

Privy Council Appeal No. 25 of 1953

Giorgio Borg Olivier and others - - - - - *Appellants*

v.

John Coleiro - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF MALTA

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 11TH MAY, 1954**

Present at the Hearing:

LORD PORTER

LORD OAKSEY

LORD KEITH OF AVONHOLM

[*Delivered by* LORD KEITH OF AVONHOLM]

This is an appeal by the Government of Malta against a judgment of Her Majesty's Court of Appeal of Malta by which it was held (reversing the judgment of Mr. Justice Magri in the Court below) that the respondent is not barred from prosecuting an action to have it declared that a certain statute of the Maltese legislature is null and of no effect.

The present action is a sequel to an action initiated on the 14th October, 1950, by the present respondent (hereinafter referred to for the purposes of both actions as the plaintiff). The first action arose in the following circumstances. On the 25th May, 1950, the Governor of Malta issued a proclamation that the Minister of Finance had given notice of a Bill to increase the import duty on wine. Under a local statute known as the Revenue (Safeguard) Act, the Collector of Customs immediately began to levy the increased duty. The Revenue (Safeguard) Act provides that if such a Bill is not passed into law within four months of the first sitting of the Legislative Assembly after notice of the Bill has been so given any sums collected and held on deposit shall be refunded to the depositor with interest at 3 per cent. The plaintiff, who is an importer of wine, following on the proclamation paid the increased duties to an amount of £15,201 to the Collector of Customs for a period from the 25th May to the 24th September, 1950. Four months elapsed from the first sitting of the Legislative Assembly after the notice of increase of duty was given without the Bill being passed into law. Accordingly the plaintiff filed a Writ of Summons which was issued on the 14th October, 1950, against the Collector of Customs, the Minister of Commerce, the Minister of Finance and the Treasurer to the Government of Malta, all as representing the Government, claiming repayment of the sum of £15,201 with interest.

Two days after this action began, on the 16th October, 1950, the Legislative Assembly passed an Act, No. XIV of 1950, the Customs Duty (Appropriation) Act, 1950, appropriating to the Government all customs duties levied between 25th May and 24th September, 1950, and enacting that this provision should have effect notwithstanding any claim or judicial proceedings made or begun prior to the commencement of the Act. Accordingly the defendants to the action in their statement of defence and declaration filed on the 7th November, 1950, took the plea, *inter alia*, that the action was barred by the Act No. XIV of 1950. To

this the plaintiff replied that the Act was invalid and sought leave to institute an action *ad hoc* in order to obtain a declaration of the nullity of that law. The defendants submitted that the question should be determined in the then action. On the 5th October, 1951, Mr. Justice Colombo, considering "That although this issue may also be argued and determined in these proceedings, nevertheless, having regard to its delicate nature, it seems that it would be better if the same be dealt with on a separate action and on its own merits and not as a counter-plea to the plea of the defendants," ordered that further hearing in the cause be suspended and allowed the plaintiff a period of one month "within which, if he so thinks, he may institute before the competent Court the action of impugment mentioned by him" and adjourned the cause *sine die*.

On the 31st October, 1951, that is within the month allowed by Mr. Justice Colombo, the second action was begun on a Writ of Summons filed by the plaintiff by which he sought, *inter alia*, that it be declared and adjudged that the Act No. XIV of 1950 was, for various reasons specified, null and of no effect. This action was brought against the Prime Minister of Malta representing the Government of Malta and for any interest they might have the Collector of Customs and the Treasurer to the Government of Malta. For reasons depending no doubt upon the different reliefs sought in the respective actions the personality of the defendants differed to some extent in the two actions but in their Lordships' opinion this is of no materiality as they can all be taken as representing in one capacity or another the Government of Malta and were indeed so called as defendants. In their Statement of Defence filed on the 24th November, 1951, the defendants took a plea that the demand for a declaration of the nullity of the Act No. XIV of 1950 was barred under section 39 of the Malta (Constitution) Letters Patent, 1947.

The Act No. XIV of 1950 was passed under these Letters Patent and the relevant portion of section 39 of the Letters Patent runs as follows:—

"The validity of any law made under section 22 of these Letters Patent or of any provision of such law shall not be questioned in any legal proceedings commenced after the expiration of one year from the date on which the law comes into operation. . . ."

The Act No. XIV of 1950 had been in force for one year on the 16th October, 1951. The second action by the plaintiff was not started till 31st October, 1951. The sole question in this appeal is whether he is barred from obtaining his declaration of nullity by section 39 of the Letters Patent.

Mr. Justice Magri before whom the second action first came found that the plaintiff was barred. On the only point that was argued before their Lordships he held that the first action could not be considered as one and the same thing with the second action because (1) the subject matter of the two actions was different; (2) although in the first action the plaintiff intimated his intention of impugning the Act No. XIV of 1950, he did not in fact do so in that action; (3) when he impugned it in the second action the legal time available for the purpose had already expired.

This judgment was reversed by the Court of Appeal in Malta, who held that the claim for a declaration of nullity was not barred and referred back the record to the First Court for the hearing of this claim on its merits. They held that the issue of the validity of the Act of 1950 had been clearly raised by the plaintiff in the first action and its validity "questioned" within the meaning of section 39 of the Letters Patent. In their Lordships' opinion the Court of Appeal were fully warranted in arriving at this conclusion. Their Lordships find it unnecessary to examine the reasons given in detail. It is the view their Lordships would have reached on the material before them. The Court of Appeal further held that though the issue was raised in the other action it was being decided in this action as a matter of form for the reasons given by Mr. Justice Colombo and already in part quoted by their Lordships.

“As a consequence,” they say “the present cause and the other one are so strictly connected that the other cause is to remain in suspense until the present cause is disposed of and until a solution is given to the point raised in that first cause. In other words, the present cause is the *form* whereby the point already raised in the former cause is brought for judicial decision.”

Their Lordships see no reason for interfering with this conclusion. The question appears to them to be largely one of domestic procedure in the Courts of Malta with which their Lordships would be slow to interfere. If forms of process do not prohibit it their Lordships see no reason why the second action should not be treated as ancillary to the first action in which the issue of validity has been raised and continues as a live issue until determined by the machinery of the second action. It was strenuously contended that there were two writs; that there could be no interconnection between the two writs; and that, as the second writ was out of time, the issue of validity could not be determined in the action initiated by that writ. But the Letters Patent do not refer to a challenge of validity by the issue of a writ of summons. The words are “shall not be questioned in any legal proceedings commenced after the expiration of one year, etc.” Though the first action was raised for recovery of a sum of money, when the defendants pleaded in defence the Act No. XIV of 1950, the plaintiff contested the validity of that Act. The validity of the law was thus made an issue in the first action and it was intended, under the procedure adopted by the Courts of Malta, that this issue should be determined in the second action. Their Lordships see no difficulty in holding that the two actions in this matter are so closely connected as to form one set of legal proceedings. The challenge of validity has been continuous since it was raised in the first action and accordingly, in their Lordships’ opinion, the validity of the law in question was questioned in legal proceedings commenced before the expiration of one year from the date of the law coming into force.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed and the judgment of the Court of Appeal be affirmed. The appellants must pay the costs of the appeal.

In the Privy Council

GIORGIO BORG OLIVIER
AND OTHERS

v.

JOHN COLEIRO

DELIVERED BY LORD KEITH OF AVONHOLM

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.
1954