard the rights envisaged in the Order-in-Council under reference, and, further, to order that nothing shall be done by the Plaintiffs to disturb the present state of affairs until this Court makes its pronouncement on the Application for a stay of execution — if necessary, the Law Vacations being dispensed with and an earlier date than that of the 10th January, 1949 being fixed for the hearing of the case. 10

Alternatively, this Court may consider it opportune to extend the period within which the premises have to be surrendered at least up to the 10th January, 1949, considering that Defendants' Application was filed during the run of that period of fifteen days, that is to say, on the 7th December, 1948.

(Signed) A. MAGRI, Advocate.
 " J. XUEREB, Advocate. 20
 " G. SCHEMBRI, Legal Procurator.
 " G. MANGION, Legal Procurator.

This Twenty-Third December, 1948.

Filed by GIUS. MANGION L.P. without Exhibits.

(Signed) S. BUGEJA, D/Registrar.

No. 33.
Decree on
Defendants'
Application

No. 33.

Decree on Defendants' Application

HIS MAJESTY'S COURT OF APPEAL

The Court,

Upon seeing the Application filed by the Defendant Appellants on the 23rd December, 1948. 30

Upon seeing the record of the proceedings relating to Defendants' Petition for leave to appeal to H.M. Privy Council.

Upon seeing Defendants' Application for stay of execution.

Upon seeing the **proces verbal** whereby both Petition and Application were put down for hearing on the 10th January, 1949.

Allows the Application, extending the period for ejectment up to the 15th January, 1949, without prejudice to any rights to which the Plaintiffs may be entitled for the recovery of damages, and saving further directions, if necessary.

No. 33.
Decree on
Defendants'
Application
—Continued.

Immediate service of the present Decree shall be made upon the Plaintiffs.

Costs reserved.

This Twenty-Third December, 1948.

(Signed) J. DINGLI, D/Registrar.

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No. 34.

Defendants' Minute

No. 34.
Defendants'
Minute

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A.& C.E. & Others.

Defendants' Minute.

Whereby they produce the annexed Note of Submissions, marked "A."

20

(Signed) J. XUEREB, Advocate,

„ A. MAGRI, Advocate.

„ G. MANGION, Legal Procurator.

„ G. SCHEMBRI, Legal Procurator.

The Thirty-First December, 1948.

Filed by GIUS. MANGION L.P. with a Note of Submissions.

(Signed) S. BUGEJA, D/Registrar.

No. 35.

Defendants' Note of Submissions

No. 35.
Defendants'
Note of
Submissions

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A.& C.E. & Others.

30

Defendants' Note of Submissions.

Respectfully sheweth:—

At the Sitting held on the 22nd of the present month, the question was raised as to whether the stay of execution of the

No. 35.
Defendants',
Note of
Submissions
—Continued.

judgment on appeal should have been demanded by Application or by means of a Writ-of-Summons in terms of section 267 of the Laws of Procedure.

So far as this matter is concerned, it is submitted that stay of execution has been demanded by way of an Application in every case known to the undersigned Advocates up to date. The last of such cases was between Emmanuele Borg and Joseph Grixti & Others, determined by this Court on the 30th April, 1948. In that case, the Court held that it was the only competent Court to determine whether or not a stay of execution should be granted, thereby ruling that section 267, contemplating the suspension of judgments given by the Courts of First Instance, is inapplicable in these cases. In point of fact, in that case, the question was not raised by the Court, and it would undoubtedly have been raised by the Court if the matter so required. 10

The matter as regards stay of execution from judgments wherefrom appeal is pending before H.M. Privy Council is regulated by section 5 of the Order-in-Council of the 22nd November, 1909. Once no special procedure has been laid down in that section, the inference is that certain latitude has been allowed as regards the procedure to be followed, and that suspension may be demanded also by way of an Application. There is no doubt it was the intention of the legislator to make special provisions as regards Appeals to the Privy Council, thereby putting the matter out of reach of the ordinary rules of Civil procedure. That such in fact was the aim of the legislator is clearly shown by section 2 of the Laws of Civil Procedure, wherein it is laid down that the Courts of Justice of Civil Jurisdiction are exclusively vested with the judicial authority in Civil matters within the jurisdiction of the Tribunals of these Islands, **saving always the provisions as regards appeals to H.M. in His Privy Council.** 20 30

The Courts in Malta have so construed the intention of the legislator and have invariably upheld the view that the Code of Civil Procedure concerns only the suspension of judgments appealed from **in Malta and before the Court in Malta.** "In cases of appeals to H.M. Privy Council it is the Order-in-Council that determines the question as to the enforcement of the judgment appealed from." (Collection of Judgments, VIII, p. 396, col. 2), which is in consonance with section 267, which contemplates the enforcement of judgments on appeal from the Courts of First Instance. 40

Such is the supremacy of the Order-in-Council that it admits evidence by affidavit for the purpose of determining the value involved in the dispute (App., Commercial Hall, 5th November, 1935: "Dr. W. Harding nomine vs. H. Zammit") and this because evidence by affidavit is admitted by the rules governing appeals to the Privy Council — though no such evidence is admitted in our laws.

10 There are various reasons why procedure by **analogy** is inadmissible: (a) section 267 of the Laws of Procedure calls for conditions that are different to those imposed by section 5 of the Order-in-Council. Under section 267, it is only the debtor who may apply for a stay of execution, whilst under section 5 of the Order-in-Council the Court itself has the power to grant a stay of execution independently of any request to that end by the debtor — and, the measure being one of the greatest importance, the inference to be drawn is that the **power** of the Court is more in the nature of a **duty**, considering that it is exercised only where "to the Court shall seem just." The difference is all the more obvious when it is considered that the
20 **enforcement of the judgment** has to be applied for to this Court, whilst in the case of an appeal from a Court of First Instance, enforcement is made by the Court, without the need of seeking any authorization. — (b) Section 5, contrary to section 267 of the Laws of Procedure, does not require the condition as to "the greater prejudice to the debtor," but stipulates only that a stay of execution shall seem just to the Court — "if to the Court shall seem just." — (c) Section 267 demands security for the execution of the judgment eventually to be given by the Appellate Court, while under section 5 of the
30 Order-in-Council security is meant for and is limited to "the due performance of such order as H.M. in Council shall think fit to make thereon." — (d) Whilst section 267 requires a surety bond, it is enough under section 2 of the Order-in-Council to tender security, which may consist of the deposit of a sum of money — as was done under an Order of this Court in re "Borg vs. Grixti."

40 Apart from the foregoing, the rules of procedure are a matter of public policy, and, therefore, they are subject to restrictive interpretation and cannot be applied with any degree of elasticity as between one case and another — much less so where analogy is lacking.

The need for restrictive interpretation is felt all the more keenly when it is considered that analogous or extensive interpretation may prejudice the appellants to the extent of an

No. 35.
Defendants'
Note of
Submissions
—Continued.

annulment of the procedure initiated by them by means of an Application. In other words, it may reduce itself to penalty and forfeiture when, in such cases, the principle "**in odiosis, quod minimum est sequimur**" is to be followed. It is the principle that has been adopted by the local Courts (Collection of Judgments, Vol. 5, p. 68, col. 1; and Vol. VI, p. 592, col. 2 at foot). The same view is held also by the text-books. "In such an odious matter as a forfeiture of a right, it is wrong to create grounds for forfeiture which are not expressly envisaged in the law. (Fadda, Giurisprudenza, Codice Civile Italiano, Disposizioni Preliminari, art. 4, Codice Civile Italiano). 10

After all, once no special procedure has been established by the law as regards the request for a stay of execution of judgments wherefrom appeal lies to the Privy Council, the inference is that the procedure to be admitted is that which has been followed "**per aequipollens**" (Collection of Judgments, Vol. VI, p. 442, col. 1 at foot and p. 476 col. 1, at foot).

The Plaintiffs themselves have been so conscious of the regularity of the whole matter that they made no attempt either in the written or the oral proceedings to put up the plea of wrongful procedure. 20

In case of doubt, the procedure followed, rather than be annulled, should be upheld.

However, the Plaintiffs, in the Minute filed in answer to the Defendants' Application for a stay of execution, maintained that no stay of execution could be granted inasmuch as leave to appeal is inadmissible on the ground that the value in dispute does not amount to £500 or upwards.

That plea is entirely groundless. Section 2 of the Order-in-Council contemplates also an appeal that, directly or indirectly, involves some claim or **question** to or respecting property or some Civil right amounting to or of the value of £500 or upwards. This goes to show that the value is determined, not only by the claim, but also by the question that may be involved in the issue. The legislator would otherwise give undue preference to the Plaintiff to the detriment of the Defendant; and he therefore strives to put both on the same level by the insertion of the word "question." Now the plea has been set up that the good-will of Plaintiffs' property belongs to the Defendants, and the Court below, as well as this Court, studied and had perforce to determine the point in view of the fact that thereon rested the plea of incompetence raised by 30 40

the Defendants. It follows therefore that the value involved in the dispute is not that of a year's rent, but the value of the good-will of a cinematograph in the heart of Sliema — which obviously exceeds £500.

It is not necessary that the value in dispute should be established in the act initiating the proceedings: it may be established in any manner (Collection of Judgments, Vol. XXV, 1, 650 & 891).

10 It is also an untenable argument that the value involved is that which the Appellant has lost in the case. Indeed, in the case at issue, the argument furthers Defendants' case, for the good-will, declared to appertain to the Plaintiffs, and not to the Defendants, is of the value of £500 and more.

Further, the claim for eviction involves also the claim in respect of the good-will, for the Plaintiffs have not sought the recovery of the bare premises, but the recovery of the cinematograph, together with the good-will thereof, so that the value of at least £500 is involved also in Plaintiffs' claim.

20 Finally, it is to be pointed out that, properly speaking, it is before the Courts of First Instance that proceedings are instituted by Writ-of-Summons, and that in the Appellate Court that form of procedure is followed only in those cases established by law.

In the circumstances of the case, it would be fair if, at the Sitting to be held on the 10th January, 1949, the Court were first to grant leave to appeal, and then proceed to give its decision on the request for a stay of execution — seeing that the question as regards the value involved in the dispute is common both to the one and to the other procedure.

30 Wherefore the Defendants submit that Plaintiffs' plea is untenable and should be dismissed with Costs.

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

No. 36.
Plaintiffs' Minute

No. 36.

Plaintiffs' Minute

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A.& C.E. & Others.

Plaintiffs' Minute.

Whereby they produce the annexed Note of Submissions, marked "A."

(Signed) G. PACE, Advocate.

" R. DINGLI,
Legal Procurator.

10

This Fourth January, 1949.

Filed by ROB. DINGLI L.P. with a Note of Submissions.

(Signed) A. GHIRLANDO,
D/Registrar.

No. 37.
Plaintiffs' Note
of Submissions

No. 37.

Plaintiffs' Note of Submissions

In H.M. Court of Appeal.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A.& C.E. & Others.

20

Plaintiffs' Note of Submissions.

Respectfully sheweth:—

1. As to procedure for stay of execution by Application.

The Laws of Procedure are laws of public policy and no departure therefrom is admissible. Our Code of Procedure prescribes the manner in which the party cast in the Court of First Instance may seek a stay of execution, and that party must perforce follow the procedure therein laid down.

It is a fact that the Order-in-Council prescribes no form of procedure for a stay of execution, and, therefore, in a case such as the one at issue, it is incumbent upon the Court to have recourse to analogy — as is done in similar cases and as is being done in the present case in so far as the question of the value involved is concerned. In fact, as shown by the judgments

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quoted in the preceding Minute filed by the Plaintiffs, these Courts, in determining whether or not the value involved amounts to £500 — in those cases where the value involved is not expressly indicated — invariably seek the guidance to be drawn by analogy, that is to say, the guidance of the rule whereby the Laws of Procedure establish the value involved for the purpose of the plea of incompetence. Such has always been the practice of our Courts and it is giuridically incorrect to assert that once no special procedure has been laid down by the law, a stay of execution need not be sought by a Writ-of-Summons and may instead be sought by Application.

The question was not raised, and therefore no pronouncement was made by the Court, in the case quoted by the Defendants, namely, Borg vs. Grixti.

The Code of Civil Procedure, in the case of an ordinary appeal from a judgment of a Court of First Instance, lays down, not only that the appellant shall sue out a Writ-of-Summons, but also that he shall, **together with the Writ-of-Summons**, give a sufficient security for the execution of the judgment. The procedure adopted by the Defendants in no way safeguards the interests of the Plaintiffs.

2. Defendants' appeal is frivolous and untenable and has been lodged solely with the object of securing some delay in handing over the Cinema Axisa, thereby enabling the Defendant Baldacchino and the other Defendants, who operate other leading Cinemas at Sliema, such as the Gaiety and the Majestic, to ward off — until the Appeal is determined by the Privy Council — such competition as may be offered by the Plaintiffs by operating the Cinema Axisa, to the recovery of which they are entitled in terms of the judgment given by H.M. Commercial Court, upheld and affirmed **in toto** by this Honourable Court.

3. This Court is authorized to grant a stay of execution only in the case where the judgment appealed from requires the Appellant to pay money or **to perform a duty** — as, for instance, where the Appellant is required to render services (vide "Prof. Ullo Xuereb vs. Prof. Augustus Bartolo," wherein the Defendant was required to perform his duty as a Member of Parliament).

40 The present case involves no performance of duty and no payment of money and therefore this Honourable Court is not authorized by the law to grant a stay of execution.

No. 37.
 Plaintiffs' Note
 of Submissions
 —Continued.

The Appellants have no other interests at stake than that the Respondents should provide sufficient security to cover such damages as they may sustain in the event of the Privy Council reversing the judgments given by these Honourable Courts. The Respondents are prepared to give such security and therefore the Appellants would suffer no prejudice if the judgment of H.M. Court were to be enforced before the appeal is determined by H.M. Privy Council. The Appellants are bound to show to the satisfaction of the Court that the enforcement of the judgment would cause more prejudice to them than a stay of execution would cause to the Plaintiff Respondents. 10

As the Plaintiffs are prepared to substantiate in evidence, the Appellants have since the 1st July, 1948 kept the Cinema Axisa closed down, without providing for its upkeep and without carrying out the necessary repairs to the ceiling. The upshot is that the good-will has been completely lost. Meantime, the Appellants are operating the Gaiety and the Majestic at a very handsome profit, and if the enforcement of the judgment were to be suspended for an indeterminate period of time, i.e., until the Appeal is determined by H.M. Privy Council, they would attain the main object they have in view, namely, that of making it impossible for the Plaintiffs to operate the Cinema Axisa, causing them the loss of considerable profit and securing for themselves the exclusive or almost exclusive monopoly of the Sliema area. 20

4. Where the Appeal to the Privy Council is frivolous and vexatious, it is within the unchallengeable discretion of the Court to dismiss the demand, subject to an Order directing the Plaintiffs to give sufficient security to safeguard the interests of the Defendants. It was so held in re "Hinton, Ex p. 2 Deac. and Ch. 407, Mews Digest Vol. 1, 2nd Ed., p. 620 under heading 9: Staying proceedings: "An appeal pending is not a sufficient ground for staying proceedings, more especially when it is plain that the appeal is brought for the purpose of delay." 30

Similarly, it was held in "Barrs vs. Fewks" 35. L.J. Ch. 188 (p. 628 of Vol. 1 above) that: "Where a plaintiff obtained a decree, ordering him to be let into possession of real estate: on motion, by the defendant, who was about to appeal, the plaintiff declining to give security to refund the rents in the event of the decree being reversed, execution of the decree was ordered to be stayed until further orders, the defendant giving security for what should be found due from him in respect of past rents; the future rents to be paid into Court, with liberty to the plain- 40

tiff to apply for a maintenance order, and for costs of the appeal."

No. 37.
Plaintiffs' Note
of Submissions
—Continued.

If the Court were to follow that principle, the Plaintiffs, under the judgment given in Malta, would have the right to be let into possession of the Cinema Axisa, subject to security being given by them for such damages as the Defendants may sustain in the event of the judgment being reversed. The Defendants are not operating the cinematograph, and therefore the opening of the cinematograph by the Plaintiffs would not
10 deprive them of any profits that they are making from that cinematograph. The Plaintiffs may possibly be ordered to deposit in Court, as a guarantee and without prejudice, the whole profits that, in the exercise of the discretion of a **bonus paterfamilias**, they may realise from the Cinema Axisa from the present day until the Appeal is determined by H.M. Privy Council — thus adequately safeguarding the interests of the Defendants.

The foregoing is being proposed without prejudice to the fact that in terms of section 5 of the Order-in-Council of 1909,
20 the only two cases in which this Court is authorized to suspend execution are those involving **payment of money or performance of a duty** — none of which is applicable to the case.

(Signed) G. PACE, Advocate.

No. 38.

Decree on Application for Stay of Execution
HIS MAJESTY'S COURT OF APPEAL
(Commercial Hall)

No. 38.
Decree on
Application for
Stay of Execution

Judges:—

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

Sitting held on Monday,
the 10th January, 1949.

No. 2.

Writ-of-Summons No. 190/1947.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A.& C.E. & Others.

The Court,

40 Upon seeing the Application filed by the Defendant Appellants on the 7th December, 1948, praying for a stay of

No. 38.
Decree on
Application for
Stay of Execution
—Continued.

execution of the judgment given by this Court on the 29th November, 1948.

Upon seeing Respondents' Answer, resisting the application for a stay of execution.

On the question as to whether or not the demand for a stay of execution by way of an Application has been properly made from the point of view of procedure.

Having heard Counsel on both sides.

Considering:

The question before the Court is whether the demand for a stay of execution should have been made by Writ-of-Summons, as required by section 267 of the Code of Civil Procedure on pain of annulment, or whether such demand may be made also by means of an Application. 10

The provisions of section 267 are in respect of a judgment given by a Court of First Instance wherefrom an appeal has been lodged to this Court; and it lays down that the Court of First Instance may, in the cases therein envisaged, on the demand, by Writ-of-Summons, of the debtor by whom the appeal is entered, order a stay of execution of the judgment. In that case, the Writ-of-Summons is necessary both from the point of view of procedure and giuridical logic, for, after pronouncing judgment, the Court of First Instance has no further jurisdiction in the case except in so far as the execution of the judgment is concerned, when the judgment has become absolute; and if the debtor is to seek relief from the provisions as regards the execution of the judgment, and to demand a stay of execution, it is necessary both giuridically and ritually that he should revive the jurisdiction of the Court by means of an act whereby, normally, according to law, approach is made to that Court, that is to say, by Writ-of-Summons. This is so true that, frequently, in those cases where further directions are necessary notwithstanding that judgment has been pronounced, the Court of First Instance makes express reservation to that end in order that it may retain its jurisdiction. 20 30

The present case, however, is totally different. After the judgment given by this Court, the party cast, turning to a special law, the Order-in-Council of 1909, asked for leave to appeal to His Majesty in His Privy Council. According to section 5 of that Order-in-Council, this Court may, when granting leave to appeal, either direct that the judgment be carried into execution or that the execution thereof be suspended. 40

That stage has not been reached, for Appellants' Petition for leave to appeal has not yet come up for discussion before this Court: and consequently the demand for a stay of execution refers merely to the temporary period that must elapse before the petition is disposed of.

No. 38.
Decree on
Application for
Stay of Execution
—Continued.

It follows that, once Appellants' Petition for leave to appeal is still pending before it, this Court has the necessary jurisdiction to give all such directions as may be necessary.

10 Therefore, in the circumstances — and apart from other considerations — a mere Application, without any need for a Writ-of-Summons, is sufficient.

On these grounds,

The Court,

Declares that, in the present case, the demand by Application for a Stay of Execution is correct from the point of view of procedure. —

Costs reserved to the Order on Appellants' Petition for leave to appeal to H.M. Privy Council.

(Signed) J. N. CAMILLERI, D/Registrar.

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No. 39.

No. 39.
Decree granting
Stay of Execution

Decree granting Stay of Execution

HIS MAJESTY'S COURT OF APPEAL

Sitting held on the
10th January, 1949.

The Court,

Without prejudice to any action according to law **si et quatenus**, postpones the execution of the judgment up to the 22nd January, 1949.

30 And orders that the case be set down for hearing on the 21st January, 1949.

(Signed) J. N. CAMILLERI, D/Registrar.

No. 40.
Decree granting
Conditional
Leave to Appeal

No. 40.
Decree granting Conditional Leave to 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.

Sitting held on Friday,
the Twenty-First January, 1949. 10

No. 15.
Writ-of-Summons No. 190/1947.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A.& C.E. & Others.

The Court,

Upon seeing the Petition whereby the Defendants **proprio et nomine** and the parties joined in the suit pray for leave to appeal to His Majesty in His Privy Council from the judgment given by this Court in the above case on the 29th November, 1948. 20

Upon seeing the Answer filed by the Respondents, resisting the Petition on the ground that the value involved is of less than Five Hundred Pounds.

Having heard Counsel on both sides.

Having examined all the acts in the Record.

Considering:

The case was for the eviction of the Defendant from the Axisa Cinematograph at Sliema, the Plaintiffs contending that the lease had expired and that they were consequently entitled to retake possession of the premises together with the good-will and the equipment thereof. The Defendants put up the plea that the ordinary Courts lacked jurisdiction in that the lease was merely in respect of the bare premises — the good-will thereof being of their own contriving. The issue necessarily turned on that point, and the Court below, by judgment given on the 4th May, 1948, dismissed the plea of lack of jurisdiction and allowed the claim for eviction, ordering that the cinematograph, together with certain articles of equipment, be handed over to the Plaintiffs within fifteen days. 30 40

Considering:

The Defendants appealed, and this Court, by judgment given on the 29th November, 1948, affirmed the judgment given by the Court below. This Court considered *inter alia* that: "By no stretch of the imagination could it be said that the premises in question, which have for so long been known as a cinematograph, and which were later converted into a "Talkie," had enjoyed no good-will. It is true that, as a result of the dispute that arose between the parties concerned, the authorities had closed down the premises for a certain period of time; but this does not mean that the good-will had been lost in consequence." And the Court then proceeded to give other reasons in support of the conclusion that the good-will did not belong to the Appellants and that it was inherent to the lease contract under reference.

No. 40.
Decree granting
Conditional
Leave to Appeal
- Continued.

Considering:

The foregoing shows that the Court had to deal, not only with a question concerning a lease-contract pure and simple, but also with the "question" arising out of Defendants' plea, namely, whether the good-will was comprised in the lease, and, therefore, whether it belonged to the Plaintiffs or to the Defendants. The provisions of section 576 (2) of the Laws of Procedure, quoted by the Plaintiffs, are therefore applicable.

Bentwich, Privy Council Practice (Second Edition, page 142) states that in order to determine "the proper measure of value for determining the question" . . . "the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. Where an action for possession and mesne profits was dismissed, the appealable amount was the value of the property and the mesne profits (Mohideen Hadijar etc.). In some cases the value to the Defendant of an adverse judgment is greater than the value laid by the plaintiff to his claim. If so, it would be unjust that he should be bound not by the value to himself, but by the value originally assigned to the subject-matter of the action by his opponent." (Although the claim was confined to ejection, Defendants' plea gave rise to the question, gone into by the Court below and by this Court, as to whom the good-will belonged).

Considering:

According to section 2 (a) of the Order-in-Council of 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 £500 or upwards, or where the Appeal

No. 40.
Decree granting
Conditional
Leave to Appeal
—Continued.

involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of £500 or upwards.

That provision of the law is therefore applicable by reason of the fact that Defendants' plea has raised the question as regards the good-will of the premises. As regards the point as to whether or not the good-will is at present worth £500 (and it would appear **prima facie** that the good-will of a Talkie at Sliema is worth more than £500) — or even if the value thereof is indeterminate — the considerations that apply are those held by this Court in the judgment given on the 7th November, 1923 in re "Mifsud vs. Nicosia" (Collection Vol. XXV, p. 650) and the case-law therein quoted: "In connection with Appeals to His Majesty's Privy Council, it is the practice of this Court, where an indeterminate or uncertain value is concerned, to rely on Appellant's declaration in determining the value of the matter in dispute, as shown by the judgment given by this Court on the 25th February, 1874 in re Terreni vs. Rapinett (Collection Vol. VII, p. 35), on the 12th December, 1900 in re the Hon. Vella **nomine** vs. Apap (Collection Vol. XVII, p. 170) and on the 10th April, 1922 in re Micallef vs. Gatt — which practice is in consonance with the provisions of section 768 of the Laws of Organization and Civil Procedure" — unless in the opinion of the Court the value is manifestly below £500.

As regards stay of execution: According to section 5 of the Order-in-Council of 1909, where the judgment appealed from requires the Appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the Respondent shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of the Order of His Majesty in Council, and in case the Court shall direct the contrary, such security shall be given by the Appellant.

The Respondents have submitted that that provision of the law is inapplicable in that the issue concerns only the surrender of property and does not concern either the payment of money or the performance of a duty: but the Order of the Court directing the Defendant to vacate the property amounts to an Order directing the Defendant to perform a duty, and therefore that section of the law is applicable.

Taking into consideration all the circumstances of the case, including the prejudice that may be sustained by the Appellants by the execution of the judgment, or by the Respondents by the suspension thereof — and having regard to the fact that the Appellants own other cinemas at Sliema — the Court holds that greater prejudice would result if an Order were made for the suspension of the judgment.

No. 40.
Decree granting
Conditional
Leave to Appeal
—Continued.

On these grounds:

The Court,

- 10 Gives the Appellants twenty days within which to declare on oath that the value of the good-will of the Talkies in question is of Five Hundred Pounds or upwards, and, provided that they shall within that time make such declaration on oath, allows the Petition and grants them conditional leave to appeal from the judgment given by this Court on the 29th November, 1948, to His Majesty in His Privy Council, subject to their entering into good and sufficient security, in terms of section 4 of the Order-in-Council aforesaid, within one month from the date on which they shall make the declaration on oath
- 20 aforesaid, in a sum not exceeding Four Hundred Pounds, and, further, gives the Appellants three months, to run as above directed, within which to procure the preparation and translation of the Record and the transmission thereof to the Judicial Committee of the Privy Council. —

- At the same time, orders that the Respondents shall, within twenty days to run as above, tender security, consisting of a deposit of the sum of One Hundred Pounds, for the due enforcement of the aforesaid judgment of the 29th November, 1948, and herein undertake and bind themselves, under the
- 30 general hypothecation of the whole of their present and future property, to deposit in the National Bank of Malta, throughout the intervening period until the case is determined by the Judicial Committee, every six months, in arrear, the profits realised during that period of six months, with interest thereon, such deposit to remain pledged until final judgment in the present case is given by the Judicial Committee.

Costs hereof reserved to the final Order.

- In the event, however, of the Appellants failing to make the above declaration on oath within the time specified, the
- 40 Petition shall stand dismissed, with Costs against the Appellants.

(Signed) J. N. CAMILLERI, D/Registrar.

Plaintiffs' Application

In H.M. Court of Appeal.

Joseph Axisa & Others.
vs.
Joseph Zammit Bonett A.& C.E. & Others.

The Application of the Plaintiff Respondents.
Respectfully sheweth:—

This Court, by judgment given on the 21st January, 1949, ordered the Plaintiff Respondents to make a deposit of £100 for the due enforcement of the judgment of the 29th November, 1948, and to hypothecate the whole of their present and future property by way of security for the obligation whereunder they are to deposit in favour of the Defendant Appellants, in the National Bank of Malta, throughout the intervening period until the case is determined by the Judicial Committee, every six months, in arrear, the profits and interest thereon made during that period of six months by the Cinema Axisa, now renamed Alhambra, at No. 5, Tower Road, Sliema — such deposit to remain pledged until final judgment is given by the Judicial Committee. 10
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The Plaintiff Respondents have duly made the deposit of the sum of £100 by Lodgment Schedule dated 22nd January, 1949, and, on the same day, they delivered to the Deputy Registrar the hypothec note required by the aforesaid judgment.

The Deputy Registrar prepared the respective Note of Registration, but the Director of the Public Registry is unable to accept it because it lacks the particulars as to amount required by section 2147 (d) and 2151 (2) of the Civil Code.

As the amount has not been established in the judgment, it is necessary that the case be restored to the list so that this Honourable Court may give all appropriate directions thereanent. 30

Until this is done, it will not be possible for the Warrant of Eviction issued by H.M. Commercial Court to be carried into execution.

Wherefore the Plaintiff Respondents respectfully pray that, for the purposes of section 2151 (2) of the Civil Code, this

Court may be pleased to restore the case to the list as early as may be possible in order that the appropriate directions be given and the judgment be made enforceable.

No. 41.
Plaintiffs'
Application
--Continued.

(Signed) G. PACE, Advocate.
,, ROB. DINGLI, Legal Procurator.

This Third February, 1949.

Filed by ROB. DINGLI L.P. without Exhibits.

(Signed) J. N. CAMILLERI, D/Registrar.

No. 42.

No. 42.
Decrees on
Plaintiffs'
Application

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Decrees on Plaintiffs' Application

HIS MAJESTY'S COURT OF APPEAL

The Court,

Orders that the Application be put on the case-list of the 10th February, 1949, the period established by law being abridged -- and that service be made upon the Defendant Appellants.

This 3rd February, 1949.

(Signed) S. BUGEJA, D/Registrar.

HIS MAJESTY'S COURT OF APPEAL

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The Court,

Upon seeing the Application filed by the Plaintiff Respondents.

Upon seeing the Decree given on the 3rd February, 1949.

Upon hearing Applicants' Counsel — Counsel for the Appellants having failed to appear.

Orders that the hypothec required by the judgment given on the 21st February, 1949, shall be for the sum of One Thousand Pounds.

This 4th February, 1949.

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(Signed) J. N. CAMILLERI, D/Registrar.

No. 43.

Schedule of Deposit

In H.M. Court of Appeal.

Writ-of-Summons No. 190/1947.

Joseph, John and Carmelina Axisa, children of the late Emmanuele Axisa; Vincenza, the widow of the said Emmanuele Axisa; Joseph, Victor, Carmelo and Frank Camilleri, as parties concerned in the issue in succession to their father, Peter Camilleri; and Robert, Harry, Hector and Victor Pace, as successors to the share previously held by their brother, Dr. Giuseppe Pace; —

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versus

Joseph, Paolo, Cettina, the widow of Charles Micallef, Rosaria **sive** Lucy, wife of Henry Galea, and John, brothers and sisters Zammit Bonett, and Marietta, the widow of Alfredo Zammit, as the successors of Alfredo Zammit, deceased; Mary, the widow of Alfredo Axisa, and Eugene, the wife of Michael Azzopardi, Dolores, the wife of Emmanuele Briffa, Vincent, Annie, Eddie, George, Robert and Joseph, brothers and sisters Axisa, as successors of Alfredo Axisa, deceased; Marianna, the widow of Alfredo Debono, and Joseph, Mary, the wife of Alfredo Lanzon, Doris, the wife of Joseph Mifsud, Amelia, the wife of Joseph Zammit Bonett, and Carmelo, brothers and sisters Debono, as the successors of Alfredo Debono, deceased; Emmanuele Grech, and his children, namely: Charles **sive** Carmelo, and Mary, the wife of David Smith, as the successors of their late mother, Carmela, and in respect of their mother's share in the community of acquests between her and her said

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husband; Edgar Baldacchino, and, in so far as their interests may be concerned, George, Alexander, Edgar, John and Anthony, brothers Portanier, as parties concerned in the issue in so far as it affects the said Edgar Baldacchino; and Walter and Frank Debono and William Axisa, joined in the suit by Decree given on the 28th June, 1947; — and, by Minute dated 17th October, 1947, Carmelo Debono, who took up the proceedings as attorney on behalf of his brothers Walter and Frank, absent from these Islands; and, by Minute dated 27th February, 1948, the said Walter and Frank Debono who, having returned to Malta, have personally taken up the proceedings in the stead of the said Carmelo Debono.

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Schedule of Deposit of all the Defendant Appellants — the wives acting with the consent and concurrence of their respective husbands.

Respectfully sheweth:—

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By Decree given on the 21st January, 1949, the Defendant Appellants were granted conditional leave to appeal from the Judgment given by this Court on the 29th November, 1948 to His Majesty in His Privy Council, and they were given one month within which to tender security in a sum of £400 in terms of section 4 of the Order-in-Council.

In compliance, the Defendant Appellants hereby deposit the aforesaid sum of Four Hundred Pounds.

(Signed) A. MAGRI, Advocate.
 „ J.H. XUEREB, Advocate.
 „ G. SCHEMBRI, Legal Procurator.

This 12th February, 1949.

Filed by G. SCHEMBRI L.P. without Exhibits and together with the sum of Four Hundred Pounds.

(Signed) A. GHIRLANDO, D/Registrar.

Minute Approving Translation

In H.M. Court of Appeal.

Writ-of-Summons No. 190/47.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A.& C.E. & Others.

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 10
of the Record.

Signed — for the Appellants:-

A. MAGRI,
Advocate.
G. DEGIORGIO,
Advocate.
G. MANGION,
Legal Procurator.
G. SCHEMBRI,
Legal Procurator.

20

Signed — for the Respondents:-

G. PACE,
Advocate.

This First of August, 1949.

Filed by G. MANGION L.P. Exhibits.

(Signed) J. DEBONO, D/ Registrar.

Defendants' Application for Final Leave

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A.& C.E. & Others.

Defendants' Application.

Respectfully sheweth:—

That the translation and the printing of the Record have been completed.

- 10 Wherefore the Defendants 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.
 „ G. DEGIORGIO, Advocate.
 „ G. MANGION, Legal Procurator
 „ G. SCHEMBRI, Legal Procurator.

This First August, 1949.

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

(Signed) J. DEBONO, D/Registrar.

Procès Verbal

In H.M. Court of Appeal.

The Third October, 1949.

Dr. Pace acknowledges service of and raises no objections to the Application.

(Signed) J. N. CAMILLERI,
 D/Registrar.

No. 47.
Decree granting
Final Leave

No. 47.

Decree granting Final Leave

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 Tuesday,
The Third October, 1949. 10

No. 6.

Writ-of-Summons No. 190/1947.

Joseph Axisa & Others.

vs.

Joseph Zammit Bonett A.& C.E. & Others.

The Court,

Upon seeing Defendants' Application, submitting that the translation and printing of the Record have been completed, and praying that they be granted final leave to appeal to His Majesty in His Privy Council. 20

Upon seeing the Decree given by this Court on the 21st January, 1949; granting the Defendants **proprio et nomine** conditional leave to appeal to His Majesty in His Privy Council from the judgment given by this Court on the 29th November, 1948. — Costs reserved to the final order.

Upon seeing the **procès verbal** recording that the Plaintiffs have raised no objections to the Application. —

Allows the Application of the Defendants **proprio et nomine** and grants them final leave to appeal to the Judicial Committee of His Majesty's Privy Council from the aforesaid judgment of this Court. 30

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 Respondents, if and as may be ordered by the Judicial Committee of His Majesty's Privy Council.

(Signed) J. N. CAMILLERI,
D/Registrar,

EXHIBITS

Plaintiffs' Exhibits**"A"****"A"**
Contract dated
2nd July, 1934**Contract dated 29th July, 1930**

The Twenty-Ninth July,
One Thousand Nine Hundred and Thirty

Before me, Dr. Ettore Francesco Vassallo, Notary Public, Malta, and in the presence of the undersigned competent witnesses, have personally appeared; —

10 Of the one part — Giuseppe Mangion, L.P. son of the late Carmelo, born and residing at Sliema, appearing as a party hereto in his capacity as one of the Testamentary Executors of Vincenzo Axisa, Merchant, son of the late Paolo, born in Valletta, formerly residing at Sliema, and Carmela, the widow of the said Vincenzo Axisa, daughter of the late Rosario Vella, born at Birkirkara, formerly residing at Sliema — appointed by Decree given by His Majesty's Civil Court, Second Hall, on the Seventh of August, One Thousand Nine Hundred and Twenty-Nine, and authorised to appear as a party hereto by
20 Decree given by the aforesaid Court on the Twenty-Fourth of July, One Thousand Nine Hundred and Thirty, copies of which latter Decree, and of the respective Application, are being annexed hereto for preservation (Exhibit "A").

And — of the other part — Alfredo Zammit, Merchant, son of the late Carmelo, born in Valletta, residing at Notabile.

Appearers are known to me Notary.

By virtue of these presents, and subject to the following conditions, the said Giuseppe Mangion, in his aforesaid capacity, and authorised hereunto as above, leases to the said Alfredo Zammit, who accepts, the "Axisa" Cinematograph
30 situate at Number Five, Tower Road, formerly Strada It-Torri, Sliema:-

1. For the period of two years obligatory, to run from the day on which the premises are handed over to the said Alfredo Zammit in a good state of repair, that is to say, from the Fifth of August of the present year, and thereafter for the period of two years optional.

2. At the rent of One Hundred and Eight-Five Pounds per annum, payable quarterly in advance, with effect from the day on which the premises are handed over as above

"A"
 Contract dated
 2nd July, 1934
 —Continued.

3. All improvements made shall be left to the benefit of the property, without any right on the part of the tenant to any compensation therefor.

4. Ordinary maintenance expenses shall be borne solely by the tenant.

5. In security for the due discharge of the foregoing and within-stated obligations undertaken by the tenant, the tenant hereby binds himself to deposit in one of the banks, to the name of the Testamentary Executor of the said Vincenzo and Carmela Axisa, the equivalent of one year's rent, that is to say, the sum of One Hundred and Eighty Pounds Sterling, the interest accruing thereon being drawn by the tenant so long as and until he complies with the conditions governing the present lease. 10

6. The tenant shall not sub-let or surrender the lease of the property, in whole or in part, except to persons of whom the said Testamentary Executor approves, and by written consent of the Testamentary Executor. To all good intents and purposes, the tenant declares that he accepts this last condition notwithstanding that it was not included in the conditions attached to his offer for the lease of the property aforesaid. 20

7. The tenant shall have the right to hang out posters advertising cinematographic and other shows from the windows of the premises of the "Supply Brand Club" at Number Five, Tower Road, Sliema, provided however that he shall not thereby disturb the tenants of the adjacent tenements.

8. The tenant undertakes not to suspend the cinematographic and other shows except on good and sufficient grounds, and this in order not to impair the good-will of the "Axisa Cinematograph" aforesaid.

9. The heirs of the said Vincenzo and Carmela Axisa, and their respective families, that is to say, their wives and children, shall have the right to admission free of charge to the cinematographic and other shows. 30

The tenant declares that he accepts also the conditions set out in paragraphs numbers seven, eight and nine of the present deed, notwithstanding that these conditions were not included in the conditions accompanying his offer aforesaid.

10. The rights respecting the cinematograph, reserved to the previous lessors and tenants of the cinematograph in the current lease of the tenements situate at Numbers One and Three, Tower Road, Sliema, and in the current leases of the 40

premises at present held by Michele Caruana, entrance to which is from Number Five, Tower Road, Sliema, are likewise reserved in favour of the said tenant, Alfredo Zammit, and in favour of the other Appearer, Giuseppe Mangion **nomine**.

“A”
Contract dated
2nd July, 1934
—Continued.

10 Done, read and published — the parties having been duly informed of the import hereof — in Malta, at Number Five, Tower Road, Sliema, in the presence of Vincenzo Calleja, shoemaker, son of the late Enrico, residing at Sliema, and Giuseppe Busuttil, watch-maker, son of Francesco, residing at Hamrun, witnesses, signed hereunder.

(Signed) ALFREDO ZAMMIT.
 „ GIUS. MANGION, L.P.
 „ CALLEJA VINCENZO.
 „ BUSUTTIL GIUSEPPE.
 „ DR. ETTORE FRANCESCO VASSALLO
 Notary Public, Malta.

True Copy, issued from the Records of Notary Dr. Ettore Francesco Vassallo.

20 (Signed) PAUL PELLEGRINI PETIT,
 Notary Public, Malta.

"B"
Inventory

"B"

Inventory

Inventory of the effects that were to be found at the "Axisa Cinematograph" at the time when it was leased to Alfredo Zammit —made on the 11th October, 1930.

Fourteen wooden benches (small)	
Thirty-Seven wooden benches (large)	
Forty-Eight chairs	
One piano in bad state of repair	
Scenes: Two in fair condition and three in bad condition	10
Various scenario canvases	
Ten side-scenes (wings)	
One curtain	
One cinematographic screen	
Various advertising canvases	
Prompter's box	
Pair wooden stairs leading from pit to stage	
Red cloth pavilions on three sides of the theatre	
Ten electric-light holders with shades	20
Three wooden ladders.	

(Signed) ALFREDO ZAMMIT.
 „ GIUS. MANGION, L.P.
 „ EM. AXISA.

Contract dated 2nd July, 1934

The Second July, One Thousand
Nine Hundred and Thirty Four (1934)

Before me, Ettore Francesco Vassallo, Notary Public, Malta, and in the presence of the undersigned competent witnesses, have personally appeared:—

10 Of the one part — Alfredo Zammit, son of the late Carmelo, born in Valletta, residing at Sliema, Alfredo Axisa, son of the late Vincenzo, born and residing at Sliema, Alfredo Debono, son of the late Giuseppe, born in Valletta, and residing at Sliema, Emmanuele Grech, son of the late Vincenzo, born and residing at Sliema, and Edgar Baldacchino, son of the late Salvatore, born at Sliema, residing in Valletta, traders, **in solidum**; —

20 And — of the other part — Giuseppe Mangion, Legal Procurator, son of the late Carmelo, born and residing at Sliema, and Emmanuele Axisa, of independent means, son of the late Vincenzo, born and residing at Sliema, both of whom appear as parties hereto in their capacity as Testamentary
30 Executors of the late Vincenzo Axisa, son of the late Paolo, born at Sliema and formerly residing in Valletta, and of the late Carmela Axisa, the wife of the said Vincenzo, daughter of the late Rosario Vella, born at Birkirkara and formerly residing in Valletta, authorized for the purposes within-stated by the majority of the heirs of the said Vincenzo and Carmela Axisa, as per Exhibit “A” annexed hereto for preservation, and that is to say, by Carmelo and Spiridione Axisa, traders, sons of the late Vincenzo, born and residing at Sliema, Maria, the wife of Carmelo Stilon, Inspector of Police, Filomena **sive** Phyllis,
40 spinster, Victor and Carmelo, traders, brothers and sister Camilleri, children of Pietro Guglielmo, born and residing at Sliema, excepting Carmelo, who was born in Valletta, and Maria, who resides at Notabile; — the said Emmanuele Axisa appearing as a party hereto also in his own behalf; — Pietro Guglielmo Camilleri, trader, son of the late Pietro, born at Senglea, residing at Sliema, appearing as a party hereto on behalf of his son, Giuseppe Camilleri, trader, born and residing at Sliema, in respect of whom he promises **de rato**, and Vincenzo Vella, of independent means, son of the late Giuseppe, born in Valletta, residing at Gzira, Sliema, appearing as a party hereto in his capacity as special curator on behalf of his wife, Teresa Vella, daughter of the late Vincenzo Axisa, born at Sliema,

"C"
Contract dated
29th July, 1939
—Continued.

residing at Chatham, England, appointed by Decree given by His Majesty's Commercial Court on the Seventh of May, One Thousand Nine Hundred and Thirty-Four.

Said Appearers are known to me Notary.

Premising:

(a) That by Writ-of-Summons Number One Hundred and Twenty-One of the year One Thousand Nine Hundred and Thirty-One, filed in His Majesty's Commercial Court, the said Alfredo Zammit, premising that, by deed enrolled in my Records on the Twenty-First July, One Thousand Nine Hundred and Thirty, the said Giuseppe Mangion, Legal Procurator, acting in his aforesaid capacity, leased to him the "Axisa Cinematograph," situate at Number Five, Tower Road, Sliema, for the period of two years optional and two years obligatory:— that the Superintendent of Public Works had requested him, the said Alfredo Zammit, to widen the exit door of the Theatre aforesaid not later than the Thirty-First March, One Thousand Nine Hundred and Thirty-One, the door being too narrow and otherwise than in accordance with the specifications laid down in the Regulations relating to Cinematographs; — and that he, the said Alfredo Zammit, had unavailingly called upon the Testamentary Executors aforesaid to carry out the necessary work in order to widen the door in question: — prayed that an Order be made establishing a time-limit within which the said Testamentary Executors should carry out the necessary repairs and that at the same time they be condemned to pay to him such damages as he may sustain in consequence of delay on their part in effecting the repairs. 10 20

(b) That by judgment given by His Majesty's Court of Appeal on the Thirteenth January, One Thousand Nine Hundred and Thirty-Three, the case was remitted to His Majesty's Commercial Court for the completion of the Record by the inclusion of all the interested parties — which was fully complied with. 30

(c) That the repairs required by the competent authorities have since been carried out, and that, therefore, the parties joined in the suit, with the exception of the aforesaid heirs of Vincenzo and Carmelo Axisa, are no longer concerned in the issue before the Court. 40

(d) That, having agreed to settle the aforesaid litigation, which is now concerned solely with the matter of damages, the parties, authorised by Decree given by His Majesty's

Commercial Court on the Thirtieth June, One Thousand Nine Hundred and Thirty-Four, have come to the execution of the present compromise.

“C”
Contract dated
29th July, 1939
—Continued.

And, by virtue of these presents, and in pursuance of the foregoing, the said Alfredo Zammit waives the damages claimed by him as above, and, for their part, the other Appearers, Giuseppe Mangion, Legal Procurator, and Emmanuele Axisa, in their aforesaid capacity, Vincenzo Vella **nomine**, and Pietro Guglielmo Camilleri **nomine**, waive the
10 rent due by the said Alfredo Zammit for the period during which the Cinematograph was kept closed, that is, from Second November, One Thousand Nine Hundred and Thirty-Three to Thirty-First March, One Thousand Nine Hundred and Thirty-Four.

The Costs of the suit in respect of which compromise has been made as above shall be borne, one-third by the said Alfredo Zammit, and two-thirds by Giuseppe Mangion, Legal Procurator, and Emmanuele Axisa, in their capacity as Testa-
20 mentary Executors of the said Vincenzo and Carmela Axisa, and by the heirs of the last-named.

In view of the compromise so made, the said Giuseppe Mangion, Legal Procurator, and the said Emmanuele Axisa, acting in their aforesaid capacity, and duly authorised as above, Vincenzo Vella **nomine**, and Pietro Guglielmo Camilleri **nomine**, authorised as above by His Majesty's Civil Court, Second Hall, grant to the other Appearers, Alfredo Zammit, Alfredo Axisa, Alfredo Debono, Emmanuele Grech and Edgar Baldacchino, jointly and **in solidum**, the lease of the aforesaid “Axisa Cinematograph” at Number Five, Tower Road, Sliema, in its
30 present state and as it stands at present, and subject to and under the following conditions:—

1. For the period of six years obligatory, with effect from the First August, One Thousand Nine Hundred and Thirty-Four, and successively for the period of six years optional.
2. At the rent of One Hundred and Ninety Five Pounds per annum, payable quarterly in advance.
3. All ordinary and extraordinary expenses of whatever nature, including those ordered by the Sanitary Authorities, or any other Authority, shall be borne by the tenants, without any
40 right to the recovery thereof.
4. The improvements that have been made on the premises, and those that may still be made therein, shall go to the benefit of the landlords, without any right to any compensation therefor.

'C'
Contract dated
2nd July, 1934

—Continued.

5. The tenants shall not sub-let the premises, or surrender the lease, in whole or in part, except by and with the consent of the landlords or the heirs aforesaid, excepting the case where the sub-letting is made to Dramatic or other Theatrical Companies, and then only for a period not exceeding one month.

6. The sum of One Hundred and Eighty-Five Founds at present held on deposit by the Credit Foncier d'Algerie et de Tunisie in security for the payment of the present rent shall be transferred to Sciclunas Bank for the same purpose, saving the right on the part of the tenants to draw and receive payment of the interest accruing thereon. 10

7. The tenants bind themselves not to suspend the cinematographic shows and other performances except during the months of July, August and September, or on good and sufficient grounds, and this in order not to impair the good-will of the Cinema Axisa.

8. The tenants further bind themselves to change the name of the "Axisa Cinematograph" into another name approved by the landlords, and to do so within one month from the First of August, One Thousand Nine Hundred and Thirty-Four. 20

9. The heirs of the said Vincenzo and Carmela Axisa, and their wives, shall have the right to be admitted free of charge to the cinematographic shows and other performances.

10. The rights respecting the cinematograph, reserved to the previous lessors and tenants of the cinematograph in the current lease of the tenements situate at Number One and Three, Tower Road, Sliema, and in the current lease of the premises at present held partly by Alfredo Axisa and partly by the brothers Camilleri, the doors of which open on to the yard accessible from Number Five, Tower Road, Sliema, are likewise reserved in favour of the tenants and in favour of the landlords. 30

11. The lease is in respect of the property as it stands at present, and includes the addition of two-thirds of the length of the garden at the back of the cinematograph. The tenants bind themselves to hand over the property in a good state of repair on termination of the lease or the surrender thereof for any reason or cause whatsoever.

12. All expenses incurred in connection with the present instrument shall be paid one-half by the tenants and one-half by the landlords. 40

The tenants shall have the right to put up posters advertising cinematographic and other performances on the outside of the building now housing the Central Club, held on lease by Spiridione Axisa and having the entrance in common with the "Axisa Cinematograph," provided however that this is done on that side of the building flanking Tower Road and that the tenants of the adjacent buildings are not prejudiced thereby.

"C"
Contract dated
2nd July, 1934
—Continued.

10 The parties declare that they have thus composed the differences outstanding between them up to the present day and that they have no other claims against each other beyond those settled by virtue of the present instrument.

Done, read and published — the parties having been duly informed of the import hereof — in Malta, at Number One Hundred and Sixty, St. Lucia Street, Valletta, in the presence of Francesco Pace, clerk, son of the late Gio Batta, residing at Sliema, and Attilio Sammut, merchant, son of the late Enrico, residing at Sliema, witnesses, signed hereunder.

20 (Signed) EM. GRECH.
" ALFREDO ZAMMIT.
" EDG. BALDACCHINO.
" ALFREDO DEBONO.
" A. AXISA.
" V. VELLA.
" PETER CAMILLERI.
" E. AXISA.
" GIUS. MANGION L.P.
" ATTILIO SAMMUT.
" FRANCIS PACE.
30 " DR. ETTORE VASSALLO,
Notary Public, Malta.

True Copy

Issued from the Records of Notary Dr. Ettore Francesco Vassallo, this 16th April, 1947.

(Signed) PAUL PELLEGRINI PETIT,
Notary Public, Malta.
Keeper.

"D"
Minute dated
26th April, 1934

"D"

Minute dated 26th April, 1934

Taken from the original at fol. 109
of the Record of the case
"Alfredo Zammit vs. G. Mangion L.P."
(No. 121/1931), determined by
H.M. Commercial Court on the
11th March, 1932.

In H.M. Commercial Court.

Alfredo Zammit 10
vs.
Giuseppe Mangion L.P.

Plaintiff's Minute

Whereas, during the pendency of the suit, the Defendants have carried out the repairs mentioned in the Writ-of-Summons, the Plaintiff declares that the present case now concerns only the matter of damages and costs, and that, therefore, he waives his claim as regards the merits of that case.

(Signed) ENRICO BORG OLIVIER, Advocate.

The Twenty-Sixth April, 1934.

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Filed at the Sitting by Dr. E. BORG OLIVIER.

(Signed) JOHN DINGLI, D/Registrar.

True Copy.

„ JOHN DINGLI, D/Registrar.

Judgment dated Eleventh March, 1932

HIS MAJESTY'S COMMERCIAL COURT

Judge:—

The Honourable Mr. Justice Rob. F. Ganado, LL.D.

Sitting held on the
Eleventh March, 1932.**Writ-of-Summons No. 121/1931.**

Alfredo Zammit

vs.

Giuseppe Mangion L.P. and Emmanuele Axisa,
in their capacity as Testamentary Executors of
Vincenzo and Carmela Axisa.

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The Court,

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Upon seeing the Writ-of-Summons, whereby the Plaintiff, premising: whereas, by deed enrolled in the Records of Notary Ettore Francesco Vassallo on the 29th July, 1930, Giuseppe Mangion L.P., in his aforesaid capacity, leased to the Plaintiff, for two years obligatory and two years optional, the "Axisa Cinematograph" at No. 5, Tower Road, Sliema; — and whereas the Superintendent of Public Works has given the Plaintiff up to the 31st March, 1931 within which to widen the door of the cinematograph, which is too narrow and otherwise than in accordance with the Regulations relating to Cinematographs — warning him at the same time that, in default, the respective licence shall not be renewed, and this in terms of Government Notice No. 465 of the 12th December, 1930; — and whereas, under articles 1292 and 1293 of Ordinance VII of 1868 (Sections 1628 and 1629, Chap. 23, Revised Edition, Laws of Malta), the Defendants are bound to maintain the thing in a fit condition for the use for which it has been let and to secure the lessor in the quiet enjoyment of the thing during the continuance of the lease, making all such repairs as may become necessary; — and whereas no heed has been taken of the Protest entered by the Plaintiff on the 19th January, 1931, calling upon the Defendants to effect the necessary repairs; — prayed that an Order be made against said Defendants for them to carry out the repairs in question, and to widen the

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door of the “Axisa Cinematograph,” within such short period of time as shall be determined by the Court, and that they be condemned to pay to the Plaintiff such damages as shall be sustained by him in consequence of delay in effecting the repairs. — With Costs, including the Costs of the Protest entered on the 19th January, 1931, and of the Application filed in H.M. Civil Court, Second Hall, on the 2nd January, 1931.

Upon seeing the Exhibit produced together with the Writ-of-Summons.

Upon seeing the Defendant’s Statement of Defence, pleading that the claims are groundless. 10

Upon seeing, at fol. 12, the transcription of the evidence of Emmanuele Axisa.

Upon seeing, at fol. 13, Plaintiff’s Minute, and, at fol. 14 et seq., the authoritative opinions therein quoted.

Upon seeing Defendant’s Note of Submissions.

Upon seeing the Exhibits produced by the Defendants at fol. 22 et seq.

Upon seeing the transcription of Plaintiff’s evidence.

Upon seeing the Decree given by the same Court on the 22nd May, 1931, declaring that the case is not of an urgent nature and that it must therefore follow the normal course. 20

Upon seeing the correspondence produced by the Police Authorities **animo ritirandi**.

Upon seeing the **procés verbal** at fol. 34.

Upon seeing the Exhibits produced by the Plaintiff at fol. 35 and 51.

Upon seeing the transcription of the evidence of Spiridione Axisa (foll. 45 and 53) and of Paolo Bonaci (foll. 49 and 52).

Upon seeing the **procés verbal** of the inquiry **in situ** held by the Court, assisted by Mr. Godwin Galizia, Architect and Civil Engineer, on the 30th December, 1931. 30

Upon seeing the terms of reference given to Mr. Godwin Galizia.

Upon seeing the Report filed by Mr. Galizia on the 22nd February, 1932.

Upon seeing the **procés verbal** of the one Sitting held by Mr. Galizia.

Having heard Counsel on both sides.

Considering:

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By deed enrolled in the Records of Notary Ettore Francesco Vassallo on the 29th July, 1930, Giuseppe Mangion L.P., in his capacity as Testamentary Executor of the estate of Vincenzo and Carmela Axisa, as authorised by H.M. Civil Court, Second Hall, by Decree dated 24th July, 1930, leased to the Plaintiff, Alfredo Zammit, for the period of two years obligatory, with effect from 5th August, 1930, and two years optional, and at 10 the rent of £185 per annum, payable half-yearly in advance, the “Axisa Cinematograph” at No. 5, Tower Road, Sliema.

It was agreed in the aforesaid deed (para: 10) that “The rights respecting the cinematograph, reserved to the previous lessors and tenants of the cinematograph in the current lease of the tenements situate at number One and Three, Tower Road, Sliema, and in the current leases of the premises at present held on lease by Michele Caruana, entrance to which is from number Five, Tower Road, Sliema, are likewise reserved in favour of the said tenant, Alfredo Zammit, and in favour of the other 20 Appearer, Giuseppe Mangion **nomine.**”

The Director of Public Works and the Police Authorities gave the Plaintiff up to the 31st March, 1931, within which to widen the door of the “Axisa Cinematograph,” which is too narrow and otherwise than in accordance with the Regulations relating to Cinematographs (Government Notice No. 465 of the 12th December, 1930) — and, at the same time, warned him that, in default, the respective licence would not be renewed.

Thereupon, the Plaintiff, by Protest dated 19th January, 30 1931, requested the Defendants to carry out the repairs required by the Authorities.

The Defendants failed to accede to the request and, on the 23rd February, 1931, the Plaintiff sued out the present Writ-of-Summons.

The action is based on the provisions of article 1292, paras: 2 and 3, of Ordinance VII of 1868, wherein it is laid down that the lessor is bound to maintain the thing in a fit condition for the use for which it has been let and to secure the lessee in the quiet enjoyment of the thing during the continuance of the 40 lease. The Plaintiff rests his claim also on those provisions of the law whereunder, in case of default, the one party has the

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choice either of compelling the other party to fulfil the obligation or to demand the rescission of the lease.

Considering:

As evidenced by the terms of the contract aforementioned, the premises were not leased for the purpose of being converted into a cinematograph, but actually as a cinematograph, known as the “Axisa Cinematograph” — so much so that the stipulation was made that, in order not to impair the good-will of the place, the tenant should not suspend the performances except on good and proper grounds.

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That means that the lessor is bound to maintain the premises in a fit condition for use as a cinematograph.

The Plaintiff shall not be able to make use of the cinematograph unless the work required by the Police and the Public Works Department is carried out, that is to say, unless the exit door of the premises is widened in terms of the Regulations relating to Cinematographs.

Considering:

Once the Plaintiff is being disturbed in the enjoyment of the property by the Administration — the sovereign authority — it is necessary to go into the question as to whether the lessor is bound to implement the guarantee. According to the text-books, and according to judicial practice, the tenant is entitled to the fulfilment. Baudry Lancantinerie, **Contratto di Locazione**, No. 568, writes:

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“The rights under the guarantee persist where an act of the Administration renders impossible the exercise of the specific trade or industry for which the property has been leased or for which it is designate by its own lay out and equipment. In this case, in fact, the parties are agreed that the tenant shall enjoy the use of the property for a determinate purpose. The tenant cannot otherwise enjoy the property. For his part, the lessor undertakes to secure for the tenant, not only the enjoyment of the property, but the enjoyment thereof in the conditions that supervene . . .” Laurent, Ricci and Pacifici Mazzoni, and other authors quoted by them, held the same view; and that view is upheld by the judicial practice to which they make reference.

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The Defendant **nomine** is therefore wrong in holding that the Defendants had in no way undertaken to safeguard Plaintiff’s licence to run a cinematograph: As stated above, they did

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not lease to him an immovable for the purpose of being converted into a cinematograph, but actually the "Axisa Cinematograph" itself — and they leased it to him at an annual rent that compares with that charged for the lease of cinematographs. The Defendant is therefore liable towards the Plaintiff for such expenditure as the Administration, in the interests of public safety, considers necessary in order that the property may continue to be used as a cinematograph. The example referred to by the Defendant **nomine** in his Note of Submissions at fol. 21 — as quoted by Laurent — is inapplicable in so far as the case at issue is concerned. Here the lease is of a cinematograph, to conduct which it is necessary to have the authorization of the competent authorities — so that the Defendant is bound to satisfy the requirements of what he has promised.

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The Defendants submit that, juridically, they cannot be compelled to effect the repairs in question, seeing that the main entrance of the cinematograph is confined within the space permitted by the other parts of the building which they have leased to third parties, and that the third parties concerned are entitled to demand the maintenance of the **stato quo**.

On this point, both Spiridione Axisa and Bonaci have stated in evidence that they would raise no objection, provided their interests are not prejudiced thereby.

In that connection, the Court held a Sitting **in faciem loci** and also appointed a Legal Referee to ascertain whether the repairs in question were technically possible and whether they would prove detrimental to the neighbouring tenants.

Considering:

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In his Report, the Legal Referee explains that the proposed structural alterations consist in widening the main entrance of the "Axisa Cinematograph" by two feet three inches, adding that the work involves the demolition of the wall between the buildings lying at the back of the entrance of Bonaci's shop and the reconstruction of that wall on the new alignment.

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The Legal Referee holds that the alterations are technically possible, provided all necessary precautions are taken. As regards the premises at No. 7, the property of Emmanuele Axisa, the Referee points out that the loft, overlying the entrance of the cinematograph, would be widened by two feet three inches, so that the repairs would actually benefit the tenants of No. 7.

According to the evidence, the Plaintiff, by a judicial letter dated 19th January, 1931, enjoined the Defendants Mangion

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and Emmanuele Axisa to carry out the repairs in question, and the deed of transfer to Emmanuele Axisa was published on the 20th January, 1930; and therefore Emmanuele Axisa had full knowledge of the obligations undertaken by him as executor and one of the heirs of Vincenzo and Emmanuele Axisa. Further, as already pointed out, the alterations in question are advantageous to Emmanuele Axisa.

On these grounds:

The Court,

Adjudges, allowing Plaintiff's claims, and, in connection with the first claim, establishes the period of one month within which the Defendants shall carry out the repairs whereof in the Writ-of-Summons, as described by the Legal Referee, Mr. Godwin Galizia, A. & C.E. 10

And orders that the Costs shall be borne by the Defendants **nomine**.

(Signed) F. PORTELLI, D/Registrar.

A True Copy.

(Signed) J. DINGLI, D/Registrar.

“F”
Judicial Letter
dated
26th March, 1947

“F”

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Judicial Letter dated 26th March, 1947

IN H.M. COMMERCIAL COURT

26th March, 1947.

To:—

1. Joseph, Paolo, Cettina, the widow of Charles Micallef, Rosaria **sive** Lucy, the wife of Henry Galea, and John, brothers and sisters Zammit Bonett, and Marietta, the widow of Alfredo Zamit, as the successors of Alfredo Zammit.

2. Mary, the widow of Alfredo Axisa, and Eugene, the wife of Michael Azzopardi, Dolores, the wife of Emmanuele Briffa, Vincent, Annie, Eddie, George, Robert and Joseph, brothers and sisters Axisa, as the successors of Alfredo Axisa, deceased. 30

3. Marianna, the widow of Alfredo Debono, and Joseph, Mary, the wife of Alfredo Lanzon, Doris, the wife of Joseph Mifsud, Amelia, the wife of Joseph Zammit Bonett, brother and sisters Debono, as the successors of Alfredo Debono, deceased; and Carmelo Debono.

4. Emmanuele Grech, and his children, namely, Charles **sive** Carmelo, and Mary, the wife of David Smith, as the successors of their late mother, Carmela, and in respect of their mother's share in the community of acquests between her and her said husband.

"F"
Judicial Letter
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5. Edgar Baldacchino, and, in so far as their interests may be concerned, George, Alexander, Edgar, John and Anthony, brothers Portanier, as parties concerned in the issue in so far as it affects the said Edgar Baldacchino. —

10 The wives acting with the consent and concurrence of their respective husbands.

20 Joseph, John and Carmelina, children of the late Emmanuele Axisa; Vincenza, the widow of the said Emmanuele Axisa; Joseph, Victor, Carmelo and Frank Camilleri, as parties concerned in the issue in succession to their father, Peter Camilleri; and Robert, Harry, Hector and Victor Pace, as successors to the share previously held by their brother, Dr. Giuseppe Pace, sole proprietors of the "Axisa", now the "Alhambra," Cinematograph, at No. 5, Tower Road, Sliema, and the good-will and equipment thereof, as leased by Deed enrolled in the Records of Notary Ettore Francesco Vassallo on the 2nd July, 1934 — hereby inform you that it is not their intention to grant you an extension of the lease of the aforesaid cinematograph, and of the respective good-will and equipment, on and after the 30th April, 1947.

30 They therefore call upon you to surrender and hand over the premises on that date, together with the respective good-will, improvements and equipment, and they warn you that, unless you give them an assurance within two days that you propose complying with this their request, they will take steps against you according to law.

And they hold you answerable for such damages as they may sustain in consequence of any delay on your part.

With Costs.

(Signed) G. PACE, Advocate.

„ ROB. DINGLI, Legal Procurator.

The Twenty-Sixth March, 1947.

Filed by Rob. Dingli L.P. without Exhibits.

(Signed) J. DINGLI, D/Registrar.
