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18,1954

In the Privy Council.

No. 25 of 1953. 37691

ON APPEAL
FROM THE COURT OF APPEAL OF MALTA

UNIVERSITY OF LONDON
W.C.1.
24 FEB 1955
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

GIORGIO BORG OLIVIER, Prime Minister of Malta,
representing the Government of Malta, ANTONIO
CAMILLERI, Collector of Customs, and EDGAR
CUSCHIERI, Treasurer to the Government of Malta APPELLANTS

AND

JOHN COLEIRO, on behalf of the firm "COLEIRO
BROTHERS LIMITED" RESPONDENT.

CASE FOR THE APPELLANTS

RECORD

1.—This is an Appeal from a Judgment, dated the 6th February, 1953, of the Court of Appeal of Malta (Camilleri, C.J., Montanaro Gauci and Harding, JJ.) allowing an Appeal by the Respondent from a Judgment, dated the 25th October, 1952, of the First Hall of the Civil Court of Malta (Magri, J.) holding that the Respondent's claim for a declaration that Act No. XIV of 1950 (an Act of the legislature of Malta) was null and of no effect was barred by Section 39 of the Malta (Constitution) Letters Patent, 1947. pp. 28-40
pp. 14-18

10 2.—The legislative provisions relevant to this Appeal are as follows :

MALTA (CONSTITUTION) LETTERS PATENT, 1947.

22.—(1) It shall be lawful for Us, by and with the advice and consent of the Assembly, to make laws, to be entitled " Acts," for the peace, order and good government of Malta.

* * * * *

39.—The validity of any law made under Section 22 of these Letters Patent or of any provision of any such law shall not be

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questioned in any legal proceedings commenced after the expiration of one year from the date on which the law comes into operation, except on the ground that the law or provision, as the case may be, deals with a matter with respect to which the Assembly has no power to make laws.

CODE OF ORGANISATION AND CIVIL PROCEDURE.

103.—(1) Any legal or judicial time, not being peremptory, may be extended on good cause being shown, provided the request for such extension is made within the time extension of which is sought.

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Connections
of actions

796.—(1) If two or more actions brought before one and the same Court are connected in respect of the subject-matter thereof, or if the decision on one of the actions might affect the decision on the other action or actions, it shall be lawful for the Court to order that the several actions be tried simultaneously.

(2) Where several actions have been tried simultaneously before the Court of first instance, they may be tried in like manner before the appellate Court, without the necessity of any other order of the Court.

(3) Nevertheless a separate Judgment shall be given in each action, both in the Court of first instance and in the appellate Court, every Judgment containing a statement of the respective reasonings, or a reference to the reasonings premised to the decision given in any other of the actions heard simultaneously.

* * * * *

3.—On the 25th May, 1950, the Governor of Malta issued a proclamation that the Minister of Finance had given notice of a Bill to (*inter alia*) increase the import duty on wine. In accordance with the Revenue (Safeguard) Act, the Collector of Customs immediately began to levy the increased duty, and sums collected in respect of the increase were held on deposit pending consideration of the Bill. On the 23rd June, 1950, the Legislative Assembly was dissolved, and the Bill lapsed. Between the proclamation and the dissolution Coleiro Bros., Ltd., who are wine importers, had paid in respect of the proposed increase in the duty sums amounting to over £15,000, and at the time of the dissolution the Collector of Customs was holding these sums on deposit.

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4.—The Revenue (Safeguard) Act provides that if, when notice of a Bill has been given, the Bill is not passed within four months of the first sitting of the Legislative Assembly after the notice, any sums collected under the Act and held on deposit shall be refunded to the depositor with interest at 3 per cent. On the 14th October, 1950, the Respondent, on behalf of the firm of Coleiro Bros., Ltd., issued a writ in the First Hall of the Civil Court against the then Collector of Customs and others, claiming under this provision the refund, with interest at 3 per cent., of the sums paid by the firm in respect of the proposed increase in the duty. On the 16th October, 1950, the Legislative Assembly passed an Act (No. XIV of 1950) whereby all amounts of customs duty levied by the Collector between the 25th May and the 24th September, 1950, in pursuance of the proclamation of the 25th May and of the Revenue (Safeguard) Act were irrevocably vested in and appropriated to the Consolidated Revenue Fund, notwithstanding any claim or proceedings made or instituted before the commencement of the Act. This Act came into operation on the 18th October, 1950. In their defence to the Respondent's action (entitled *Coleiro v. Agius and Ors.*), dated the 7th November, 1950, the Defendants alleged that the Respondent, as soon as he began depositing sums in respect of the proposed increase in the duty, had raised the price of wine to his customers by an amount at least corresponding to the proposed increase, so that the amounts deposited were in fact borne by the customers; and the action was barred by Act No. XIV of 1950.

RECORD

pp. 53-54

pp. 56-57

5.—The Respondent applied to the Court to stay the proceedings in *Coleiro v. Agius and Ors.*, in order to give him (the Respondent) an opportunity to start a separate action challenging the validity of Act No. XIV of 1950. The Defendants resisted this application, and argued that the validity of the Act could be determined in *Coleiro v. Agius and Ors.* without the institution of any fresh proceedings. Colombo, J. reserved his decision on this application, and gave Judgment on the 5th October, 1951. He said that the challenge to the validity of the Act involved a very important point of constitutional law. It could be determined in the proceedings then pending, but, in view of its delicate nature, it seemed better that it should be determined in a separate action. Accordingly, the learned Judge allowed the Respondent one month within which to institute an action challenging the validity of the Act, and adjourned *Coleiro v. Agius and Ors. sine die* with liberty to restore it to the list either after a month, if no new action should have been started, or after the determination of the new action.

pp. 59-61

p. 61,

ll. 14-23

6.—On the 31st October, 1951, the Respondent, on behalf of the firm of Coleiro Bros., Ltd., issued the writ in the present action. He alleged in the writ that, for various reasons, Act No. XIV of 1950 was invalid, and claimed a declaration that the Act was null and of no effect. He did not allege that the Act dealt with a matter with respect to which the Assembly had no power to make laws. He also claimed certain other relief. In their

pp. 1-3

p. 2,

ll. 23-41

- pp. 5-6 defence, dated the 24th November, 1951, the Appellants alleged that the claim for a declaration was barred under Section 39 of the Malta (Constitution) Letters Patent, 1947.
- pp. 7-8 7.—The Respondent filed his submissions on the 13th December, 1951. He submitted that he had challenged the validity of Act No. XIV of 1950 in *Coleiro v. Agius and Ors.*; there was no doubt that that action had been brought before the lapse of one year; and that action and the present action should be considered as one and the same thing.
- pp. 8-13 8.—The Appellants filed their submissions on the 27th December, 1951. They submitted that the two actions were separate judicial entities. 10
p. 9, l. 18— The Defendants in the two actions were different. In both actions the
p. 10, l. 11 Defendants, in the last resort, represented the Government; but for purposes of judicial representation there was no identity between the various heads of departments of the Government, and each was, to the exclusion of all others, the lawful representative of the Government in matters concerning his department. The two actions, therefore, were not one and the same thing. It had been decided that connection between two actions, even when the Plaintiff in the second had merely re-submitted pleas raised by him in the first, did not lead to their unification. These two actions were distinct for the further reason that, whereas *Coleiro v. Agius and Ors.* 20
p. 10, l. 29-44 was concerned with an act of the Government *jure gestionis*, the present action was concerned with an act *jure imperii*. Whenever a Court suspended proceedings in order to allow other proceedings to be instituted for decision of a point in issue, the new proceedings, simply because they were other proceedings, were a separate cause; all the more so when the parties were different. In *Coleiro v. Agius and Ors.* the Respondent had not challenged the validity of Act No. XIV of 1950, but had merely asked for time to start a separate action in which he would challenge it. When the Judgment was given in *Coleiro v. Agius and Ors.*, on the 5th October, 1951, the Respondent still had thirteen days within which he might have started 30
p. 12, l. 3-35 proceedings to challenge the validity of the Act. Indeed, he might have started such proceedings at any time without any permission and without waiting for the judgment delivered on the 5th October, 1951. The Court had no power to extend the period of one year fixed by the Constitution.
- pp. 14-18 9.—On the 25th October, 1952, Magri, J. gave Judgment upholding the Respondents' plea in bar, dismissing the claim for a declaration of the nullity of the Act, and deferring the case for hearing on the Respondent's other claims. The learned Judge held that the action could not be considered to be one and the same thing with *Coleiro v. Agius and Ors.* 40
p. 17, l. 1-11 The parties were different and the objects of the two actions were different. In *Coleiro v. Agius and Ors.*, moreover, the Respondent had intimated his intention of challenging the validity of Act No. XIV of 1950, but had not in fact challenged it. When the present action was started the time for challenging the validity of the Act had already expired. This time was not a period of prescription, but a period of absolute limitation leading to forfeiture of the right. The effect of the Judgment of the 5th October,
p. 17, l. 17—
p. 18, l. 14

- 1951, was to allow the Respondent a maximum period of one month for starting a new action, subject to his obligation to conform to the law; for the Court had no power to extend a period of a peremptory nature. That judgment did not constitute a *res judicata*. Apart from the question whether the elements of *res judicata* were present, the period of limitation had not run when the Judgment was given, so it could not prevent the Appellants from setting up the plea of limitation. p. 18, ll. 15-26
p. 18, ll. 27-36
- 10 10.—The Respondent appealed to the Court of Appeal by a note of appeal dated the 3rd November, 1952. In his petition, dated the 14th November, 1952, he set out the following grounds of appeal: pp. 19-20
pp. 20-23
- (i) The action had to be considered as one with *Coleiro v. Agius and Ors.* The question of the validity of Act No. XIV of 1950 had been raised in *Coleiro v. Agius and Ors.*, so the Judgment of the 5th October, 1951, was binding on the Appellants: p. 22, ll. 7-38
- (ii) the Respondent was entitled to the full time allowed him for issuing his writ. The Judgment of the 5th October, 1951, was binding as to the time, because the Defendants might have appealed on that point but had not done so.
- 20 The Appellants filed a reply, dated the 22nd November, 1952, in which they elaborated their submissions made to the Civil Court. pp. 23-27
- 11.—The Judgment of the Court of Appeal (Camilleri, C.J., Montanaro Gauci and Harding, JJ.) was delivered on the 6th February, 1953. The learned Judges set out the course of the proceedings in *Coleiro v. Agius and Ors.* and in the present action. They rejected the Respondent's argument that he was entitled to start his new action at any time within the month granted by the Judgment of the 5th October, 1951. That Judgment should be understood as granting one month, providing that was within the limit of time prescribed by law. The period of one year was not a time which could be extended, but a term of absolute limitation established by law. The argument that the Judgment of the 5th October, 1951, was binding on the parties was also untenable. Apart from the question whether the elements of *res judicata* were present, the point under Section 39 of the Letters Patent was a new point not raised in *Coleiro v. Agius and Ors.* It could not, therefore, be covered by the Judgment in that case. There remained the argument that the validity of Act No. XIV of 1950 was challenged in due time because it was challenged in *Coleiro v. Agius and Ors.* It was first necessary to establish the meaning of the word "questioned" in Section 39 of the Letters Patent. No help could be got from the Maltese Codes. In view of the restrictive character of the section, the interpretation should be not extensive but literal. It appeared from English judgments on such phrases as "if any question arises" that there was a question when there was a proposition made by one party and rejected by the other. It was clear, therefore, that the Respondent had pp. 28-40
p. 32, l. 38—
p. 34, l. 35
p. 34, l. 38—
p. 35, l. 5
p. 35,
ll. 6-21
p. 35, l. 22—
p. 36, l. 31
- 30 40

p. 36, l. 32—
p. 38, l. 13 questioned the validity of Act No. XIV of 1950 in *Coleiro v. Agius and Ors.* It appeared from various parts of the record of that case that the question of validity was formally raised. The Defendants had actually submitted that the question could be determined in that case, without the institution of fresh proceedings. Counsel for the Appellants had submitted that what had been done in *Coleiro v. Agius and Ors.* was irrelevant, because the two actions could not be considered as one and the same thing. The question was not whether they were the same thing. It sufficed to remark that the point raised in *Coleiro v. Agius and Ors.* was to be decided in the present action ; and that because the Civil Court, in its Judgment of the 5th October, 1951, had thought it better that the point should be determined in a separate action. The present action was the form whereby the point raised in the earlier action was brought for judicial decision. In such circumstances it would be antijudicial to hold that time should be reckoned up to the starting of the present action, not to the date on which the validity of the Act was in fact challenged in *Coleiro v. Agius and Ors.* Counsel for the Appellants had also argued that there were different Defendants in the two actions ; but the substantial fact was that the new action was only the submission for decision, in the form ordered by the Court, of the point raised in the first action. There was also the fact that the party interested as Defendant in both cases, though differently represented, was the Crown. The action was not barred, because the issue of the nullity of Act No. XIV of 1950 was raised in *Coleiro v. Agius and Ors.* barely one month after the Act came into force. Accordingly the Court allowed the appeal and referred the record back to the Civil Court for hearing on the merits.

p. 39,
ll. 23-36

p. 39,
ll. 37-43

p. 40,
ll. 1-10

12.—The Appellants respectfully submit that the learned Judges of the Court of Appeal misinterpreted Section 39 of the Letters Patent. There is no doubt that the validity of Act No. XIV of 1950 is being questioned in the present action. The first question is, therefore, not whether it was also questioned in *Coleiro v. Agius and Ors.*, but whether the present action was started more than a year after the Act came into force. The Appellants respectfully submit that an action is started by the issue of the writ. The writ in the present action was issued on the 31st October, 1951, which was more than a year after the 18th October, 1950, on which day Act No. XIV of 1950 came into force ; the validity of that Act, therefore, cannot be questioned in this action. The Appellants respectfully submit that this action is not identical with *Coleiro v. Agius and Ors.*, because two actions begun by different writs on different dates between different parties cannot be regarded as the same thing. The argument favoured by the Court of Appeal, that the two actions are not the same but the present action is only a form for getting a decision on the point raised in the earlier action, has never been advanced by the Respondent. The Appellants submit with respect that this argument begs the question ; because, if the present action is not the same thing as *Coleiro v. Agius and Ors.*, then, be it form or aught else, it was commenced more than a year after Act No. XIV of 1950 came into force and accordingly falls within the prohibition of Section 39 of the Letters Patent. The Appellants respectfully submit that the view

taken by the Court of Appeal is contrary to established principles of the law of Malta, and leads to results which contradict the plain meaning and intention of Section 39.

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13.—The Appellants respectfully submit that the question what was or was not in issue in *Coleiro v. Agius and Ors.* is irrelevant to this Appeal. Alternatively, they submit that Magri, J. was right in holding that in that case the Respondent did not in fact impugn Act No. XIV of 1950.

14.—The Appellants respectfully submit that the Judgment of the Court of Appeal was wrong and ought to be reversed, for the following
10 (amongst other)

REASONS

1. BECAUSE the present action is a legal proceeding commenced after the expiration of one year from the date on which Act No. XIV of 1950 came into operation, so that in it the validity of that Act cannot be questioned.
2. BECAUSE the present action cannot be regarded as one with the action *Coleiro v. Agius and Ors.*
3. BECAUSE the validity of Act No. XIV of 1950 was not questioned in *Coleiro v. Agius and Ors.*
- 20 4. BECAUSE of the other reasons set out in the Judgment of Magri, J.

J. G. LE QUESNE.

In the Privy Council.

No. 25 of 1953.

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BETWEEN

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Minister of Malta, representing the
Government of Malta, ANTONIO
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to the Government of Malta APPELLANTS

AND

JOHN COLEIRO, on behalf of the
firm "COLEIRO BROTHERS LIMITED"
RESPONDENT.

CASE FOR THE APPELLANTS

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