

Judgment 31, 1955

In the Privy Council.

31/10/55 44

1954

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ON APPEAL

FROM THE COURT OF APPEAL, MALTA.

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BETWEEN

COLONEL STEPHEN J. BORG nomine

Plaintiff (*Respondent*)

AND

GUSTAVO ROMEO VINCENTI A & C.E.

Defendant (*Appellant*)

PTD. BY GIOV. MUSCAT - MALTA.

In the Privy Council.

**ON APPEAL FROM THE COURT OF APPEAL,  
MALTA.**

UNIVERSITY OF LONDON  
W.C. 1

25 OCT 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

44816

BETWEEN  
COLONEL STEPHEN J. BORG nomine  
Plaintiff (*Respondent*)  
AND  
GUSTAVO ROMEO VINCENTI A. & C.E.  
Defendant (*Appellant*)

**RECORD OF PROCEEDINGS**

INDEX OF REFERENCE

DOCUMENTS

No.	Description	Date filed	Page
1	Writ-of-Summons ... ..	11th Feb., 1949	5
2	Plaintiff's Declaration ... ..	"	7
3	List of Exhibits ... ..	"	10
4	Plaintiff's Application ... ..	"	10
5	Decree on preceding Application ...	12th Feb., 1949	11
6	Defendant's Statement of Defence ...	23rd Feb., 1949	12
7	Defendant's Declaration ... ..	"	13
8	Procès Verbal ... ..	26th Feb., 1949	15
9	Defendant's Minute ... ..	7th March, 1949	15
10	Plaintiff's Minute ... ..	1st April, 1949	16
11	Defendant's Minute ... ..	"	19
12	Evidence, Prof. V. Caruana LL.D. ...	4th May, 1949	20
13	Evidence, the Plaintiff ... ..	"	20
14	Evidence, Dr. A. Magri ... ..	"	22
15	<i>Judgment, H.M. Civil Court, First Hall</i> ... ..	"	24
16	Defendant's Note of Appeal ... ..	10th May, 1949	30

No.	Description	Date filed	Page
17	Defendant's Petition ... ..	25th May, 1949	33
18	Surety Bond ... ..	"	40
19	Plaintiff's Answer ... ..	27th May, 1949	41
20	Plaintiff's Application ... ..	"	41
21	Decree on preceding Application ...	30th May, 1949	42
22	<i>Judgment, H.M. Court of Appeal</i> ...	14th Nov., 1949	43
23	Defendant's Statement of Defence ...	16th Nov., 1949	53
24	Defendant's Declaration ... ..	"	54
25	Plaintiff's Minute ... ..	11th Jan., 1950	55
26	Procés Verbal ... ..	30th Jan., 1950	55
27	Evidence, the Plaintiff ... ..	15th Feb., 1950	56
28	Plaintiff's Minute ... ..	28th Feb., 1950	58
29	Evidence, Capt. A. Zammit Cutajar	8th March, 1950	60
30	" Chev. F.K. Gollcher ...	"	61
31	" Mr. V. Grech A.&C.E. ...	"	63
32	" Mr. S. De Maria ... ..	"	65
33	" Mr. P. Ferrante ... ..	"	66
34	" the Plaintiff ... ..	"	67
35	Plaintiff's Minute ... ..	15th March, 1950	68
36	Evidence, Mr. S. De Maria ... ..	29th March, 1950	69
37	Defendant's Application for Letters of Request ... ..	20th April, 1950	69
38	Plaintiff's Answer ... ..	22nd April, 1950	70
39	Defendant's Minute ... ..	3rd May, 1950	71
40	Interrogatories, (1) Kathleen Borg	"	72
	" (2) Patricia Borg ...	"	74
	" (3) Helen Borg ...	"	75
41	Decree on preceding Application ...	8th May, 1950	77
42	Procés Verbaut ... ..	26th June, 1950	78
43	Decree ordering issue Letters of Request ... ..	30th Oct., 1950	79
44	Plaintiff's Application ... ..	26th March, 1951	80
45	Decree on preceding Application ...	27th March, 1951	81
46	Plaintiff's Minute ... ..	3rd April, 1951	81
47	" ... ..	"	82
48	Evidence, Helen Borg ... ..	"	82
49	" Patricia Borg ... ..	"	86
50	Defendant's Minute ... ..	27th April, 1951	89
51	Evidence, Kathleen Borg ... ..	"	90

No.	Description	Date filed	Page
52	Evidence, Patricia Borg ... ..	27th April, 1951	93
53	Defendant's Minute ... ..	16th May, 1951	94
54	Defendant's Note of Submissions ...	"	94
55	Plaintiff's Minute ... ..	19th May, 1951	97
56	Plaintiff's Note of Submissions ... ..	"	98
57	Plaintiff's Minute ... ..	28th May, 1951	101
58	<i>Judgment, H.M. Civil Court, First Hall</i> ... ..	"	101
59	Procés Verbal ... ..	"	113
60	Decree on Plaintiff's Application ...	"	113
61	Defendant's Note of Appeal ... ..	2nd June, 1951	114
62	Defendant's Petition ... ..	9th June, 1951	117
63	Defendant's List of Exhibits ... ..	"	123
64	Surety Bond ... ..	"	124
65	Plaintiff's Answer ... ..	13th June, 1951	124
66	Plaintiff's Application ... ..	"	125
67	Decree on preceding Application ...	14th June, 1951	125
68	<i>Judgment, H.M. Court of Appeal</i> ...	4th Feb., 1952	126
69	Defendant's Petition for Leave to Appeal to H.M. Privy Council ...	23rd Feb., 1952	139
70	Decree on Defendant's Petition ...	25th Feb., 1952	142
71	Plaintiff's Answer ... ..	26th Feb., 1952	142
72	Decree on Defendant's Petition ...	10th March, 1952	143
73	Plaintiff's Application ... ..	"	147
74	Decree on preceding Application ...	11th March, 1952	147
75	Procés Verbal ... ..	27th March, 1952	148
76	Plaintiff's Minute ... ..	3rd April, 1952	148
	(Judge's Minute) ... ..	9th May, 1952	
77	Plaintiff's Application ... ..	12th May, 1952	149
78	Decree on preceding Application ...	13th May, 1952	150
79	Plaintiff's Minute ... ..	4th Nov., 1952	151
80	Plaintiff's Note of Submissions ...	"	151
81	Plaintiff's Minute ... ..	7th Nov., 1952	153
82	Defendant's Minute ... ..	16th Dec., 1952	154
83	Defendant's Note of Submissions ...	"	154
84	<i>Judgment, H.M. Civil Court</i> ... ..	24th Feb., 1953	159
85	Defendant's Note of Appeal ... ..	3rd March, 1953	165
86	Defendant's Petition ... ..	16th March, 1953	169
87	Surety Bond ... ..	"	175



No.	Description	Date filed	Page
88	Plaintiff's Answer ... ..	31st March, 1953	176
89	Defendant's Minute ... ..	4th May, 1953	176
90	<i>Judgment, H.M. Court of Appeal</i> ...	"	177
91	" "	15th June, 1953	183
92	Defendant's Petition for Leave to Appeal to H.M. Privy Council ...	6th July, 1953	194
93	Decree on Defendant's Petition ...	7th July, 1953	199
94	Plaintiff's Answer ... ..	24th July, 1953	199
95	Decree granting Conditional Leave	23rd Nov. 1953	200
96	Surety Bond ... ..	12th Dec., 1953	205
97	Minute approving Translation ... ..	27th July, 1954	206
98	Application for Final Leave ... ..	4th Aug., 1954	207
99	Decree granting Final Leave ... ..	4th Oct., 1954	208

## EXHIBITS

Mark	Description	Date filed	Page
	<b>PLAINTIFF'S:—</b>		
	<i>Exhibits produced together with writ-of-summons</i>		
"A"	Power of Attorney ... ..	11th Feb., 1949	5
"B"	Schedule of Pre-emption — 3. 9. 1948		9
"C"	Letter 22. 1. 1949. — Prof. Caruana to Dr. Magri ... ..		11
	<i>Exhibits produced by Plaintiff's Minute</i>		
"A"	Genealogical Table ... ..	1st April, 1949	13
1	Application M. Deboño dei Conti Ciantar & Decree thereon ... ..		14
2	Application A.J. Demartino nomine & Decree thereon ... ..		15
3	Application A.J. Demartino & Decree thereon ... ..		17
4	Minute: A.J. Demartino nomine ...		18
5	" M. Debono dei Conti Ciantar		19
6	" A.J. Demartino ... ..		20
7	Judicial Letter to Col. Borg nomine 10. 11. 48. ... ..		21

Mark	Description	Date filed	Page
8	Marriage Certificate ... ..	1st April, 1949	21
9	" " " ... ..		22
10	Act of Birth ... ..		23
11	" " " ... ..		24
12	" " " ... ..		25
13	" " " ... ..		26
14	Birth Certificate ... ..		27
15	Marriage Certificate ... ..		27
16	Birth Certificate ... ..		28
17	Marriage Certificate ... ..		28
18	Act of Marriage ... ..		29
19	Act of Birth ... ..		30
20	" " " ... ..		31
21	" " " ... ..		32
"A"	Baptismal Certificate ... ..	11th Jan., 1950	33
"A"	Marriage " ... ..	"	33

Ref. Genealogical Table "A"

Mark	Description	Date filed	Page
	<i>Exhibits "A" to "M" produced by Plaintiff's Minute.</i>	28th Feb., 1950	
"A"	Letter Col. Borg to Kath. Borg		
	— 22. 4. 1948 ... ..		34
"B"	" Kath. Borg to Col. Borg		
	— 20. 7. 1948 ... ..		36
"C"	" Col. Borg to Kath. Borg		
	— 5. 9. 1948 ... ..		36
"D"	" Col. Borg to Towle & Cooper		
	— 4. 10. 1948 ... ..		38
"E"	" Towle & Cooper to Col. Borg		
	— 17. 11. 1948 ... ..		39
"F"	" Col. Borg to Towle & Cooper		
	— 30. 11. 1948 ... ..		40
"G"	" Col. Borg to Kath. Borg		
	— 22. 11. 1948 ... ..		40
"H"	" Kath. Borg to Col. Borg		
	— 27. 10. 1948 ... ..		42
"I"	" Helen Borg to Col. Borg		
	— 28. 9. 1948 ... ..		44
"J"	" Patricia Borg to Col. Borg		
	— 7. 1. 1949 ... ..		44
"K"	" Towle & Cooper to Col. Borg		
	— 29. 4. 1949 ... ..		47
"L"	" Col. Borg to Towle & Cooper		
	— 5. 7. 1949 ... ..		47
"M"	" Towle & Cooper to Col. Borg		
	— 19. 7. 1949 ... ..		47
"A"	Loan Agreement ... ..		
"A"	Letter Col. Borg to Patricia Borg	15th March, 1950	48
	— 15. 9. 1948 ... ..		
"A"	Deed of Exchange of Property	3rd April, 1951	51
	— 12. 10. 1944 ... ..		
	<b>DEFENDANTS':—</b>	3rd April, 1952	53
"A"	Minutes of Board Meetings ... ..	29th March, 1950	59
"B"	Letter Towle & Cooper to Patricia Borg		
	— 1. 7. 1948 ... ..	27th April, 1951	62

Mark	Description	Date filed	Page
	<i>Exhibits produced together with Note of Submissions:</i>		
"A"	Judicial Letter to Mr. Vincenti — 4. 10. 1948 ... ..	16th May, 1951	64
"B"	Judicial Letter to Mr. Vincenti — 30. 11. 1948 ... ..		64
("C")	Schedule of Pre-emption — 3. 9. 1948 (Duplicate) ... ..		65
"D"	Deed of Donation ... ..		65
("E")	Deed of Exchange of Property — 12. 10. 1944. (Duplicate) ...		67
"G"	Final Adjudication Sale by licitation — 1. 4. 1948 ... ..		67
	<i>Exhibits produced together with Petition:</i>		
"V"	Sale Notice ... ..	9th June, 1951	69
"W-X"	Procés verbal sale by licitation ...		70
"Y"	Decree ordering Final ... ..		71
	Adjudication — 3. 3. 48 ... ..		
("Z")	Final Adjudication Sale by licitation — 1. 4. 48 (Duplicate) ... ..	72	
	<i>Exhibits "A" and "B"</i>		
"A"	Application Bice Demartino & Decree thereon ... ..	17th Jan., 1952	72
"B"	Application Bice Demartino & Decree thereon ... ..		"

**DOCUMENTS AND EXHIBITS THE TRANSLATION OF WHICH HAS BEEN OMITTED.**

Sub-poenas, Certificates of Service, Case Notices  
Procés verbaux recording adjournments  
Other formal documents

*And* documents and exhibits filed in the original record at fol. 169/172; un-numbered documents inserted between fol. 203/204; foll. 210/211; 221/222; 267/274; 275; 282; 286; 288/289; 295; 319/321; 372.

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# DOCUMENTS

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**IN H.M. CIVIL COURT, FIRST HALL.**

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In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL,  
MALTA.

BETWEEN

COLONEL STEPHEN J. BORG nomine  
Plaintiff (*Respondent*)

AND

GUSTAVO ROMEO VINCENTI A. & C.E.  
Defendant (*Appellant*)

RECORD OF PROCEEDINGS

DOCUMENTS

*Translation.*

No. 1.  
Writ-of-Summons

No. 1.  
Writ-of-  
Summons.

Writ-of-Summons No. 112/1949.

Filed in H.M. CIVIL COURT,  
First Hall, by G. Mangion L.P.  
with Three Exhibits, this eleventh  
February, 1949.

(Signed) V. PANDOLFINO,  
D/Registrar.

10

GEORGE VI

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

BY OUR COMMAND, at the suit of Colonel Stephen J. Borg, in  
his capacity as attorney for and on behalf of Patricia and Helen Borg,  
absent from these Islands, appointed, by instrument annexed to the  
Deed enrolled in the Records of Notary John Spiteri Maempel on the  
2nd September, 1948, a true copy whereof is annexed hereto (Exhibit  
20 "A"); — and, by Minute filed on 3rd April, 1951, Patricia and Helen

No. 1.  
Writ-of-  
Summons.  
—continued.

Borg who, having returned to the Island, took up the proceedings; and, by Minute filed on 28th May, 1951, Colonel Stephen J. Borg who, on the departure from the Island of Patricia and Helen Borg, again took up the proceedings on their behalf; — YOU SHALL SUMMON — Gustavo Romeo Vincenti, Architect and Civil Engineer, to appear before this Our Court at the Sitting to be held on the Twenty-Sixth February, 1949, at 9 a.m.

And there; — every necessary declaration being prefaced and any expedient direction being given; — whereas, at the judicial sale held 10  
on 1st April, 1948, the property at the corner between Kingsway and St. John Street, Valletta, formerly the block of buildings at Nos. 45, 46, 47, Kingsway, and Nos. 46, 47, and 48, St. John Street, inclusive of the cellar underlying Nos. 45, 46, and 47, Kingsway, at present demolished as the result of enemy action, free from and unencumbered by burthens and servitudes, and carrying with it the right to the amount of compensation payable by the War Damage Commission, was finally adjudicated to the Defendant for the sum of Thirty-two Thousand Two Hundred Pounds (£32,200); — and whereas, by Schedule No. 163 dated 20  
3rd September, 1948, (Exhibit "B"), the Plaintiff nomine, by virtue of the title of consanguinity, and any other whatsoever title appertaining to the said Patricia and Helen Borg, exercised the right of pre-emption in respect of the aforesaid property; — and whereas, notwithstanding the reiterated requests made to him by judicial letter, and notwithstanding previous agreement on his part to effect the re-sale of certain portions of the property (Exhibit "C"), the Defendant has now refused to surrender even those portions thereof; — said Defendant to shew cause (1) why a judicial declaration should not be made to the effect that the right of pre-emption exercised by the Plaintiff nomine is valid and lawful; (2) why, if necessary, liquidation should not be made of 30  
any lawful expenses incurred by him, the Defendant, in connection with the purchase of the property, over and above those lodged by the aforesaid Schedule; (3) why he should not be condemned to effect the re-sale to the Plaintiff nomine, within a short and peremptory period of time, of 283/360th portions of the property above-mentioned, or other varying portion thereof, even larger — and this subject to the proviso that, in default, the resale shall be deemed so effected in virtue of the judgment of the Court; — and (4) why he should not be condemned to pay to the Plaintiff nomine all the damages sustained and that may 40  
be sustained in consequence of delay and default on his, Defendant's, part — such damages being assessed by Judicial Referees appointed for the purpose.

With interest according to law, and with Costs, including the Costs of the judicial letters of the 4th and 16th October, 1948 and 8th January, 1949.

No. 1.  
Writ-of-  
Summons.  
—continued.

YOU SHALL SUMMON the Defendant so that a reference to his oath may be made.

You shall further give the Defendant notice that if he wants to contest the claim, he must, not later than two working days previous to the day fixed for the hearing of the cause, file a statement of defence according to law, and that in default of such statement of defence within  
10 the said period, and of his appearance on the day, at the hour and the place aforesaid, the Court will proceed to deliver judgment according to justice on the action of the Plaintiff *nomine* on the said day, or any subsequent day, as the Court may direct.

And after service by delivery of a copy hereof upon said Defendant, or his agent according to law, or upon your meeting with any obstacle in the said service, you shall forthwith report to this Court.

Given by Our aforesaid Civil Court, First Hall.

Witness Our faithful and well-beloved the Honourable Mr. Justice Alb. V. Camilleri B.Litt., Doctor of Laws, Judge of Our said Court.

20

This Twelfth February, 1949.

(Signed) Alb. V. CAMILLERI.

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**No. 2.**  
**Plaintiff's Declaration**

No. 2.  
Plaintiff's  
Declaration.

30 In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

The Declaration of the Plaintiff nomine.

1. The sisters Patricia and Helen Borg exercised the right of pre-emption, by reason of consanguinity and all other lawful titles whatsoever, in respect of the property whereof in the writ-of-summons, purchased by the Defendant.

40 2. Following repeated official requests, it was agreed between the parties that those portions of the property which, in Defendant's view, had gone out of the family — that is to say, the portion belonging to the

No. 2.  
Plaintiff's  
Declaration.  
—continued.

inheritance of Beatrice Apap and that belonging to Beatrice Demartino — should be retained by the Defendant, and that he, the Defendant, should release and effect the re-sale of the remaining portions — that is to say, those claimed in the writ-of-summons.

3. Matters progressed so far that Notary John Spiteri Maempel was actually entrusted with the task of drawing up the draft deed. Later, however, the Defendant changed his mind and refused to release and effect the re-sale of any portion of the property.

4. The Defendant, in the meantime, stood surety for several of the co-vendors, thus to enable them to withdraw their share of the deposit made; and all the Applications and all the acts relating to such withdrawals were served upon the Plaintiff nomine, so that the Plaintiff nomine was acknowledged and recognised as “de facto” possessor of the property in question. 10

5. That the Plaintiff nomine is entitled to the recovery of the property is further evidenced by the fact that the loan made by the National Bank of Malta by deed enrolled in the Records of Notary John Spiteri Maempel on the 2nd September, 1948 was made on the advice of Professor Dr. Victor Caruana, who is also Defendant's Legal Adviser. 20

6. It being their aim to rebuild and develop the property, the parties represented by the Plaintiff are sustaining very considerable damages in consequence of delay and default on Defendant's part — apart from the high rate of interest they are obliged to pay on the sum advanced to them as above.

7. The Plaintiff nomine, together with the Schedule of Pre-emption, lodged the lawful expenses which, so far as can be ascertained, were incurred by the Defendant in connection with the purchase of the property; but so far nothing has been said by the Defendant as regards the correctness or otherwise of the sum so placed at his disposal. 30

8. The stand taken by the Defendant, and the damages being sustained by the Plaintiff nomine — especially in view of the delay involved — have made it necessary to sue out the present writ-of-summons.

(Signed) A. MAGRI,

Advocate.

” GIUS. MANGION,  
Legal Procurator.

” J. MANGION,  
Legal Procurator. 40

Witnesses : —

1. The Plaintiff and Plaintiff's constituents — to give evidence in substantiation.

2. Professor Victor Caruana LL.D.

3. Alberto Magri LL.D.

To give evidence in substantiation of the fact that the Defendant was prepared to release and effect the re-sale of the aforementioned portions of the property; and to give further evidence.

4. Notary John Spiteri Maempel LL.D. — to produce the draft deed of the re-sale.

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

(Signed) A. MAGRI,  
Advocate.

The Plaintiff *nomine* makes reference to the Record of the Judicial Sale "Col. Stephen J. Borg and Others vs. Mgr. Chetcuti and Others," determined by this Court on 1st April, 1948.

20

(Signed) A. MAGRI,  
Advocate.  
" GIUS. MANGION,  
Legal Procurator.  
" J. MANGION,  
Legal Procurator.

6. Paul Ferrante, Cashier, National Bank of Malta — to confirm in evidence that the Bank's Legal Adviser approved of the loan being made in view of the fact that Plaintiff's constituents were entitled to the recovery of the property in question; and, if necessary, to produce all documents bearing on the matter.

(Signed) A. MAGRI,  
Advocate.  
" GIUS. MANGION,  
Legal Procurator.  
" J. MANGION,  
Legal Procurator.

No. 3.  
List of  
Exhibits.

**No. 3.**  
**List of Exhibits**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

List of Exhibits produced together with the writ-of-summons.

A. — Power of Attorney whereby Patricia and Helen Borg appointed Colonel Stephen J. Borg to act on their behalf. 10

B. — Official copy of the Schedule of Pre-emption dated 3rd September, 1948.

C. — Letter sent to Dr. A. Magri by Professor Dr. Victor Caruana on behalf of Mr. G. R. Vincenti A. & C.E. dated 22nd January, 1949.

(Signed) A. MAGRI,  
Advocate.

" GIUS. MANGION,  
Legal Procurator.

" J. MANGION, 20  
Legal Procurator.

No. 4.  
Plaintiff's  
Application.

**No. 4.**  
**Plaintiff's Application**

In H.M. Civil, Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E. 30

The Application of the Plaintiff nomine.

Respectfully sheweth:—

The Plaintiff nomine has this day filed a writ-of-summons whereby, inter alia, he is seeking an Order against the Defendant for the release and re-sale of the property therein mentioned, adjudicated to him, at the price of £32,200, in a Judicial Sale by Auction.

The property in question was demolished through enemy action and the right of pre-emption has been exercised so as to exploit its 40 possibilities as a building site.

In order so to exercise the right of pre-emption, Plaintiff's constituents borrowed money from the National Bank of Malta and the interest charged thereon amounts approximately to Five Pounds (£5) per day.

No. 4.  
Plaintiff's  
Application.  
—continued.

Various efforts have been made by the Plaintiff nomine to secure the recovery of the property without having to resort to litigation; but the Defendant, after agreeing to a settlement, changed his mind and refused to release the property.

Therefore, in view of the damages sustained by the pre-emptors, the Plaintiff nomine respectfully prays that this Court may be pleased to order that the case be put on an early case-list, so that it may be heard and determined with urgency — the legal period being dispensed with.

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

This 11th February, 1949.

20 Filed by J. Mangion L.P. without Exhibits.

(Signed) V. PANDOLFINO,  
Deputy Registrar.

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**No. 5.**  
**Decree on preceding Application**

No. 5.  
Decree on  
preceding  
Application.

30 HIS MAJESTY'S CIVIL COURT,  
FIRST HALL

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**Judge:**

The Honourable Mr. Justice Alb. V. Camilleri B.Litt., LL.D.

The Court,

40 Upon seeing the Application. —

Whereas there are no lawful grounds for an urgent hearing of the case.



No. 5. Disallows the Application, ordering that the case shall take its  
 Decree on preceding normal course.  
 Application.  
 —continued. This 11th February, 1949.

(Signed) V. PANDOLFINO,  
 Deputy Registrar.

No. 6.  
 Defendant's  
 Statement  
 of Defence.

**No. 6.**  
**Defendant's Statement of Defence**

10

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
 v.  
 Gustavo Romeo Vincenti A. & C.E.

Defendant's Statement of Defence.

The Defendant prays that he be discharged *ab observantia* in accordance with section 155 of the Code of Civil Procedure (Chap. 15, 20 Laws of Malta), on the ground of the nullity of the acts as envisaged in section 792 of that Code.

Without prejudice to other pleas on the merits *si et quatenus*.

(Signed) ED. VASSALLO,  
 Advocate.

" ALB. GANADO,  
 Advocate.

" E.G. CARUANA SCICLUNA,  
 Legal Procurator.

30

This 23rd February, 1949.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

(Signed) J. CAMILLERI CACOPARDO,  
 Deputy Registrar.

**No. 7.**  
**Defendant's Declaration**

No. 7.  
Defendant's  
Declaration.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

Defendant's Declaration.

Respectfully sheweth:—

10     1. So far as the alleged title of consanguinity is concerned, the Plaintiff has failed to produce the necessary documents showing that Patricia and Helen Borg are related to the vendors by consanguinity through a common ancestor. As regards any other title, no documents have been produced in support thereof.

2. Again, no documents, such as are admissible at law, have been produced by the Plaintiff to show that the conveyance of the property falls due in pursuance of an agreement arrived at — if it is Plaintiff's view that such an agreement is one of the causes of the claim.

20     3. The cause of the claim is not clearly and explicitly stated in the writ-of-summons.

4. In the Declaration, too, the Plaintiff has failed to make a clear and detailed statement of the facts of the case of which he or any other person therein mentioned may be aware.

30     5. Therefore, the writ-of-summons, otherwise the acts filed by the Plaintiff, impinge upon the form prescribed by law: The lack of supporting documents is especially prejudicial to the Defendant, in that, if the necessary documents are such as to be convincing, he will waive the issue and save the considerable costs involved — but will otherwise resist the claim. The Defendant still does not know whether he should challenge the title of consanguinity or other titles or whether he should contest the agreement alleged by the Plaintiff — to which the Plaintiff confined all the proofs adduced: The most important documents respecting the title of consanguinity — the Baptismal Certificates of the Plaintiffs Patricia and Helen Borg and the Marriage and Baptismal Certificates of their parents — are lacking. The original power of attorney, or a duly authenticated copy thereof, is likewise missing.

40     6. The acts are therefore defective in the essential particulars expressly prescribed by law in sections 155, 558, 559, and 792 of Chap. 15.

7. In view of the foregoing, the Defendant is not in a position to go into the merits of the case — and he reserves so to do *si et quatenus*.

No. 7.  
Defendant's  
Declaration.  
—continued.

8. The Defendant, on the grounds above-stated, demands that he be absolved from the Instance.

9. The copy of the power-of-attorney produced is not an authenticated copy and should therefore be removed from the Record.

(Signed) ED. VASSALLO,  
Advocate.

" ALB. GANADO,  
Advocate.

" E.G. CARUANA SCICLUNA,  
Legal Procurator. 10

Witnesses :—

1. The Plaintiffs Patricia and Helen Borg, and their attorney, Colonel Stephen J. Borg — to confirm Defendant's Declaration; the Defendant likewise to give evidence in substantiation.

2. Antonio Cassar Torregiani O.B.E., Captain Arturo Zammit Cutajar and Frederick Gollcher, Directors of the National Bank of Malta — to give evidence as to the loan advanced to the Plaintiffs for the recovery of the property in question and as to the agreement made with Colonel Borg personally or in his aforesaid capacity.

3. Victor Grech A. & C.E. — to give evidence as to the instructions given to him by the National Bank of Malta and to produce the plan made by him for the development of the site at issue in this case. 20

4. Salvino Demaria and Paolo Ferrante, officials of the National Bank of Malta — to give evidence as to whether and to what extent the Bank was interested in the site and as to the conditions imposed in connection with the loan advanced to the Plaintiff for the recovery thereof.

5. Albert J. Demartino — to give evidence as to the discussion regarding the site in question which took place between him and the Civil Engineer acting on behalf of the Bank.

6. Romeo Said and Major Edgar Amato Gauci — to give evidence as to the proposals made to them for converting the site lying at the back of the pre-empted site, together with the pre-empted site itself, into a Bank. 30

The Defendant reserves the right to name other witnesses whom it may be necessary to produce if and when the Plaintiff produces the documents now lacking.

(Signed) ED. VASSALLO,  
Advocate.

" ALB. GANADO,  
Advocate.

" E. G. CARUANA SCICLUNA,  
Legal Procurator. 40

**No. 8.**  
**Procés Verbal**

No. 8.  
Procés  
Verbal.

In H.M. Civil Court, First Hall.

26th February, 1949.

Dr. Ed. Vassallo, appearing for the Defendant, withdraws the statement made by him in his Declaration, to the effect that the power-of-attorney filed by the Plaintiff *nomine* is not in order.

10

*Omissis*

(Signed) S. BUGEJA,  
Deputy Registrar.

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**No. 9.**  
**Defendant's Minute**

No. 9.  
Defendant's  
Minute.

20 In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

**Defendant's Minute.**

The following are the documents which are required in support of the claim and which the Plaintiff *nomine* failed to produce together with the writ-of-summons:-

- 30 (a) The Birth Certificate of Marianna Debono Ciantar; (b) The Marriage Certificate of her parents; (c) The Birth Certificate of Mgr. Girolamo Chetcuti; (d) The Marriage Certificate of his parents; (e) The Birth Certificates of Daniele, Francesca, Stefania and Carmela Pellegrini Chetcuti; (f) The Marriage Certificate of their parents; (g) The Birth Certificates of Albert, Beatrice, and Anne Marie Demartino; (h) The Marriage Certificate of their parents; (i) The Birth and Marriage Certificates that are required to establish the descent of the vendors or their parents from the common ancestor.

- 40 A document entitled "Genealogical Table showing the blood relationship of Col. Stephen Borg with the vendors of the property here-under mentioned" was annexed to the Judicial Letter dated 30th November, 1947, which was served upon the Defendant. The table shows that Patricia and Helen Borg are the descendants of Dr. Pasquale

No. 9.  
Defendant's  
Minute.  
—continued.

Debono and Marianna Galea and the lineage is vouched for by the necessary documents. But there is nothing in the table to show the blood relationship of the pre-emptors with the vendors of the property in question, and much less is there any document in support of that alleged relationship. These documents are essential so far as Defendant's case is concerned. They have never been shown to the Defendant and they are not to be found among the acts filed before this Court.

(Signed) ED. VASSALLO,  
Advocate. 10  
" ALB. GANADO,  
Advocate.  
" E.G. CARUANA SCICLUNA,  
Legal Procurator.

This 7th March, 1949.

Filed at the Sitting by Dr. Alb. Ganado without Exhibits.

(Signed) SALV. BUGEJA,  
Deputy Registrar. 20

No. 10.  
Plaintiff's  
Minute.

### No. 10. Plaintiff's Minute

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Minute of the Plaintiff nomine. 20  
Respectfully sheweth:—

Defendant's plea, set up in terms of section 792 of the Code of Civil Procedure (Chap. 15), is that he is entitled to be discharged "ab observantia" on the ground of the nullity of the acts filed in the Record. It is his contention that the writ-of-sommons is null and void on the ground that the cause of the claim is neither explicit nor clear, in that the premises make mention of the title of consanguinity and other titles appertaining to the Plaintiff *nomine* according to law and of the agreement whereby the Defendant had undertaken to effect the re-sale of the property. 40

It is to be observed in the first place that one single cause or reason for the claim is sufficient to ensure the validity of the writ-of-sommons,

and this, in the present case, consists of the right to the exercise of pre-emption by reason of the title of consanguinity. As regards the agreement, it was referred to in the premises, not as the cause of the claim, but in connection with the order as to costs. Nor is the cause of the claim, as it stands, uncertain. Even if it were, however, the writ-of-summons would still be valid so long as the Defendant is not thereby prejudiced in his defence of the case (Collection of Judgments, Vol. XIII, 425) — as in fact he is not in the case at issue.

No. 10.  
Plaintiff's  
Minute.  
—continued.

10 The Defendant also seeks to make out a case for the nullity of the acts on the ground that the necessary documents were not produced together with the writ-of-summons. It is to be mentioned in the first place that long before the filing of the writ-of-summons, and indeed for a period running into several months, the contending parties had sought to come to a settlement out of Court, and that the Defendant, assisted by Professor V. Caruana LL.D., had agreed to release and effect the re-sale of the property, bar those portions belonging to Beatrice Demartino and the vacant inheritance of Beatrice Apap. For that reason, the supporting proofs respecting the title of consanguinity were limited to the descent of the Plaintiffs, as the lawful children  
20 of their father, from their grandmother, Virginia Borg, through the common ancestor, Dr. Pasquale Debono. (These documents are annexed to Schedule of Pre-emption No. 163 dated 3rd September, 1948 and the judicial letter sent to the Defendant on the 30th November, 1948). Defendant's concurrence had reached the point where the draft deed for the re-sale of the property had actually been prepared for enrolment — and had then to be abandoned because the Defendant changed his mind.

30 The upshot is that, once the Defendant had been satisfied with the proofs as above produced, it was fairly to be assumed that there was no actual necessity for supporting documents. All this, after all, is fully borne out by Professor Caruana's letter (Exhibit "C" filed together with the writ-of-summons.)

40 The production of documents is required by law so as to enable the Defendant to make all necessary preparations for his defence, and not where the Defendant, by his attitude, has made it clear that he does not stand in need of that evidence. At the same time, it is an elementary principle dictated by common sense that the plea of lack of documents may not be set up by a Defendant who has already had knowledge of such documents (Collection of Judgments XXVI, 1, 3a, 344); — as happens to be the case in this instance, where the documents were brought to Defendant's knowledge on the two occasions when he was served with the Schedule of Pre-emption and,

No. 10.  
Plaintiff's  
Minute.  
—continued.

later, with the Judicial Letter dated 30th November, 1948.

In the last resort, the Court always has it in its power to allow the production of evidence, including documentary evidence, and the fact that such evidence has failed to be produced together with the initial act of the proceedings does not entitle the Defendant to obtain his dismissal from the action, not even "*ab observantia*." (Collection of Judgments, XXIV, I, 721; XXVII, II, 287).

Another ground for nullity, according to the Defendant, is that the Plaintiff *nomine* is seeking an order for the re-sale of a determinate portion of the property, "or other varying portion thereof, even larger." It would not appear that the Defendant has brought any serious argument in support of this plea, which aims at upsetting the practice consistently followed before these Courts where claims formulated as above have always been allowed. 10

Further, the Defendant has gone so far as to plead the nullity of the writ-of-summons on the ground that the accompanying Declaration fails to state the facts of the case. Apart from the fact that it is not quite correct to say that the facts have not been stated therein, any such omission could never produce the nullity of the acts, so much so that the Plaintiff may, if to the Court it shall seem fit, be allowed to file a Minute explaining the facts (section 175 (i) Code of Civil Procedure) or another Declaration — as has happened on occasion. 20

It is to be observed, especially in connection with the matter as to Costs, that the Defendant bought the pre-empted property from the very same persons in respect of whom he is now seeking proof of consanguinity. A genealogical table showing the relationship between the owners of the property — that is to say, the persons from whom, in the judicial sale, the Defendant bought that property — is filed in the Record of the case "Colonel Stephen Borg and Others v. Mgr. Gerolamo Chetcuti and Others", determined by this Honourable Court on the 24th July, 1946. It is therefore hard to explain why the Defendant, now, is questioning that relationship between the vendors — unless it is merely to spin out the proceedings. 30

It is also a significant fact that the Applications for the withdrawal of the deposit made by the Defendant in respect of the price of the property are being served upon the Plaintiff *nomine* in order that the latter may ascertain whether the guarantee offered by the parties receiving the payment-out is good and sufficient to meet the purposes of any subsequent re-deposit according to law; and where the Plaintiff *nomine* declined the surety offered, the Defendant stepped into the breach and the money was withdrawn under his own guarantee (Exhibits Nos. 1 to 7). This cannot but mean recognition, albeit 40

indirect, of Plaintiffs' right to the exercise of pre-emption in respect of the property in question.

No. 10.  
Plaintiff's  
Minute.  
—continued.

Without prejudice to proofs as to the limitation of the documentary evidence in support of the consanguinity above-mentioned, and without prejudice to Defendant's agreement to release the property (bar the quotas above referred to), the Plaintiff nomine is here producing the necessary documents showing Plaintiffs' title of consanguinity *vis à vis* the vendors.

At all events, however, the Plaintiff *nomine* insists that the Defendant, having necessitated the costs of the case, be ordered to bear all the costs — and that he be condemned to pay all the damages that his vexatious actions have caused and are causing to the Plaintiff *nomine*.

(Signed) A. MAGRI,  
Advocate.

This First of April, 1949.

Filed at the Sitting by Dr. A. Magri, together with 22 Exhibits.

(Signed) S. BUGEJA,  
Deputy Registrar.

20

### No. 11. Defendant's Minute

No. 11.  
Defendant's  
Minute.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

Defendant's Minute.

The Defendant raises objection to the filing of the documents produced by the Plaintiff together with the Minute filed on 1st April, 1949 — a question in regard to which is pending at this stage of the proceedings — and demands that the documents be provisionally removed from the Record.

(Signed) ED. VASSALLO,  
Advocate.  
" ALB. GANADO,  
Advocate.

This First of April, 1949.

Filed at the Sitting by Dr. Alb. Ganado without Exhibits.

40

(Signed) S. BUGEJA,  
Deputy Registrar.



**No. 12.**  
**The Evidence of Professor V. Caruana LL.D.**

No. 12.  
The  
Evidence of  
Professor  
V. Caruana  
LL.D.

In H.M. Civil Court, First Hall.

4th May, 1949.

Professor Victor Caruana LL.D., produced by the Plaintiff, states on oath:—

The letter marked Exhibit "C", produced together with the writ-of-summons, was written and conceived by me. In view of my own personal knowledge of the genealogical table of the family, I did not stop to consider at all closely whether the supporting documents were there or not — for it seemed to me that, on the face of it, the table had been accurately made out. At that time, I was acting as Dedendant's Legal Adviser. I know also that the parties were about to settle the matter out of Court and that a draft deed had been made for the purpose. As regards the children of Dr. Antonio Borg, I insisted upon seeing the supporting documents, and, though I cannot remember whether or not there was a judicial letter with regard to them, I know that the Plaintiff *nomine* met my wishes so far as they were concerned. The proposed settlement out of Court failed to materialise for this reason: Vincenti had to retain in his possession certain quotas which were not subject to pre-emption and he therefore wanted to know which part of the site was to be retained by him as representing those quotas; and they failed to agree as to the distribution of the site according to the respective quotas. That at least is my impression. It was for that reason that he changed his mind.

Read over to the witness by the stenographer by order of the Court.

(Signed) S. BUGEJA,  
Deputy Registrar.

No. 13.  
Plaintiff's  
Evidence.

**No. 13.**  
**Plaintiff's Evidence**

30

In H.M. Civil Court, First Hall.

4th May, 1949.

The Plaintiff *nomine*, at his own request, states on oath:—

I exercised the right of pre-emption on behalf of my nieces on the 3rd September, 1948, producing the necessary power-of-attorney. Later, there was an exchange of judicial letters between Mr. Vincenti

and myself. I was officially requested in those letters to give certain details in regard to the genealogical table originally produced in connection with the licitation proceedings, and, in response to every question they were entitled to make, we produced the necessary documents. They never asked for documents respecting other relatives of mine, for they seemed satisfied with the relationship, so much so that, by the time I gave them the Baptismal Certificates, we had come to the point of effecting a settlement out of Court. There were three quotas which Mr. Vincenti insisted upon retaining in his possession, that of Bice Demartino, Grace Borg, and the Apap quota. I was  
10 advised by Dr. Alberto Magri that I had no rights in so far as the Bice Demartino and the Apap quotas were concerned, but that the quota belonging to my wife, who had made an exchange of property with my mother, had remained within the family, for I was still living; and there were certain judgments thereanent.

I was here on one occasion when the case was being heard by the Judge presiding over this Court. Professor Caruana and Dr. Alberto Magri were present at the time. Dr. Magri spoke to Professor Caruana and quoted to him certain judgments or provisions of the law bearing  
20 on the subject of my wife's quota, which had not gone out of the family. Professor Caruana then went out and spoke to Mr. Vincenti, after which he said: "It's all right — we shall come to a settlement." I was prepared, on the advice of Dr. Magri, to raise no question as regards the retention by Mr. Vincenti of the other two quotas, that is to say, the Bice Demartino and the Apap quotas: I was perfectly satisfied with things as they stood and I agreed to let him have the Bice Demartino and the Apap quotas.

I gave instructions to Notary Dr. Spiteri Maempel to prepare a draft deed for the re-sale of the property. On my way upstairs, after  
30 leaving the Hall, Mr. Vincenti told me he wanted to keep for himself, in respect of the quotas to be retained by him, that part of the site lying at the corner between Kingsway and St. John Street, stating he was entitled to a part on the Kingsway side and to another part on the side of St. John Street. The proposed agreement did not include which part of the site was to be retained in his possession. In fact, we were to draw up the deed for the release of the undivided quotas and to effect the partition afterwards. Nothing had been said as regards which quotas were to be kept by him. The actual partition had not been determined upon and was not included in the draft deed. The draft  
40 deed envisaged the quota to be re-sold at the respective price according to the "costings" made after the sale by licitation. Subsequently, I met Dr. Magri — or perhaps it was Professor Caruana — and he told me:

No. 18.  
Plaintiff's  
Evidence.  
—continued.

“Vincenti has changed his mind.” I then told Dr. Magri to do the necessary.

I remember that my Legal Adviser had mentioned to me that he had spoken to Professor Caruana.

#### CROSS — EXAMINATION

As regards my wife's quota, nothing had been said to the effect that, in order to come to a settlement out of Court, one half of that quota was to be deemed apportionable to me and the other half to Mr. Vincenti. It was regarded as my own quota in its entirety. The answer is in the negative and no such proposal was ever made. To me at least nothing was ever said about the matter. 10

On one occasion, Mr. Vincenti called on me and we had an idea we might come to terms before the start of the proceedings and before the preparation of the draft deed. This was after the 3rd September in the interval between the filing of the Schedule of Pre-emption and the filing of the Writ-of-Summons. He came to see me and we decided to discuss the matter and that the outcome of our discussion would in no way be binding upon anyone — and we were by ourselves. Mr. Vincenti offered me property somewhere else. I told him I was sorry, but that it was that property I wished to have. 20

Read over to the witness by the stenographer by order of the Court.

(Signed) S. BUGEJA,  
Deputy Registrar.

No. 14.  
The  
Evidence of  
Dr. Alberto  
Magri.

No. 14.

30

### The Evidence of Dr. Alberto Magri

In H.M. Civil Court, First Hall.

4th May, 1949.

Dr. Alberto Magri, produced by the Plaintiff *nomine*, states on oath:—

There was an understanding between Professor Victor Caruana, who was then Defendant's Legal Adviser, and myself, that I should produce documents in support of the genealogical table in so far as it concerned the Plaintiffs' direct descent from the *capo stipite*. 40

A question arose as regards the quotas belonging to the inheritance of Beatrice Apap, that belonging to Beatrice Demartino and that belonging to the wife of the Plaintiff nomine, Grace Borg. As regards the quota last mentioned, I quoted to him certain judgments given by the Courts in Malta, as well as Pothier on the subject; and afterwards Professor Caruana seemed satisfied on the point. A draft deed was then drawn up, wherein the only quotas left out were those of Bice Demartino and the Apap heirs. After he had seen the draft, unless I am mistaken, and when I asked him to fix a date for the publication of the deed, he told me that the Defendant had changed his mind. There was nothing else to do then but to sue out the present writ-of-summons.

#### CROSS — EXAMINATION

The descent of the Plaintiffs' blood collaterals was not discussed. He told me it was necessary to prove, not only the Baptismal Certificates, but also the Marriage of the parents of the Plaintiffs. The question was not discussed, and, therefore, the documents were not produced.

Read over to the witness by the stenographer by order of the Court.

(Signed) S. BUGEJA,  
Deputy Registrar.

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No. 15.  
Judgment,  
H.M. Civil  
Court,  
First Hall.

No. 15.  
Judgment, H.M. Civil Court, First Hall

H.M. CIVIL COURT FIRST HALL  
First Hall

Judge:

The Honourable Mr. Justice A. V. Camilleri B.Litt., LL.D.

Sitting held on Wednesday, the  
4th, May, 1949.

10

No. 19.

Writ-of-Summons No. 112/1949.

Colonel Stephen J. Borg, in his capacity as attorney for Patricia and Helen Borg, absent from these Islands — appointed by instrument annexed to the Deed enrolled in the Records of Notary Dr. John Spiteri Maempel on the 2nd September, 1948.

20

v.

Gustavo Romeo Vincenti A.&C.E.

The Court,

Upon seeing the Writ-of-Summons, whereby the Plaintiff nomine:- Every necessary declaration being prefaced and any expedient direction being given:- premising that, at the Judicial Sale held on 1st April, 1948, the property at the corner between Kingsway and St. John Street, Valletta, formerly the block of buildings at Nos. 45, 46, and 47, Kingsway, and Nos. 46, 47, and 48, St. John Street, inclusive of the cellar 30 underlying Nos. 45, 46, and 47, Kingsway, at present demolished as the result of enemy action, free from and unencumbered by burthens and servitudes, and carrying with it the right to the amount of compensation payable by the War Damage Commission, was finally adjudicated to the Defendant for the sum of Thirty-two Thousand Two Hundred Pounds (£32,200); — that, by Schedule No. 163 dated 3rd September, 1948, the Plaintiff nomine, by virtue of the title of consanguinity, and any other whatsoever title appertaining to the said Helen and Patricia Borg, exercised the right of pre-emption in respect of the aforesaid property; — and that, notwithstanding the reiterated requests 40 made to him by Judicial Letter, and notwithstanding previous agree-

ment on his part to effect the re-sale of certain portions of the property, the Defendant has now refused to surrender even those portions thereof; — prayed that (1) a judicial declaration be made to the effect that the right of pre-emption exercised by the Plaintiff nomine is valid and lawful; (2) that, if necessary, liquidation be made of any lawful expenses incurred by the Defendant in connection with the purchase of the property, over and above those lodged by the aforesaid Schedule; — (3) that the Defendant be condemned to effect the re-sale to the Plaintiff nomine, within a short and peremptory period of time, of  
 10 283/360th undivided portions of the property above-mentioned, or other varying portion thereof, even larger — and this subject to the proviso that, in default, the re-sale shall be deemed so effected in virtue of the judgment of the Court; — and (4) that the Defendant be condemned to pay to the Plaintiff nomine all the damages sustained and that may be sustained in consequence of delay and default on his, Defendant's, part — such damages being assessed by Judicial Referees appointed for the purpose.

With interest according to law, and with Costs, including the Costs of the Judicial Letters of the 4th and 16th October, 1948 and 8th  
 20 January, 1949.

Upon seeing Plaintiff's Declaration and List of Witnesses.

Upon seeing the Exhibits produced by the Plaintiff.

Upon seeing the Application filed by the Plaintiff on the 11th February, 1949, praying for an urgent hearing of the case; and upon seeing the Decree given on the 12th February, 1949, dismissing that Application.

Upon seeing Defendant's Statement of Defence, pleading that he be discharged "*ab observantia*" in accordance with section 155 of the  
 30 Code of Civil Procedure (Chap. 15, Laws of Malta), on the ground of the nullity of the acts as envisaged in section 792 of that Code. — Without prejudice to any other pleas on the merits *si et quatenus*.

Upon seeing Defendant's Declaration and List of Witnesses.

Upon seeing the procès verbal dated 26th February, 1949, recording Defendant's withdrawal of the submission made by him in the Declaration to the effect that the power-of-attorney filed by the Plaintiff nomine is not in order.

Upon seeing the Minute filed by the Defendant on the 7th  
 40 March, 1949.

Upon seeing the Minute filed by the Plaintiff on the 1st April, 1949; and the Exhibits produced thereby.

No. 15.  
Judgment,  
H.M. Civil  
Court,  
First Hall.  
—continued.

Upon seeing the Minute filed by the Defendant on the 1st April, 1949.

Having heard the evidence.

Having heard Counsel on both sides.

Having considered:—

As shown in the course of the proceedings, and in the Notes of Submissions of the contending parties, the questions raised are two in number, namely:— (1) the nullity of the writ-of-summons on the ground that the cause of the claim is not therein stated clearly and definitely; and (2) the nullity of the writ-of-summons on the ground that the Plaintiff failed to produce the necessary documents together with the writ-of-summons. 10

Having considered:—

The Plaintiff, by Schedule No. 163 dated 3rd September, 1948, exercised the right of pre-emption, by reason of consanguinity and any other lawful title, in respect of the property in question, which had been finally adjudicated to the Defendant at the Judicial Sale held on 1st April, 1948. It appears that, afterwards, the two Plaintiffs, through their uncle, approached the Defendant, and it appears that judicial acts were then exchanged between the parties, including the Judicial Letter dated 20 3rd November, 1948, sent by the Plaintiff *nomine* to the Defendant, together with certain supporting documents respecting the descent of the Plaintiffs, and of some of the original vendors, from the common ancestor, Dr. Pasquale Debono. Later, presumably in response to Plaintiff's last Judicial Letter dated 8th January, 1949, the then Legal Adviser of the Defendant, Professor Caruana, wrote the letter dated 22nd January, 1949, (produced in the original and marked Exhibit "C" in the Record); according to which letter, the Defendant, at that time, raised no question as regards any supporting documents, but declared through his Legal Adviser that he was prepared to release the property 30 "de quo", excepting the quotas which are therein referred to as being no longer within the family — so that it would appear the Defendant was not unaware, or was satisfied, that the quotas he was prepared to release had in fact remained within the family, a declaration which may well have some bearing on the questions at issue.

As regards the first plea, it is beyond question that, doctrinally, it is important closely to examine, in connection with the object of the claim and the law that governs and determines the issue, the facts that have given rise to the action — and these facts cannot but be within 40 the knowledge of the contending parties. Where the facts entitle the

Plaintiff to a plurality of rights, there is nothing in the law to prevent him adducing the facts in the writ-of-summons, so long as they tend towards the attainment of the object in view and provided they are not irreconcilable. The writ-of-summons, so drawn up, is not rendered obscure by reason of the causes of the claim, but shows, if anything, by virtue of which rights (*jus petendi*) the Plaintiff is bringing the action. Nor is the Defendant, juridically speaking, in any way prejudiced thereby, in that the Defendant, duly served with the writ-of-summons, is always in a position to repudiate all the rights claimed. In

10 the case at issue, the Plaintiff *nomine* declared in the oral proceedings, and in his written submissions, that the claim for the release and re-sale of the property, and the other interdependent claims, rest on the title of consanguinity held by him, and that cause, of itself, is enough to ensure the validity of the writ-of-summons and to render untenable the plea of nullity on the ground of lack of clearness. Where the object and the cause or causes of the claim have been duly set out, the writ-of-summons cannot be said to be lacking in the formalities or wanting in the matter of clearness.

In the view of the Court, therefore, the first plea is untenable.

20 Having considered :—

So far as the second plea is concerned, section 155 (2) of the Code of Civil Procedure, to the effect that such documents as may be necessary in support of the claim shall be produced together with the writ-of-summons, is meant to provide the Defendant with sufficient knowledge as to the documentary evidence on which the Plaintiff relies to establish the facts on which the action is based. In other words, the object in view of the formality above-mentioned is that of placing the Defendant in a position, immediately on reading the writ-of-summons, to become acquainted with all the facts underlying the

30 action and all the documentary evidence that goes to support the claim — so that he may either agree to what is demanded of him or prepare a just defence. (Vide Collection of Judgments, Vol. XIII p. 425, H.M. Commercial Court, 25th February, 1863, “Le Bet Hasan v. Vincenzo Abela and Others;” and Vol. XXVIII, Part 1, p. 66, H.M. Court of Appeal, 1st. May, 1931, “Frendo Randon v. Despott pro. et noe and Others”). However, it should be borne in mind that, according to established practice — apart from professional etiquette which depends upon individual inclinations and individual tendencies, and which, therefore, has nothing to do with the law — the necessity of the

40 quest for truth in the compilation of judicial proceedings has always led the Court to permit the Plaintiff, in certain cases, whilst the



No. 15.  
Judgment,  
H.M. Civil  
Court,  
First Hall.  
—continued.

dispute is pending before the Court of First Instance, to produce any document that may be deemed necessary for the better implementation of the case. (Vide Vol. XXVII, Part II, p. 286, H.M. Civil Court, First Hall, 10th October, 1930, "Schembri and Others v. Cassar;" Vol XXIV, Part I, p. 721, H.M. Court of Appeal Civil Hall, 20th April, 1921, "Micallef v. Zammit"). It has also been held that, in the case of documents lying in the Registry of the Court, reference thereto is sufficient to ensure compliance with the provisions of section 155 of the Code of Civil Procedure. (Vide Vol. XVI, Part II, p. 317, H.M. Civil Court, First Hall, 18th October, 1898, "Gellel v. Despott"); 10  
and that, where a document has failed to be produced, and it is the decision of the Court that the document is one which can easily and at any time be made available, the non-inclusion thereof in the Record does not amount to nullity. (Vide Vol. XXVIII, Part III, p. 491, H.M. Commercial Court, 8th February, 1917, "Azzopardi v. Mifsud"). And it was further held that, where a Judicial Letter has been sent to and served upon the Defendant, it is not necessary that the Plaintiff should produce a copy of the Letter together with the writ-of-summons, in that the Defendant has already taken cognisance thereof. (Vide Vol. XXVI, Part I, p. 344, H.M. Court of Appeal, Inferior Jurisdiction, 4th 20  
November, 1926, "Sammut utrinque").

Having considered :—

The legal principles and the jurisprudence governing the matter at issue having been premised, it is to be observed that, in actual fact, the Defendant could not but have known of the proceedings in re "Col. Stephen Borg and Others v. Mgr. Canon Gerolamo Chetcuti and Others" (determined by this Court on the 24th July, 1946) and of the documents annexed thereto, regard being had to the documents filed together with Schedule No. 163 dated 3rd September, 1948, the licitation 30  
proceedings between "Col. Borg nomine v. Mgr. Chetcuti and Others" (determined 1st April, 1948) and the Judicial Letter dated 30th November, 1948, together with the documents annexed thereto. It is true that certain documents in support of the genealogical table were missing, but it is none the less true that, before the case was brought before the Court, the Defendant, the missing documents notwithstanding, was prepared to acknowledge, subject to certain limitations, the rights held by the Plaintiffs — and that means that he was satisfied as to their blood relationship, in that it is hardly to be presumed that he would have recognised that right on their part if *prima facie* he had 40  
any doubts on the matter. It is beyond dispute that, before the issue of the writ-of-summons, the Defendant had been regularly and officially

informed, by means of the appropriate documents — and, indeed, according to the letter marked Exhibit “C”, he himself had shown himself satisfied — that the Plaintiffs were in fact the descendants of Dr. Pasquale Debono. This fact neutralizes Defendant’s plea as to the necessity of proving Plaintiffs’ blood relationship with that capo stipite. As against that, the Defendant may perhaps complain that, before the issue of the writ-of summons, he was not shown any documentary evidence proving that the vendors were also the descendants of the same ancestor, thus establishing their blood relationship with the

10 pre-emptors; but that was because he himself had made it plain that he was satisfied of that relationship, as evidenced by the letter marked Exhibit “C”. After all, that proof, where evident, is not generally called for in cases of pre-emption by reason of the title of consanguinity; and where it is otherwise than evident, the genealogical table, which is itself a document, may in the course of the proceedings be supplemented by the required documents. In the case at issue, the genealogical table of the family concerned was known to the Defendant before the present dispute arose, and Plaintiffs’ branch of the family was supplemented by the Judicial Letter of the 30th November, 1948 — upon

20 which or following which Defendant’s then Legal Adviser wrote the letter marked Exhibit “C”.

Any other reference to lack of clearness in the Declaration, made by the Defendant in his own Declaration, is legally devoid of all significance, considering that, the Court, in cases where the Declaration is lacking in the formalities required by law, may order the removal of that Declaration from the Record and its substitution by another — as is done in everyday practice.

In the opinion of the Court, therefore, the second plea also fails.

30 On these grounds,

The Court

Adjudges, dismissing the two preliminary pleas set up by the Defendant respecting the lack of clearness of the writ-of-summons and the lack of supporting documents — and ordering that the documents produced shall be retained in the Record.

And, having regard to the merits, orders each party to bear its own Costs.

(Signed) S. BUGEJA,  
Deputy Registrar.

No. 16.  
Defendant's  
Note of  
Appeal.

**No. 16.**  
**Defendant's Note of Appeal**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

Defendant's Note of Appeal.

The Defendant, deeming himself aggrieved by the preliminary **10**  
judgment given by this Court on the 4th May, 1949, hereby enters  
Appeal therefrom to H.M. Court of Appeal.

(Signed) ALB. GANADO,  
Advocate.

" E.G. CARUANA SCICLUNA,  
Legal Procurator.

The 10th May, 1949.

Filed by E. G. Caruana Scicluna L.P. without Exhibits.

(Signed) S. BUGEJA,  
Deputy Registrar.



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**IN H.M. COURT OF APPEAL**

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**No. 17.**  
**Defendant's Petition**

**No. 17.**  
**Defendant's**  
**Petition.**

In H.M. Court of Appeal.

Colonel Stephen J. Borg, in his capacity as attorney for Patricia and Helen Borg, absent from these Islands — appointed by instrument annexed to the Deed enrolled in the Records of Notary Dr. John Spiteri Maempel on the 2nd September, 1948.

10

v.

Gustavo Romeo Vincenti A. & C.E.

Defendant's Petition.

Respectfully sheweth:—

The Plaintiff, by writ-of-summons filed on the 11th February, 1949, premising that, at the Judicial Sale held on 1st April, 1948 the property at the corner between Kingsway and St. John Street, Valletta, formerly the block of buildings at Nos. 45, 46, and 47, Kingsway, and Nos. 46, 47, and 48, St. John Street, inclusive of the cellar underlying Nos. 45, 46, and 47, Kingsway, at present demolished as the result of enemy action, free from and unencumbered by burthens and servitudes, and carrying with it the right to the amount of compensation payable by the War Damage Commission, was finally adjudicated to the Defendant for the sum of Thirty-two Thousand Two Hundred Pounds (£32,200); — that, by Schedule No. 163 dated 3rd September, 1948, the Plaintiff nomine, by virtue of the title of consanguinity, and any other whatsoever title appertaining to the said Helen and Patricia Borg, exercised the right of pre-emption in respect of the aforesaid property; — and that, notwithstanding the reiterated requests made to him by Judicial Letter, and notwithstanding previous agreement on his part to effect the re-sale of certain portions of the property, the Defendant has now refused to surrender even those portions thereof; — prayed that (1) a judicial declaration be made to the effect that the right of pre-emption exercised by the Plaintiff nomine is valid and lawful; — (2) that, if necessary, liquidation be made of any lawful expenses incurred by the Defendant in connection with the purchase of the property, over and above those lodged by the aforesaid Schedule; — (3) that the Defendant be condemned to effect the re-sale to the Plaintiff nomine, within a short and peremptory period of time, of 283/360th undivided

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40

No. 17.  
Defendant's  
Petition.  
—continued.

portions of the property above-mentioned, or other varying portion thereof, even larger — and this subject to the proviso that, in default, the re-sale shall be deemed so effected in virtue of the judgment of the Court; — and (4) that the Defendant be condemned to pay to the Plaintiff *nomine* all the damages sustained and that may be sustained in consequence of delay and default on his, Defendant's, part — such damages being assessed by Judicial Referees appointed for the purpose. — With interest according to law and with Costs.

The Defendant, in his Statement of Defence, pleaded the nullity of the writ-of-summons on the ground that the cause of the claim had not been clearly and definitely set out and on the ground that the Plaintiff *nomine* had failed to produce the necessary supporting documents; and therefore prayed that he be discharged *ab observantia*. 10

The Court below, by judgment given on the 4th May, 1949, dismissed the preliminary pleas set up by the Defendant, directed that the documents produced be retained in the Record, and, in view of the merits, ordered each party to bear its own Costs.

The Defendant, deeming himself aggrieved by that judgment, entered Appeal therefrom to this Honourable Court by Minute filed on the 10th May, 1949. 20

The grievance is manifest and it is that the Court below disallowed Defendant's plea as to the nullity of the writ-of-summons.

That plea was raised, firstly, on the ground that the cause of the claim had not been clearly and definitely explained, and, secondly, on the ground that the necessary supporting documents had not been produced together with the writ-of-summons, as prescribed by section 155, Chap. 15, Laws of Malta.

The Court below gave undue importance to what passed between the parties before the case was brought before the Courts. At that time, in fact, negotiations had taken place and the parties had sought to find some solution acceptable to both sides and thus to avoid the possibility of litigation. 30

Now it is well known that, at that stage, the Legal Advisers concerned, endeavouring to settle the issue out of Court, rest entirely on the information that is supplied to them by the parties, without seeking to establish whether the information so supplied to them is mathematically exact and without insisting upon seeing all the documentary proofs required in support thereof. Where, however, one of the parties to the dispute brings the issue before the Courts, the position undergoes 40

a complete change. Thereupon, the question is caught up in the complex meshes of the procedural mechanism, and the matter as to "form", now gone beyond the discretion of the parties, is governed by the formalities prescribed by law — which affect and concern all citizens in general, and which, as a matter of public policy, are binding in their observance, not only upon the litigants, but also upon the Court.

No. 17.  
Defendant's  
Petition.  
—continued.

10 All judicial acts must strictly conform with the law, not least of all the writ-of--summons, which holds a pre-eminent place among judicial acts. Where conformity with the law is lacking, the Code of Civil Procedure, in section 792, prescribes the nullity of the act.

The law lays down that the subject-matter and the cause of the claim must be clearly and correctly stated in the writ-of-summons — "So that the Defendant may agree to what he considers just or prepare his defence against what he considers unjust." (H.M. Civil Court, First Hall, 24th February, 1911, Vol. XXI, II, p. 259, "Demajo v. Camilleri"), In the present case, it was not possible for the Defendant to do either, for the cause of the claim is not stated in the manner prescribed by law. The fact is only too evident. In the third claim brought forward in  
20 the writ-of-summons, the Plaintiff *nomine* seeks an order against the Defendant for the release and re-sale, within a short and peremptory period of time, of an undivided portion of the property, or other varying portion thereof, even larger. Where indeed is the cause of the claim in this instance? It is certainly not disclosed in the act, either in the wording of the claim itself or in the premises. So far as the premises are concerned, the Plaintiff *nomine* set off with the assertion that the property in question had been sold by licitation — which is not the cause of the third claim brought forward. It is then stated that, by  
30 Schedule No. 163 dated 3rd September, 1948, the Plaintiff *nomine*, by virtue of the title of consanguinity, and any other whatsoever title appertaining to Helen and Patricia Borg, had exercised the right of pre-emption in respect of the property therein mentioned. It cannot be said that that is the cause of the claim for the release and re-sale of the property. There the Plaintiff *nomine* merely affirms that he has exercised the right of pre-emption — obviously in order that he might then demand, as he does in the first claim, a judicial declaration to the effect that the right of pre-emption has been validly and lawfully exercised. That does not amount to an exposition of the cause of the claim as required by law. The Plaintiff *nomine* failed to state, in a  
40 clear and definite manner, by virtue of which title he has brought the present action; he did not explain or disclose the right which he claims



No. 17.  
Defendant's  
Petition.  
—continued.

to hold. It is not enough that he should make reference to the Schedule of Pre-emption. The Plaintiff *nomine* stated in that Schedule that he was exercising the right of pre-emption "by virtue of any other whatsoever title appertaining to the aforesaid Helen and Patricia Borg;" and he repeated the very same words in the writ-of-summons. Such vague terms could hardly be said to attain the scope and object of the law, which is "that of placing the Defendant in a position to know, immediately on reading the writ-of-summons, what is required of him, so that he may either agree to the claim and save further costs or make the necessary preparations for his defence." (H.M. Court of Appeal, 5th December, 1921, Vol. XXIV, Part First, p. 914 — Callus v. Baldacchino). According to constant jurisprudence, mere reference to the documents which are annexed to the writ-of-summons, but which have not been served upon the Defendant together with the writ-of-summons, is valueless so far as the subject-matter and the cause of the claim is concerned. 10

That apart, the premises and the claim for the release and re-sale of the property lack between them that logical and natural sequence which goes to show that the former — the premises — are the cause, and the latter — the claim — the effect thereof. In fact, whilst the recovery of the *whole* property is mentioned in the premises, the claim is confined to 283/360th undivided portions of that property. To be able to discover, simply by reading the writ-of-summons, why pre-emption has been exercised in respect of the whole property, and why, at the same time, the claim is made for the re-sale of only a part of that property, it is necessary to be endowed with supernatural intelligence. If anything, clearness and correctness are conspicuous by their absence. 20

It is however also premised in the writ-of-summons that, notwithstanding the repeated requests made to him by Judicial Letter, and notwithstanding previous agreement on his part to effect the re-sale of certain portions thereof, the Defendant has now refused to surrender even those portions. It is a proposition that complicates rather than elucidates the question. In fact, that premise and the claim for re-sale are more closely related than premise number two and the same claim. Whilst in the second premise the Plaintiff *nomine* speaks of the property as a whole, in the premise quoted above, he mentions only certain portions of the property — even though it is not stated whether those portions are the very same portions referred to in the claim. On reading the writ-of-summons, therefore, one may well think that that is the cause of the claim. 30 40

The accompanying Declaration tends to strengthen that impression. It is there stated that the pre-emptors had recovered the property in question — a statement which is followed by no fewer than five paragraphs in which the Plaintiff strives to show that the Defendant had first agreed to effect the re-sale and had then thought better of it. Almost all the witnesses in the sub-joined list, too, are called to give evidence in support of that fact.

No. 17.  
Defendant's  
Petition.  
—continued.

In the oral proceedings, as well as in his written submissions, the Plaintiff *nomine* declared that the claim for the release and re-sale of the property, and the other interdependent claims, rest on the title of consanguinity held by Helen and Patricia Borg. The Court below held that that cause, of itself, is sufficient to ensure the validity of the writ-of-summons and to render untenable the plea of nullity. The Defendant agrees that the cause as above expressed is of itself sufficient for the validity of the writ-of-summons, but once that cause is not disclosed, clearly and explicitly, in the writ-of-summons, the plea of nullity should be allowed.

As regards the other ground for the nullity of the writ-of-summons, section 155 (2) of the law requires that such documents as may be necessary in support of the claim shall be produced together with the writ-of-summons. Juridically, that provision of the law has for its basis the necessity of apprising the Defendant of all the facts of the case so that he may be able to prepare his defence. Local jurisprudence as regards that section of the law may be summed up thus: "The construction which the Courts in Malta have consistently placed upon section 175 (section 155 (2), Revised Ed., Laws of Malta) is that the documents therein mentioned must be documents of which the Defendant has no knowledge, the production of which is so necessary that, without them, the Defendant is unable to prepare his defence." (H.M. Commercial Court, 7th November, 1933, Vol. XXVIII, Part III, p. 1217 — *Mamo v. Joslin*).

If one were to assume that the cause of the claim is that mentioned by the Plaintiff *nomine* in his subsequent Minute, that is to say, the blood relationship of the pre-emptors with the vendors, then one cannot but come to the conclusion that the necessary documents have not been produced, and that, consequently, the writ-of summons is null and void.

The following are the reasons:—

The Plaintiff *nomine* produced three documents together with the writ-of-summons, namely: (a) a power of attorney authorizing him to

No. 17.  
Defendant's  
Petition.  
—continued.

act on behalf of Patricia and Helen Borg; (b) an official copy of the Schedule of Pre-emption dated 3rd September, 1948; and (c) the letter sent to Dr. A. Magri by Professor Victor Caruana on behalf of the Defendant.

Then the Plaintiff, in his List of Witnesses, made reference to the Record of the Judicial Sale "Colonel Stephen J. Borg and Others v. Mgr. Chetcuti and Others," determined 1st April, 1948.

The Plaintiff was under no obligation to produce, together with with the writ-of-summons, the documents annexed to the Schedule of Pre-emption dated 3rd September, 1948, for it is to be taken for granted that, having been served with the Schedule of Pre-emption, the Defendant had already come to know of those documents (H.M. Court of Appeal, Inferior Jurisdiction, 4th November, 1946 — "Sammut v. Sammut"). It was also sufficient to make reference to the Judicial Sale determined 1st April, 1948. (Vide "Gellel v. Despott" and "Azzopardi v. Mifsud" quoted in the judgment of the Court of First Instance). Similarly, according to that jurisprudence, it is not within Defendant's rights to take exception to the fact that the Plaintiff omitted to produce the documents annexed to the Judicial Letter dated 3rd November, 1948, that Judicial Letter having been served upon the Defendant.

On the other hand, however, the Plaintiff *nomine*, in order to avoid an infraction of the law, should have produced all the other necessary documents which had never been brought to Defendant's knowledge and which are not included in the Record to which he made reference. The Court below duly noted that "certain documents in support of the genealogical table were missing," but held that "it is none the less true that, before the case was brought before the Court, the Defendant, the missing documents notwithstanding, was prepared to acknowledge, subject to certain limitations, the rights held by the Plaintiffs." And therefore the Court considered that the Plaintiff *nomine* was justified in not complying with the law and in not producing the relevant documents proving that the Plaintiffs and the vendors in the licitation are the descendants of a common ancestor.

It is Defendant's humble submission that that conclusion can be arrived at by an elastic, rather than an extensive, interpretation of the relevant provision of the law. It may be the Court below deemed it proper so to construe a procedural enactment, having in mind the considerable issues at stake on the merits and the prejudicial effects that a judicial declaration as to the nullity of the writ-of-summons

would necessarily produce so far as the Plaintiff is concerned. It is Defendant's submission, however, that such considerations should not prevail where the Judge is called upon to decide on a plea respecting the non-observance of an established ritual.

No. 17.  
Defendant's  
Petition.  
—continued.

The Court below referred also to "the necessity of the quest for truth in the compilation of judicial proceedings", and, because of that necessity, deemed it incumbent upon itself to allow the Plaintiff *nomine* to produce in the course of the proceedings necessary documents that had not been produced before. It should be observed  
10 that it is exactly because of the necessity of the quest for truth that the legislator devised the rules that govern the conduct of judicial proceedings — rules which are within the domain of public policy and which should be observed *ad litteram*. The search for truth must be conducted in conformity with, and not contrary to, the procedure established by law. Otherwise, it would always be possible to plead the higher interests of the quest for truth — and the laws of procedure would not be worth the paper they are written on.

According to the foregoing principles, the documents filed in re "Colonel Stephen Borg and Others v. Mgr. Gerolamo Chetcuti and  
20 Others," determined by H.M. Civil Court, First Hall on the 24th July, 1946, likewise fail to meet the case, in that the Defendant had taken no part in those proceedings and no reference thereto is made in the writ-of-summons under discussion. The Court below stated that the Defendant could not but have been aware of those proceedings. There is no evidence that goes to justify that conclusion and, therefore, *quod gratis asseritur, gratis negatur*.

All this makes it clear that the Defendant was not "placed in a position, immediately on reading the writ-of-summons, to become acquainted with all the facts underlying the action and all the docu-  
30 mentary evidence that goes to support the claim" — and therefore he was unable "either to agree to what is demanded of him or to prepare a just defence." It has been established that documents that were necessary to support the claim (such as, for example, the Marriage Certificates proving the descent of the vendors from the *capo stipite*) were not produced together with the writ-of-summons; and, obviously, these are documents "the production of which is so necessary that, without them, the Defendant is unable to prepare his defence." (Vide "Mamo v. Joslin" quoted above). The Plaintiff *nomine* makes no attempt to prove — as he is in duty bound to do, but cannot in actual  
40 fact — that the documents which he failed to produce were known to the Defendant before the issue of the writ-of-summons. It follows

No. 17.  
Defendant's  
Petition.  
—continued.

therefore that the second plea as to the nullity of the writ-of-summons rests on good and lawful grounds.

Therefore, producing the undermentioned surety for the costs of the appeal, making reference to the evidence adduced — and reserving the right to produce all further evidence admissible at law — the Defendant Appellant humbly prays that this Honourable Court may be pleased to reverse the judgment given by the Court of First Instance on the 4th May, 1949, allowing the plea set up by him as to the nullity of the writ-of-summons and discharging him *ab observantia*. With the Costs both of the First and of this Second Instance against the Res- 10  
pondent *nomine*.

(Signed) ED. VASSALLO,  
Advocate.  
" ALB. GANADO,  
Advocate.  
" E.G. CARUANA SCICLUNA,  
Legal Procurator.

This 25th May, 1949.

Filed by E. G. Caruana Scicluna L.P. without Exhibits.

20

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

No. 18.  
Surety  
Bond.

### No. 18. Surety Bond

John Bonnici, Messenger, son of the late Alfred and Caterina née Brincat, born and residing in Valletta, appears and stands joint surety 30  
with the Defendant Appellant, Gustavo Romeo Vincenti A. & C.E., for the Costs of this Appeal, hypothecating the whole of his present and future property and renouncing every benefit accorded by law.

(Signed) JOHN BONNICI.

The said John Bonnici has affixed his signature hereto in my presence, this 25th May, 1949.

(Signed) J. CAMILLERI CACOPARDI,  
Deputy Registrar.

40

**No. 19.**  
**Plaintiff's Answer**

**No. 19.**  
**Plaintiff's**  
**Answer.**

In H.M. Court of Appeal

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Answer of the Plaintiff nomine.

Respectfully sheweth:—

10 The surety produced by the Defendant Appellant, being unknown, is refused for all the ends and purposes of the law.

On the merits, the judgment appealed from is just and should be affirmed.

The Plaintiff nomine therefore respectfully prays that the Appeal be declared abandoned and — in the event of an acceptable surety being produced — that it be dismissed with Costs.

(Signed) A. MAGRI,  
Advocate.

20

" G. MANGION,  
Legal Procurator.

This 27th May, 1949.

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

(Signed) J. MICALLEF,  
Deputy Registrar.

**No. 20.**  
**Plaintiff's Application**

**No. 20.**  
**Plaintiff's**  
**Application.**

30

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine,  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Application of the Plaintiff nomine.

Respectfully sheweth:—

The Appeal entered by the Defendant is confined to matters affecting procedural formalities.

40

It is in the interests of the Plaintiff that the case be concluded and disposed of before the Law Vacations, in that, in order to recover the

No. 20.  
Plaintiff's  
Application.  
—continued.

property in question, his constituents had to borrow money on which they are being charged interest at the rate of about £5 per day — without being able to develop or make use of the property in the meantime.

The Plaintiff therefore respectfully prays that this Honourable Court may be pleased to accord the Appeal an urgent hearing and to fix an early date for the purpose.

(Signed) A. MAGRI,  
Advocate.

” GIUS. MANGION,  
Legal Procurator. 10

This 27th May, 1949.

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

(Signed) J. MICALLEF,  
Deputy Registrar.

## No. 21.

### Decree on preceding Application

20

No. 21.  
Decree on  
preceding  
Application.

#### H.M. COURT OF APPEAL

The Court,

Upon seeing Plaintiff's Application, praying that the Appeal be accorded an urgent hearing:— .y

Upon considering:

No Application was made in the Court below for an abridgement of the period prescribed by law: In fact, the judgment appealed from was given on the 4th May, 1949, the Note of Appeal and the Petition were entered respectively on the 10th and the 25th May, and 30 Defendant's Answer was filed on the 27th May.

Upon considering:

The Petition itself shows that the Appeal is not such as to be easily disposed of.

Therefore disallows the Application.

This 30th May, 1949.

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

40

**No. 22.**  
**Judgment, H.M. Court of Appeal**

No. 22.  
Judgment,  
H.M. Court  
of Appeal.

H. M. COURT OF APPEAL  
(Civil Hall)

Judges:

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

Sitting held on Monday, the  
14th November, 1949.

No. 12.  
Writ-of-Summons No. 112/1949.

20

Colonel Stephen J. Borg, in his capacity as attorney for Patricia and Helen Borg, absent from these Islands — appointed by instrument annexed to the Deed enrolled in the Records of Notary Dr. John Spiteri Maempel on the 2nd September, 1948.

v.

Gustavo Romeo Vincenti A. & C.E.

The Court,

Upon seeing the Writ-of-Summons, whereby the Plaintiff nomine, premising:— that, at the Judicial Sale held on 1st April, 1948, the property at the corner between Kingsway and St. John Street, Valletta, formerly the block of buildings at Nos. 45, 46, and 47, Kingsway, and Nos. 46, 47, and 48, St. John Street, inclusive of the cellar underlying Nos. 45, 46, and 47, Kingsway, at present demolished as the result of enemy action, free from and unencumbered by burthens and servitudes, and carrying with it the right to the amount of compensation payable by the War Damage Commission, was finally adjudicated to the Defendant for the sum of Thirty-two Thousand Two Hundred Pounds (£32,200); — that, by Schedule No. 163, dated 3rd September 1948, the Plaintiff nomine, by virtue of the title of consanguinity, and any other whatsoever title appertaining to the said  
40 Helen and Patricia Borg, exercised the right of pre-emption in respect of the aforesaid property; — and that, notwithstanding the reiterated



No. 22.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

requests made to him by Judicial Letter, and notwithstanding previous agreement on his part to effect the re-sale of certain portions of the property, the Defendant has now refused to surrender even those portions thereof; — prayed that (1) a judicial declaration be made to the effect that the right of pre-emption exercised by the Plaintiff nomine is valid and lawful; — (2) that, if necessary, liquidation be made of any lawful expenses incurred by the Defendant in connection with the purchase of the property, over and above those lodged by the aforesaid Schedule; — (3) that the Defendant be condemned to effect the re-sale to the Plaintiff nomine, within a short and 10 peremptory period of time, of 283/360th undivided portions of the property above-mentioned, or other varying portion thereof, even larger — and this subject to the proviso that, in default, the re-sale shall be deemed so effected in virtue of the judgment of the Court; — and (4) that the Defendant be condemned to pay to the Plaintiff nomine all the damages sustained and that may be sustained in consequence of delay and default on his, Defendant's, part — such damages being assessed by Judicial Referees appointed for the purpose. — With interest according to law, and with Costs, including the Costs of the Judicial Letters of the 4th and 16th October, 1948 and 20 8th January, 1949.

Upon seeing Defendant's Statement of Defence, pleading that he be discharged "*ab observantia*" in accordance with section 155 of the Code of Civil Procedure (Chap. 15, Laws of Malta), on the ground of the nullity of the acts as envisaged in section 792 of that Code. — Without prejudice to any other pleas on the merits *si et quatenus*.

Upon seeing the Judgment given by H.M. Civil Court, First Hall, on the 4th May, 1949, dismissing the two preliminary pleas set up by the Defendant, respecting the lack of clearness of the writ-of-summons and the lack of supporting documents — and ordering that the 30 documents produced be retained in the Record. And, further, having regard to the merits, ordering each party to bear its own Costs.

That Court having considered:—

As shown in the course of the proceedings, and in the Notes of Submissions of the contending parties, the questions raised are two in number, namely:— (1) the nullity of the writ-of-summons on the ground that the cause of the claim is not therein stated clearly and definitely; and (2) the nullity of the writ-of-summons on the ground that the Plaintiff failed to produce the necessary documents together with that writ-of-summons. 40

The Plaintiff, by Schedule No. 163 dated 3rd September, 1948, exercised the right of pre-emption, by reason of consanguinity and

any other lawful title, in respect of the property in question, which had been finally adjudicated to the Defendant at the Judicial Sale held on 1st April, 1948. It appears that, afterwards, the two Plaintiffs, through their uncle, approached the Defendant, and it appears that judicial acts were then exchanged between the parties, including the Judicial Letter dated 3rd November, 1948, sent by the Plaintiff nomine to the Defendant, together with certain supporting documents respecting the descent of the Plaintiffs and of some of the original vendors from the common ancestor, Dr. Pasquale Debono. Later, presumably in

10 response to Plaintiff's last Judicial Letter dated 8th January, 1949, the then Legal Adviser of the Defendant, Professor Caruana, wrote the letter dated 22nd January, 1949, (produced in the original and marked Exhibit "C" in the Record); according to which letter, the Defendant, at that time, raised no question as regards any supporting documents, but declared through his Legal Adviser that he was prepared to release the property "de quo", excepting the quotas which are therein referred to as being no longer within the family — so that it would appear the Defendant was not unaware, or was satisfied, that the quotas he was prepared to release had in fact remained within

20 the family, a declaration which may well have some bearing on the questions at issue.

As regards the first plea, it is beyond question that, doctrinally, it is important closely to examine, in connection with the object of the claim and the law that governs and determines the issue, the facts that have given rise to the action — and these facts cannot but be within the knowledge of the contending parties. Where the facts entitle the Plaintiff to a plurality of rights, there is nothing in the law to prevent him adducing the facts in the writ-of-summons, so long as they tend towards the attainment of the object in view and provided they are not irreconcilable. The writ-of-summons, so drawn up, is not rendered obscure

30 by reason of the causes of the claim, but shows, if anything, by virtue of which rights (*jus petendi*) the Plaintiff is bringing the action. Nor is the Defendant, juridically speaking, in any way prejudiced thereby, in that the Defendant, duly served with the writ-of-summons, is always in a position to repudiate all the rights claimed. In the case at issue, the Plaintiff nomine declared in the oral proceedings, and in his written submissions, that the claim for the release and re-sale of the property, and the other interdependent claims, rest on the title of con-

40 ganguinity held by him, and that cause, of itself, is enough to ensure the validity of the writ-of-summons and to render untenable the plea of nullity on the ground of lack of clearness. Where the object and the cause or causes of the claim have been duly set out, the writ-of-sum-

No. 22.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

mons cannot be said to be lacking in the formalities or wanting in the matter of clearness.

In the view of the Court, therefore, the first plea is untenable.

So far as the second plea is concerned, section 155 (2) of the Code of Civil Procedure, to the effect that such documents as may be necessary in support of the claim shall be produced together with the writ-of-summons, is meant to provide the Defendant with sufficient knowledge as to the documentary evidence on which the Plaintiff relies to establish the facts on which the action is based. In other words, the object in view of the formality above-mentioned is that of placing the Defendant in a position, immediately on reading the writ-of-summons, to become acquainted with all the facts underlying the action and all the documentary evidence that goes to support the claim — so that he may either agree to what is demanded of him or prepare a just defence. (Vide Collection of Judgments, Vol. XIII, p. 425, H.M. Commercial Court, 25th February, 1863, “Le Bet Hasan v. Vincenzo Abela and Others;” and Vol. XXVIII, Part I, p. 66, H.M. Court of Appeal, 1st May, 1931, “Frendo Randon v. Despott p. et noe and Others”). However, it should be borne in mind that, according to established practice — apart from professional etiquette, which depends upon individual inclinations and individual tendencies, and which, therefore, has nothing to do with the law — the necessity of the quest for truth in the compilation of judicial proceedings has always led the Court to permit the Plaintiff, in certain cases, whilst the dispute is pending before the Court of First Instance, to produce any documents that may be deemed necessary for the better implementation of the case. (Vide Vol. XXVII, Part II, p. 286, H.M. Civil Court, First Hall, 10th October, 1930, “Schembri and Others v. Cassar”; Vol. XXIV, Part I, p. 721, H.M. Court of Appeal, Civil Hall, 20th April, 1921, “Micallef v. Zammit”). It has also been held that, in the case of documents lying in the Registry of the Court, reference thereto is sufficient to ensure compliance with the provisions of section 155 of the Code of Civil Procedure. (Vide Vol. XVI, Part II, p. 317, H.M. Civil Court, First Hall, 18th October, 1898, “Gellel v. Despott”); and that, where a document has failed to be produced, and it is the decision of the Court that the document is one which can easily and at any time be made available, the non-inclusion thereof in the Record does not amount to nullity. (Vide Vol. XXVIII, Part III, p. 491, H.M. Commercial Court, 8th February, 1917, “Azzopardi v. Mifsud”). And it was further held that, where a Judicial Letter has been sent to and served upon the Defendant, it is not necessary that

the Plaintiff should produce a copy of the Letter together with the writ-of-summons, in that the Defendant has already taken cognisance thereof. (Vide Vol. XXVI, Part I, p. 344, H.M. Court of Appeal, Inferior Jurisdiction, 4th November, 1926, "Sammut utrinque").

No. 22.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

The legal principles and the jurisprudence governing the matter at issue having been premised, it is to be observed that, in actual fact, the Defendant could not but have known of the proceedings in re "Col. Stephen Borg and Others v. Mgr. Canon Gerolamo Chetcuti and Others" (determined by this Court on the 24th July, 1946) and of the documents annexed thereto, regard being had to the documents filed together with Schedule No. 163 dated 3rd September, 1948, the licitation proceedings between "Col. Borg nomine v. Mgr. Chetcuti and Others" (determined 1st April, 1948) and the Judicial Letter dated 30th November, 1948, together with the documents annexed thereto. It is true that certain documents in support of the genealogical table were missing, but it is none the less true that, before the case was brought before the Court, the Defendant, the missing documents notwithstanding, was prepared to acknowledge, subject to certain limitations, the rights held by the Plaintiffs — and that means that he was satisfied as to their blood relationship, in that it is hardly to be presumed that he would have recognised that right on their part if *prima facie* he had any doubts on the matter. It is beyond dispute that, before the issue of the writ-of-summons, the Defendant had been regularly and officially informed, by means of the appropriate documents — and, indeed, according to the letter marked Exhibit "C", he himself had shown himself satisfied — that the Plaintiffs were in fact the descendants of Dr. Pasquale Debono. This fact neutralizes Defendant's plea as to the necessity of proving Plaintiffs' blood relationship with that *capo stipite*. As against that, the Defendant may perhaps complain that, before the issue of the writ-of-summons, he was not shown any documentary evidence proving that the vendors were also the descendants of the same ancestor, thus establishing their blood relationship with the pre-emptors; but that was because he himself had made it plain that he was satisfied of that relationship, as evidenced by the letter marked Exhibit "C". After all, that proof, where evident, is not generally called for in cases of pre-emption by reason of the title of consanguinity; and where it is otherwise than evident, the genealogical table, which is itself a document, may in the course of the proceedings be supplemented by the required documents. In the case at issue, the genealogical table of the family concerned was known to the Defendant before the present dispute arose, and the Plaintiffs' branch of

No. 22.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

the family was supplemented by the Judicial Letter of the 30th November, 1948 — upon which or following which Defendant's then Legal Adviser wrote the letter marked Exhibit "C".

Any other reference to lack of clearness in the Declaration, made by the Defendant in his own Declaration, is legally devoid of all significance, considering that, the Court, in case where the Declaration is lacking in the formalities required by law, may order the removal of that Declaration from the Record and its substitution by another — as is done in everyday practice.

In the opinion of the Court, therefore, the second plea also fails. 10

Upon seeing Defendant's Note of Appeal, and his Petition, praying that that judgment be reversed — the plea as to the nullity of the writ-of-summons being allowed and he being discharged *ab observantia*. With the costs both of the First and of this Second Instance against the Respondent nomine.

Upon seeing the Answer of the Respondent nomine praying that the judgment be affirmed, with Costs.

Having examined the acts filed in the Record.

Having heard Counsel on both sides.

Having considered:—

20

The plea as to the nullity of the writ-of-summons is raised by the Appellant on the ground that the cause of the claim is not therein clearly and definitely stated according to law and on the ground that the necessary documents in support of the claim have not been produced.

As to the ground first stated, a mere reading of the writ-of-summons is enough to show that the cause of the claim rests on the right of pre-emption exercised by the Plaintiff nomine, by Schedule No. 163 dated 3rd. September, 1948, by reason of the title of consanguinity. The fact that pre-emption in respect of the whole property was exercised by that Schedule, whilst the re-sale of an undivided portion thereof, or other varying portion, even larger, is sought in the writ-of-summons, can never lead to the conclusion that the cause of the claim is indefinite and uncertain — especially when it is realised that that reduction was made after the contending parties had, through their Legal Adviser, almost arrived at the point of acknowledging that the title of consanguinity did not cover certain portions of the pre-empted property. The fact is also referred to in the premises of the writ-of-summons, wherein it is stated that, following the repeated requests made to him by Judicial Letter, the Appellant had agreed to the release of "certain portions" of 30 40

the property. It follows therefore that the plea as to the nullity of the writ-of-summons, so far as it rests on the first ground stated, is untenable.

No. 22.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

Having considered :

As regards the second ground, that is to say, the lack of supporting documents together with the writ-of-summons, the jurisprudence governing the matter at issue is enunciated in the judgment appealed from. In accordance with those principles, applied to the facts specified in that judgment, the second ground given for the nullity of the writ-of-  
10 summons must likewise be set aside; and this Court agrees with the conclusions arrived at by the Court below and adopts for its own both the grounds on which those conclusions are based and the exposition of the facts leading thereto.

On these grounds, and on the grounds set out in the judgment given by the Court of First Instance —

This Court

Dismisses the Appeal and affirms the Judgment appealed from, with Costs against the Defendant Appellant.

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

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**IN H.M. CIVIL COURT, FIRST HALL.**

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**No. 23.**  
**Defendant's Statement of Defence**

No. 23.  
Defendant's  
Statement  
of Defence.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

Defendant's Statement of Defence.

Respectfully sheweth: —

10     1. The Plaintiff nomine has not established the bond — and the degree — of consanguinity between the pre-emptors and the vendors; and, if this fails to be established, the Defendant prays that the claims be dismissed.

2. The two Plaintiffs who are absent from these Islands and who are represented by Colonel Borg were duly notified according to law of the Notices respecting the sale and they are not therefore entitled to exercise the right of pre-emption in respect of the property in question.

20     3. The two Plaintiffs aforesaid are not exercising the right of pre-emption in their own interests, but on behalf and for the benefit of third parties.

Without prejudice to other pleas.

(Signed) ED. VASSALLO,  
Advocate.  
" ALB. GANADO,  
Advocate.  
" E.G. CARUANA SCICLUNA,  
Legal Procurator.

30 This 16th November, 1949.

Filed at the Sitting by Dr. Ed. Vassallo without Exhibits.

(Signed) S. BUGEJA,  
Deputy Registrar.

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**No. 24.**  
**Defendant's Declaration**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

Defendant's Declaration.

Respectfully sheweth:—

10

1. On the merits, the Plaintiffs are bound to establish the bond — and also the degree — of consanguinity that exists between them and the vendors through the common ancestor. The evidence so far produced covers only a part of the Plaintiffs' ascending line. That the Plaintiffs are within the degree of relationship that entitles them to the exercise of pre-emption has not so far been established in evidence.

2. The Plaintiffs were duly notified of the proposed sale in terms of section 1520 of the Civil Code (Chap. 23, Laws of Malta), in that the respective advertisement was published in the Government Gazette of the 30th December, 1947 and the adjudication was made on the 1st April, 1948 — as established in the Schedule of Pre-emption and the Writ-of-Summons itself. The period that elapsed between the date of publication of the advertisement in the Government Gazette, 30th December, 1947 and the day on which final adjudication was made, 1st April, 1948, exceeds the period of one month required by law. Persons who have been notified of the sale are not entitled to the exercise of the right of pre-emption. 20

3. It shall be established in the course of the proceedings that the two Plaintiffs exercised the right of pre-emption, not in their own interests, but on behalf and for the benefit of third parties. 30

(Signed ED. VASSALLO,  
Advocate." ALB. GANADO,  
Advocate." E.G. CARUANA SCICLUNA,  
Legal Procurator.

—————

**No. 25.**  
**Plaintiff's Minute**

No. 25.  
Plaintiff's  
Minute.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

The Minute of the Plaintiff nomine.

10 The Plaintiff nomine hereby produces his Baptismal and Marriage Certificate (Exhibit "A").

As regards other documents in support of the consanguinity of the pre-emptors, the Plaintiff nomine makes reference to the documents produced and served upon the Defendant together with the Judicial Letters dated 30th November, 1948 and 8th January, 1949.

The quota handed down by Giovanna, née Debono, the wife of Amabile Demarco, having been bought by John Apap, has gone out of the family and the Plaintiff therefore does not insist upon the recovery thereof.

20 The descent from Dr. Pasquale Debono of Carmela, the wife of Dr. Daniele Chetcuti, Saverio, Antonia, the wife of Francesco Mifsud, and Margherita, the wife of Lorenzo Demartino, is established by their Marriage Certificates, which have already been produced.

(Signed) A. MAGRI,

Advocate.

" FORTUNATO MIZZI,

Advocate.

This 11th January, 1950.

Filed at the Sitting by Dr. F. Mizzi with one Exhibit.

30

(Signed) S. BUGEJA,

Deputy Registrar.

**No. 26.**  
**Procés Verbal**

No. 26.  
Procés  
Verbal.

13th January, 1950.

Dr. Ed. Vassallo, on behalf of the Defendant, has no further objections to raise as regards documentary evidence and will proceed with the evidence in respect of the other questions involved.

Case adjourned to 15th February, 1950.

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(Signed) S. BUGEJA,

Deputy Registrar.

**No. 27.**  
**Plaintiff's Evidence**

In H.M. Civil Court, First Hall.

15th February, 1950.

The Plaintiff nomine, Colonel Stephen J. Borg, produced by the Defendant, states on oath:—

So far as I know, Patricia and Helen Borg are, the former in Australia, the latter in New Zealand. I can give their addresses now. 10  
The address of Helen Borg is at No. 609, Manican Road, Epsom, Auckland, New Zealand; that of Patricia Borg is c/o French Legation, Canberra. They have been away from Malta for some considerable time — since before the war. They came to Malta once and stayed here for some months. The eldest was still a child when she first came to Malta. I cannot say how old they were the last time they were here, but they were under eighteen. Unless I am mistaken, the eldest is now 27 years of age. If I remember rightly, the last time they came to Malta was in 1937 and they stayed on for some months. I act on their behalf as their attorney. They decided — in their cor- 20  
respondence with me — to recover the property in question. I have kept that correspondence. I have copies of the letters which I sent to them and also copies of the letters which they sent to me and I will be in a position to produce both. I promise to hand over all these letters to my Counsel so that he may show them to Defendant's Counsel. So far as I know, all the letters are there.

I wrote to their mother and the reason why pre-emption was exercised on behalf of two of them — leaving the youngest out of it — is that the law in New Zealand differs from the law in Malta where the question of age is concerned. 30

The property was described to their mother and she knew about it. The last time she was here was in 1937. I cannot say whether they regarded the property from a commercial point of view, but I did put it to them that, commercially, its recovery was worth while.

In order to effect the recovery of the property, I secured a loan from the Bank. I advised them about the loan. They knew about the loan beforehand because I had told them all about it.

No correspondence was exchanged with the Bank. A loan agreement was drawn up — an instrument in public form dated September, 40  
1947 ( ? 1948). I stood joint surety. So far as the Bank is concerned,

only the loan agreement was made and I exchanged no other correspondence and there were no Meetings which I attended and of which Minutes were kept. The interest charged on the loan was  $3\frac{1}{2}$  p.c.

No. 27.  
Plaintiff's  
Evidence.  
—continued.

I had acquired certain quotas of the property in question from my aunts. I did not speak to a Civil Engineer with the object of developing the property. When I bought that property, my idea was to exploit it. The right of pre-emption was exercised in respect of those quotas, bar one quota, in respect of which an Exchange was made.

10 I had no official information from the Bank — either at the time I contracted the loan or before — that they wanted to build a Head Office; but I heard they had an idea of approaching the Government with a view to the erection of a Head Office on the site of the old Law Courts. I believe a Commission was appointed and I heard they approached Mr. Justice Camilleri with a proposal that they should take over his property. At no time have I ever discussed the matter with them.

20 I advised their mother as regards the possibility of her taking up residence in Malta, for she has my brother's property here — she and the children together. She said she would probably come the following year to have a look round and decide on the possibility of establishing herself here. One of her daughters is a medical practitioner and I understand it is her intention to bring her over too. When I wrote to them about the property, I did not, so far as I know, make any promises to them; but I told them that the property, besides being property that had come down to them from their own family, offered certain advantages, and that, as a site for a block of buildings, it was the best to be found in Valletta. In other words, they agreed to take on themselves the risk of the transaction.

30 I have informed them about the present case and I am keeping them posted as to its progress. As joint surety, I assumed responsibility for everything, including the case itself. In other words, if the case fails, I shall pay the Costs. I take it that, according to the terms of the contract, all the Costs are to my account as joint surety; but nothing has been said between us as regards the Costs of the case. I told them the case had perforce to be brought before the Courts. I cannot say who will have to pay the Costs if the case is lost. I made no promises to them that I should pay the Costs myself and we never discussed the matter as to Costs.

## CROSS — EXAMINATION

No. 27.  
Plaintiff's  
Evidence.  
—continued.

There were persons here in Malta who could have exercised the right of pre-emption. There was another nephew on my sister's side — Briffa. There were others who were not notified — my sister's in New Zealand and the son of Professor Briffa. I think the last named was either here in Malta or had already gone away. He is studying for ordination as a Jesuit, but has not yet been ordained.

## RE-EXAMINATION

10

At the present moment, the only project I have in mind is to open a clinic for the niece who has graduated in Medicine — one of the Plaintiffs.

There is the loan and they acquired the property and I stand joint surety. As regards the financial position of the children, I can state what property they have in Malta and what property will come to them later when the usufruct at present enjoyed by my sisters comes to an end. I reckon that, in round figures, the total value of the property shared between them amounts to £4,000.

20

The sum deposited is of about £34,000. When I stood joint surety, I felt that the pre-empted property afforded me sufficient cover.

(Signed) S. J. BORG.

Read over to the witness.

(Signed) S. BUGEJA,  
Deputy Registrar.

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Plaintiff's  
Minute.  
N. 28.

**No. 28.**  
**Plaintiff's Minute**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

The Minute of the Plaintiff nomine.

The correspondence referred to in the evidence given by the Plaintiff nomine on the 15th February, 1950, is hereby produced *animo rititandi*:—

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*Exhibit A.* — Copy of Plaintiff's letter to Kathleen Borg, the mother of Patricia and Helen Borg, dated 22nd April, 1948.

*Exhibit B.* — Letter to the Plaintiff from Kathleen Borg dated 20th July, 1948.

*Exhibit C.* — Copy of Plaintiff's letter to Kathleen Borg dated 5th September, 1948.

*Exhibit D.* — Copy of Plaintiff's letter to Messrs. Towle and Cooper, Counsel for Patricia and Helen Borg, dated 4th October, 1948.

10 *Exhibit E.* — Letter to the Plaintiff from Messrs. Towle and Cooper dated 17th November, 1948.

*Exhibit F.* — Copy of Plaintiff's letter to Messrs. Towle and Cooper dated 30th November, 1948.

*Exhibit G.* — Copy of Plaintiff's letter to Kathleen Borg dated 22nd November, 1948.

*Exhibit H.* — Letter to the Plaintiff from Kathleen Borg dated 27th October, 1948.

*Exhibit I.* — Letter to the Plaintiff from Helen Borg dated 28th September, 1948.

20 *Exhibit J.* — Letter to the Plaintiff from Patricia Borg dated 7th January, 1949.

*Exhibit K.* — Letter to the Plaintiff from Messrs. Towle and Cooper dated 29th April, 1949.

*Exhibit L.* — Copy of Plaintiff's letter to Messrs. Towle and Cooper dated 5th July, 1949.

*Exhibit M.* — Letter to the Plaintiff from Messrs. Towle and Cooper dated 19th July, 1949.

No. 28.  
Plaintiff's  
Minute.  
—continued.

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(Signed) A. MAGRI,  
Advocate.

" G. MANGION,  
Legal Procurator.

This 28th February, 1950.

Filed by G. Mangion L.P. with thirteen Exhibits.

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



**No. 29.**  
**The Evidence of Capt. A. Zammit Cutajar**

In H.M. Civil Court, First Hall.

8th March, 1950.

Captain A. Zammit Cutajar, produced by the Defendant, states on oath:—

I am one of the Directors of the National Bank of Malta. We had an idea at the National Bank to move to other premises. That was and still is our idea and we shall make the move as soon as we find other premises to go to. Actually, it was my own proposal. A sub-committee was appointed for the purpose and Mr. Gollcher and Mr. Cecil Camilleri were entrusted with the task. I was not one of them. We had three places in mind — the site formerly occupied by Muscat's General Stores, which has now been taken over by Dr. Pace; the "Grand Studio" and the Law Courts; and we also thought of the site once occupied by the "Saverina Establishment," together with the one next to it, that is to say, "Shensa House". In fact, we asked Mr. Gollcher to try and buy the property last mentioned, but he did not succeed. A plan was drawn up in connection with the "Saverina" site and we placed the matter in the hands of Mr. Victor Grech A. & C.E. He drew up the plan before the Judicial Sale took place. It is not within my knowledge that, subsequently, Mr. Grech made out another plan. Unless I am mistaken, there was only one plan, that drawn up by Mr. Grech.

We then learnt that the property had been adjudicated to Mr. G.R. Vincenti A. & C.E. After he bought the property at the Judicial Sale, I approached Mr. Vincenti. I took charge of the matter and asked Mr. Vincenti whether we could come to some arrangement. He told me he would not part with the site and that he wanted to set up some offices for his own use.

After the property had been bought by Mr. Vincenti, an application was made for a loan to be advanced to Colonel Borg. The money was loaned to Colonel Borg to enable him to recover the property for himself — and not that he may recover it for the Bank. It was a banking transaction made independently of the object in view.

I used to attend the Meetings of the Board of Directors at the time it was resolved to advance the loan in question.

The loan was for Colonel Borg personally. I do not know whether the loan was advanced to him for the benefit of any nieces of his, but Minutes were kept and everything is on record. Mr. Salvino De Maria,

who is the Secretary of the Board, has been sub-poenaed as a witness.

We asked Mr. Gollcher to bid for the property and the sum he was to offer was limited to about £30,000.

No. 29.  
The  
Evidence  
of Capt. A.  
Zammit  
Cutajar.  
—continued.

#### CROSS — EXAMINATION

I stated we had formed the idea of taking over the site formerly occupied by the "Saverina" establishment. It was one of the three sites we had in mind before it was sold to Mr. Vincenti. We also wanted a  
10 part of Shensa House, for the "Saverina" site by itself would have been too small.

#### RE-EXAMINATION

The idea persisted even after the property was sold to Mr. Vincenti, so much so that, of my own accord, I approached Mr. Vincenti and he came to see me at my office.

(Signed) A. ZAMMIT CUTAJAR.

Read over to the witness.

(Signed) S. BUGEJA,  
Deputy Registrar.  
30. 3. 50.

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### No. 30.

### The Evidence of Chev. F. K. Gollcher

In H.M. Civil Court, First Hall.

8th March, 1950.

No. 30.  
The  
Evidence  
of Chev.  
F. K.  
Gollcher.

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Chev. Frederick K. Gollcher, produced by the Defendant, states on oath:—

The National Bank of Malta had formed the idea of moving to other premises. When he spoke to me, Dr. Vassallo proposed that I should exercise the right of pre-emption for some client or other, but the matter fell through. The National Bank of Malta had thought of acquiring a site in Kingsway. Captain Zammit Cutajar and myself were asked to approach Colonel Borg with that end in view. This is so true that, later on, at a Meeting of the Board, I raised objections to  
40 the proposal which, after we had spoken to Colonel Borg, I found unattractive.

No. 30.  
The  
Evidence  
of Chev.  
F. K.  
Gollcher.  
—continued.

At the Judicial Sale, I tendered my bids on behalf of the National Bank of Malta; but it is not within my recollection that I declared I was bidding for the National Bank of Malta. I have an idea it was before I took part in the bidding. I have notes by me taken from the Minutes of the Board's Meeting, to the effect that "On the 17th August, there was a negative result and we took a resolution not to" and "On the 23rd August, 1948, we took a resolution to grant a loan to Colonel Borg" — so that he may start building on the site.

I am under the impression this was before I made the offer to Colonel Borg, but I suggest reference to the loan agreement. Dr. Vassallo spoke to me before the sale took place. 10

It seems to me we approached Colonel Borg at about the same time. I was against the proposal that the Bank should buy the site. We did not like the terms Colonel Borg was demanding of us and I was against it. I cannot remember what the offer was.

Dr. Vassallo once made an offer to me, but I do not remember what it was exactly. On another occasion Colonel Borg made another proposal to me, but again I do not remember what it was. Colonel Borg spoke to me before the sale; otherwise we would not have gone to the sale. I attended the sale and was authorized to make an offer of £32,000 and I raised it higher. I was against the transaction, but not against the loan being made. 20

First Dr. Vassallo made a proposal to me and then Colonel Borg made another proposal to me; and I was against and, afterwards, when I attended the sale, I tendered bids on behalf of the Bank.

We asked Mr. Victor Grech A. & C.E. to prepare a plan. I saw the plan drawn up by Mr. Grech. After the plan had been drawn up, it was suggested we should take over the adjoining site, the property of the Preziosi family.

So far as I know, no other plan was prepared by Mr. Grech. 30

Apart from those sites, we were considering other sites — such as the site formerly occupied by the Law Courts and that formerly occupied by Muscat's General Stores.

I was at the sale and I knew the property had been bought by Mr. Vincenti. After he bought it, I made a joke of it and told Mr. Vincenti several times: "We will get it back from you." I do not remember discussing the matter when we were in the Landowners Association. It was in jest that I told Mr. Vincenti: "We will take it back from you." I was never authorized to approach Mr. Vincenti.

## CROSS — EXAMINATION

No. 30.  
The  
Evidence  
of Chev.  
F. K.  
Gollcher.  
—continued.

I remember it was Captain Zammit Cutajar and myself who approached Colonel Borg at the Casino Maltese. I do not remember that the loan was granted for the nieces of Colonel Borg. I suppose an application in writing was made to the Board of Directors.

So far as Colonel Borg is concerned, there was nothing we concluded, verbally or otherwise, when Captain Zammit Cutajar and myself approached him before the Judicial Sale. He gave me an idea of his own proposals and I was against the deal and opposed it when it came up for discussion before the Board. We entered into no obligations and we had no authority to that end. We were merely sounding him on the matter.

It was once only that we spoke to Colonel Borg.

(Signed) F.K. GOLLCHER.

Read over to the witness.

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

16. 3. 50.

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No. 31.

**The Evidence of Mr. V. Grech A. & C.E.**

No. 31.  
The  
Evidence  
of Mr.  
V. Grech  
A. & C.E.

In H.M. Civil Court, First Hall.

8th March, 1950.

Mr. Victor Grech A. & C.E., produced by the Defendant, states on oath:—

I am the Architect of the National Bank of Malta. The Bank had three sites under consideration — the site formerly occupied by the Credit Foncier, that formerly occupied by Muscat's General Stores and that formerly occupied by the "Saverina" establishment. I took the measurements of the "Saverina" site and made out a sketch plan, but it did not seem to me there was sufficient depth. It was a sketch plan, though on a large scale. This was about two years ago and the Bank entrusted me with the task of preparing a sketch plan for them, but they gave me no information as to whether it was required for the purpose of exploiting the site. I do not remember that any modifications of the sketch plan were suggested to me afterwards. I do not remember anyone telling me that the ground-floor, instead of being on

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No. 31.  
The  
Evidence  
of Mr.  
V. Grech  
A. & C.E.  
—continued.

the same level with the street, should be sunk four steps lower. They did not tell me so.

I know the site was cleared after it was bought by Mr. Vincenti; and I know that a case came up before the Courts.

I knew the late Mr. Demartino. I do not remember meeting him or holding any discussion with him about the property in question after the commencement of the present litigation. In fact, I am certain I did not.

It is not a fact that when the case came up before the Courts, I met Mr. Demartino and told him that the site was no longer an undivided whole. 10

#### CROSS — EXAMINATION

I had no doubts that the sketch plan made by me was to serve for the purpose of building Bank premises. The Bank wanted to build their own premises there — that is to say, a Bank on that site. It was not a suitable site for a Bank, however.

As regards the sketch plan I made for them, nothing definite was done about it — in fact, they never mentioned it to me again. 20 My impression is that this was before the Judicial Sale took place and before Mr. Vincenti bought the property. What is done by the Directors of the Bank is their own concern — and I am not told anything. I prepare the plan and they decide what to do. I do not know whether anyone went to tender bids at the Judicial Sale after I made the plan. As the Architect for the Bank, they call me in, tell me that the Board has decided to do this or that and ask me to prepare a plan.

After Mr. Vincenti bought the property, I spoke to him. I asked him whether the property had been adjudicated to him and he replied 30 in the affirmative. But I never tried to discourage him or to induce him to surrender the property to the Bank.

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**No. 32.**  
**The Evidence of Mr. S. De Maria**

No. 32.  
The  
Evidence  
of Mr. S.  
De Maria.

In H.M. Civil Court, First Hall.

8th March, 1950.

Mr. Salvino De Maria, produced by the Defendant, states on oath:—

I am the Secretary to the Board of Directors of the National Bank of Malta. Colonel Borg applied to the Bank for a loan. It was a  
10 written application asking for a loan of £40,000. The object in view was the recovery and the development of the "Saverina" site. The application was made by Colonel Borg personally in his own behalf in order that he might exploit its possibilities as a building site. It was made personally in his own behalf and on behalf of his constituents, some relations of his — say his nieces. A record of the transaction is to be found in the Minutes kept by the Bank.

I am unable to say how the application was made originally. I can find out and I will be able to give exact information later on.

I am acquainted with the terms agreed upon. It was a loan of  
20 £36,000 at 3½%. I think the loan was for Colonel Borg and his constituents.

The Bank appointed a Commission and one of the places the Bank had under consideration was the site previously occupied by "Saverina". The Board once delegated Chev. Gollcher for the purpose of tendering an offer at the Judicial Sale and he was authorized to bid for the site up to a limit of £32,000. I do not know whether, before then, any negotiations had taken place with anybody. I do not know that negotiations had taken place either with Colonel Borg or with Mr. Albert Demartino. An offer, however, was  
30 made to the Bank. It was made to us by Mr. Demartino and it was to the effect that he himself should buy the property and then release it to us against payment of a reward. The Bank turned down the proposal.

I do not know that an offer was made by Colonel Borg. I am not aware that, after the commencement of the proceedings, the Bank approached Mr. Vincenti.

Mr. Grech was asked to prepare a plan and we took the measurements together. I am not aware that any modifications were suggested to him after he had drawn up the plan.

## CROSS — EXAMINATION

No. 32.  
The  
Evidence  
of Mr. S.  
De Maria.  
—continued.

I know of the project set out in the plan. The Bank gave up that project. It was given up because the "Saverina" site, by itself, is too small — so much so that we wanted to acquire other adjoining property. We approached the Government with the view of acquiring another site elsewhere.

I remember we sought the opinion of our Legal Adviser as to the feasibility or otherwise of the proposed transaction. The advice was for the loan to be made. 10

I am the Secretary of the Board of Directors. There is no written or verbal agreement with Colonel Borg or any arrangement or understanding with him in connection with the pre-emption of the property. Nothing of the kind was ever discussed at any Meetings of the Board which I attended and no one ever mentioned having come to any verbal arrangement with Colonel Borg. There is no agreement in writing. I have been Secretary to the Board for the past four years.

## RE-EXAMINATION

20

I think the interest is being debited to account.

(Signed) S. DE MARIA.

Read over to the witness.

(Signed) S. BUGEJA,  
Deputy Registrar.  
16. 3. 50.

No. 33.  
The  
Evidence  
of Mr. P.  
Ferrante.

**No. 33.**

30

**The Evidence of Mr. P. Ferrante**

In H.M. Civil Court, First Hall.

8th March, 1950.

Mr. Paul Ferrante, produced by the Plaintiff, states on oath:—

I am the Manager of the National Bank of Malta. The Board of Directors have their own Secretary and I do not therefore attend their Meetings. I know the Bank once entertained the idea of buying the "Saverina" site and we made an offer for it at the Judicial Sale. I know that plans were prepared by Mr. Victor Grech, but we found 40 that the place was too small for us. I do not know whether the plan

was made before or after we tendered our bid. We realized the site was too small when the plan was drawn up. There was a proposal that we should take over another plot besides "Saverina's".

No. 33.  
The  
Evidence  
of Mr. P.  
Ferrante.  
—continued.

I do not know whether the plan was prepared before or after. We were still wanting to buy the site, I think, up to the time the plan was drawn up. The property was bought by Mr. Vincenti. I do not know whether, after he bought the property, anyone at the Bank approached Mr. Vincenti. After the case came up before the Courts, I spoke both to Mr. Vincenti and Colonel Borg and suggested that they should settle  
10 the matter between them and build a block of flats together.

I had never before spoken to Mr. Vincenti about this place. Jokingly, I may have said something to him when he called to draw up the Azzopardi inventory.

The loan granted to Colonel Borg was for his nieces and, in the respective contract, he does not appear as a principal but as joint surety. I deposited the money in Court. I do not know what was asked for in the application made before that contract was drawn up. I do not remember if there is anything that could be gathered from the Minutes. If there is anything at all it will be found in the Minutes.

20 I know a sub-committee was appointed, but I hardly remember who were the members. I never discussed the site in question with Mr. Cassar Torregiani. I am unable to say whether the interest has been paid.

(Signed) P. FERRANTE.

Read over to the witness.

(Signed) S. BUGEJA,  
Deputy Registrar.  
16. 3. 50.

30

**No. 34.**  
**Plaintiff's Evidence**

No. 34.  
Plaintiff's  
Evidence.

In H.M. Civil Court, First Hall.

8th March, 1950.

The Plaintiff nomine, produced by the Defendant, states on oath:—

I stated in my previous evidence before this Court that I had in my possession copies of the letters sent to me by my nieces. What I meant to say, however, was that I had the original letters and that I



No. 34.  
Plaintiff's  
Evidence.  
—continued.

would produce copies of the originals. In actual fact, I produced the originals.

I have handed over to my Counsel all the letters I could find so that he may go through them together with Counsel appearing for the Defendant. There is one letter which I could not find. It is a letter dated 22nd September, but I do not remember what year. What was stated in the missing letter may be gathered from the reply I sent to it to my constituents.

There are certain letters to which I had replied to my constituents, but I did not keep a copy of them and I could not therefore produce 10 them in Court. The letters I am speaking of, however, were of no importance to the case at issue — for I did not refer to the matter in those letters.

I am unable to say how many letters are missing from the batch produced. The letters produced, however, outnumber those that may be missing.

So far as I know, I have no letters in my possession regarding the question at issue which I have intentionally and deliberately failed to produce.

(Signed) S.J. BORG. 20

Read over to the witness.

(Signed) S. BUGEJA,  
Deputy Registrar.  
16. 3. 50.

No. 35.  
Plaintiff's  
Minute.

**No. 35.  
Plaintiff's Minute**

30

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Minute of the Plaintiff nomine.

In order to avoid delays, and implement the promise made by him at the last Sitting of the Court, the Plaintiff nomine hereby produces a copy of the agreement dated 2nd September, 1948, enrolled in the Records of Notary Dr. Spiteri Maempel, whereby the National 40

Bank of Malta granted the loan in question to his constituents.  
(Exhibit A).

No. 35.  
Plaintiff's  
Minute.  
—continued.

(Signed) A. MAGRI,  
Advocate.  
" GIUS. MANGION,  
Legal Procurator.

This 15th March, 1950.

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

(Signed) U. BRUNO,  
Deputy Registrar.

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**No. 36.**

**The Further Evidence of Mr. S. De Maria**

No. 36.  
The  
Further  
Evidence  
of Mr. S.  
De Maria.

In H.M. Civil Court, First Hall.

29th March, 1950.

Mr. Salvino De Maria, produced by the Defendant, states on oath:—

20 I produce extracts from the Minutes of the Board Meetings, the correctness of which extracts I vouch for on my oath.

I remember that a plan was prepared in connection with the site in question. The plan was prepared because we had an idea we might buy the site at the Judicial Sale.

Read over to the witness by the Stenographer at the Sitting by order of the Court.

(Signed) S. BUGEJA,  
Deputy Registrar.

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**No. 37.**

**Defendant's Application for Letters of Request**

No. 37.  
Defendant's  
Application  
for Letters  
of Request.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine,

v.

Gustavo Romeo Vincenti A.&C.E.

Defendant's Application

Respectfully sheweth:—

40 It has been established during the hearing of the case that the greater part of the correspondence on the subject of the recovery of

No. 37.  
Defendant's  
Application  
for Letters  
of Request.  
—continued.

the property in question was exchanged with Kathleen, the widow of Dr. Anthony Borg, the mother of the Plaintiffs.

The correspondence exchanged, which Colonel Borg has failed to produce in its entirety, is necessary for a decision to be given in the case according to justice.

Up to the time he filed his Statement of Defence, the Defendant was unaware that Plaintiffs' mother had corresponded with Colonel Borg and he could not foresee that Colonel Borg would omit to produce the whole of the correspondence exchanged on the subject-matter of the case at issue. 10

Therefore the Defendant respectfully prays that, notwithstanding the omission of her name from the List of Witnesses — due to the reasons aforesaid — this Honourable Court may be pleased to authorize him to sub-poena the said Kathleen Borg, in order that, by means of Letters of Request, the witness may give her evidence in the case, and produce the letters which the Plaintiff nomine has been unable to file in Court, or, where the letters themselves are unavailable, describe and state the contents thereof — and also give evidence as to other facts and circumstances which are not referred to in the correspondence in question, but which may be useful and necessary for the better implementation of the case. 20

(Signed) ED. VASSALLO,  
Advocate.

" ALB. GANADO,  
Advocate.

" E.G. CARUANA SCICLUNA,  
Legal Procurator.

This 20th April, 1950.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

(Signed) S. BUGEJA,  
Deputy Registrar. 30

No. 38.  
Plaintiff's  
Answer.

**No. 38.**  
**Plaintiff's Answer**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

The Answer of the Plaintiff nomine.

Respectfully sheweth:— 40

The demand made by the Defendant by the Application filed on

the 20th April, 1950 is inadmissible on the following grounds, namely: 1) the Interrogatories have not been produced together with the Application (section 614, Laws of Procedure; — 2) the formalities prescribed by law, and, more particularly, those whereof in section 615, Laws of Procedure, have not all been complied with; 3) the Court, consequently, is not in a position to make a pronouncement as to the indispensability of the Interrogatories (section 613), in accordance with the interpretation given by these Courts (Collection of Judgments, Vol. XXIII, I, p. 875).

No. 38.  
Plaintiff's  
Answer.  
—continued.

- 10 Further, the proposed evidence is not indispensable in the legal sense of the word: for such evidence to be deemed indispensable it is necessary that, without it, the Court would not be in a position to give a fair and equitable judgment.

The Defendant therefore opposes the Application for the admission of Kathleen Borg as a witness.

(Signed) A. MAGRI,  
Advocate.  
" GIUS. MANGION,  
Legal Procurator.

- 20 This 22nd April, 1950.

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

(Signed) EDW. CAUCHI,  
Deputy Registrar.

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### No. 39. Defendant's Minute

No. 39.  
Defendant's  
Minute.

- 30 In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine,  
v.  
Gustavo Romeo Vincenti A.&C.E.

Defendant's Minute.

The Defendant hereby submits the names of the Barristers and Solicitors by whom he will be represented at the hearing of the proposed witnesses:—

1. Messrs. C.W. Davies and R.G. Bailey, Civic Centre, Canberra, *Australia*.
- 40 2. Mr. H. R. A. Vialoux, Barrister and Solicitor, 402 New Zealand Insurance Buildings, Queen Street, Auckland, *New Zealand*.

No. 39.  
Defendant's  
Minute.  
—continued.

The Defendant submits also the Interrogatories to be put to Kathleen, the widow of Dr. Anthony Borg, and to Patricia and Helen Borg, together with an English translation thereof made by the undersigned.

(Signed ED. VASSALLO,  
Advocate.

This 3rd May, 1950.

Filed at the Sitting by Dr. Ed. Vassallo together with the Interrogatories to be put to Kathleen, the widow of Dr. Anthony Borg, and to Patricia and Helen Borg, daughters of the late Dr. Anthony Borg 10 aforesaid.

(Signed) S. BUGEJA,  
Deputy Registrar.

No. 40.  
Interrogatories.

## No. 40. Interrogatories

### 1. *Kathleen Borg.*

20

Questions to be put to Kathleen widow of Dr. Anthony Borg.

1. On the 22nd. April, 1948 Colonel S. J. Borg, your brother in law, wrote to you about the block of buildings (destroyed by enemy action) in Kingsway, Valletta, which was sold in Court for £32,500. What other correspondence passed between you and your brother in law up to the time your daughters Patricia and Helen signed the Power of Attorney of the 7th July, 1948 in his favour. Produce it.

2. In your letter of the 20th July, 1948 you start by writing: "your last letter came very quickly — 10 days from Malta to Auckland — I wish they would always travel so fast" and further down "I think 30 Pat will write to you as she was not here when your letter came, but if you like I could send them all to her and perhaps save more explanations". File all the correspondence passed between you on one side and your brother in law, your daughters and Messrs. Towle & Cooper on the other side. In case you are unable to produce any of them, state why and name the person in possession of any of them.

3. Give a full statement of the contents of the letters you are unable to file, what was written to you and what was your reply.

4. Who was to benefit from the transaction your brother in law wrote to you about in his letter of the 22nd April, 1948. Who was to 40 suffer in case the transaction did not succeed.

5. Are you aware that your brother in law took a loan from the Bank in the name of your two daughters Patricia and Helen and that he stood surety. What is the amount taken on loan and at what interest. Are you aware of the judicial proceedings. What are they about. Is there any understanding in case of a reverse. Who is to pay the Bank's interest. Who is to pay the judicial costs in case of a Court's ruling against your daughters.

6. Who is to benefit from this transaction in case of a success. What is to be done with this property, held or transferred. In the latter case to whom and at what price. What gain are your daughters expecting, is there any other person who will gain from any such transfer. Is there any understanding about the gains with your brother in law. In case he is to benefit, state to what extent.

7. Has your daughter Helen expressed to you her intention of fixing her domicile in Malta and of making use of a part of this property for the exercise of her profession.

8. Was there any change in the instructions and powers given to Colonel Borg by your daughters in the Power of Attorney of the 7th July, 1948 or any different understanding about your daughter's liabilities and interest in this transaction after the start of the judicial proceedings. What were they.

9. On the 28th September, 1948 your daughter Helen wrote to Uncle Ettie: "if it is just being being done to get money for Pat and me, I'd rather not have it, because we are quite happily provided for, thanks to darling Dad. Please don't think I am awful saying all this; but I hate getting involved in law-suits etc." Can you say what made her change her mind and empower her uncle to start judicial proceedings against Mr. Vincenti. Were you instrumental in making her change her mind. How?

10 On the 5th September, 1948 Colonel Borg writes to you: "I shall now wait for the other side, Mr. Vincenti, to release the property in favour of Pat and Helen. When this takes place I shall try and find a way of getting Pat and Helen clear of hypothecations, mortgage etc. with some profit". How were your daughters to get clear of hypothecations mortgage etc, and what was the profit going to be.

11. Have you had any instructions about the way you were to answer the questions that are being put to you to-day.

12. Have you had any instructions about the suppression of correspondence or disposal of same.

13. When are you coming to Malta. For good or on a visit to the members of your late husband's family.

No. 40.  
Interrogatories.  
—continued.

2. *Patricia Borg.*

Questions to be put to Patricia Borg, daughter of Doctor Anthony Borg, deceased.

1. When did you last visit Malta, how long did you stay, what was your age at that time.
2. Have you any idea where the property for which you signed the Power of Attorney in favour of your uncle, is.
3. Give a description of this property to the best of your knowledge. 10
4. How did you make up your mind to "recuperate" or take over this property jointly with your sister Helen from the purchaser Mr. Vincenti.
5. In what way are you to benefit from this transaction and to what extent. Is there any other person who is to gain from this transaction. Who is he and how.
6. Do you know anything about a loan that has ben taken from a local Bank in your name jointly with your sister Helen. What do you know about this loan, Capital, interest and conditions. 20
7. What do you know about the judicial proceedings, what are they about and against whom.
8. In case of a reverse who is to pay the Bank's interest and the judicial costs.
9. Is there any understanding or undertaking by your uncle about the final payment of the Bank's interest and costs. Are they to be borne by you and your sister or by some other person whom you will name.
10. What do you know about the risks of this transaction.
11. Do you intend keeping this property or selling it again. 30  
To whom and at what profit.
12. Has your uncle any interest in this transaction. Is he expecting any gain or taking any risk. Explain fully.
13. Was there any change of powers or of instructions after the date when you signed the Power of Attorney of the 7th July, 1948.
14. Did you write other letters to your uncle besides that of the 7th January, 1949 in answer to his of the 15th September, 1948. File your uncle's letter of the 15th September, 1948 and any other letter on the subject of the property in Kingsway, Valletta, from whatever quarter received and all the letters (copies) written by you on 40

the subject to your mother, your sisters, your uncle and Messrs. Towle and Cooper.

No. 40.  
Interrogatories.  
—continued.

15. In case you are not in a position to produce any such letter give a statement of its or their contents.

16. Had you any hint or instruction to dispose of or suppress any part of the correspondence, by whom.

17. Had you any information about the questions that are to-day being put to you, by whom and what were your information and instructions, if any.

10 3. *Helen Borg.*

Questions to be put to Helen Borg, daughter of Doctor Anthony Borg, deceased.

1. In your letter dated 28th September, 1948 you write to your uncle, Colonel S.J. Borg: "It sounds as if *the two cousins* from afar will be most unpopular *with the gentleman*. If it is just being done to get money for Pat and me, I'd much rather not have it, beause we are quite happily provided for, thanks to darling Dad. Please don't think I am awful saying all this; but I hate getting involved in law-suits etc."

20 Explain how it is that after this letter you changed your mind to such an extent as to sign a Power of Attorney, empowering your uncle to take over the property from the purchaser, Mr. Vincenti, and to start judicial proceedings against him when he challenged your rights.

2. What benefit, pecuniary or otherwise, you are expecting to derive from this transaction.

3. Have you been informed of the consequences in case of a reverse. What was the information given you.

4. Besides you and your sister, is there any one else interested in this transaction.

30 5. What is the real position of your uncle in this business.

6. Have you been informed of any loan taken from a local Bank in your and your sister's interest. What is the amount taken on loan, at what interest and under what conditions.

7. Have you been informed about any judicial proceedings or law-suits. What are they about and against whom have they been started.

8. Have you in any way changed or modified the instructions given to your uncle in the Power of Attorney of the 7th July, 1948.



No. 40.  
Interrogatories.  
—continued.

9. Is there any agreement or understanding between you and your sister Patricia on one part and your uncle on the other part about the risks of the loan and the lawsuit, who is to pay the Bank interest and the judicial costs in case of a ruling by the Court against you and in favour of Mr. Vincenti.

10. Have you written other letters on the subject of this business besides that of the 28th September, 1948 to your uncle, your mother, any of your sisters and to Messrs. Towle & Cooper or received any from them. File them. Give a statement of their contents in case you are not in a position to produce any of them. 10

11. Have you ever expressed the idea of exercising your profession in Malta and utilising part of the premises in question for a clinic and a pharmacy combined. When and to whom.

12. When did you last visit Malta, how long did you stay, what was your age at that time.

13. What do you know about the property under review. Description, situation, extension, how many storeys.

14. Did you receive instructions about the way you were to answer to these questions that are being put to you to-day. By whom and what were these instructions. 20

15. Were you instructed to suppress or dispose of any part of the correspondence, by whom and in what way.

16. In case you and your sister succeed in getting this property have you made plans about its development or disposal. In case of disposal, who is going to purchase it and at what price. In what way are you going to benefit from this transaction, is there any other person who will benefit from this business, who is he, and to what extent.

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**No. 41.**  
**Decree on preceding Application**

No. 41.  
Decree on  
preceding  
Application.

H.M. CIVIL COURT  
(First Hall)

Judge:

The Honourable Mr. Justice A. V. Camilleri B.Litt., LL.D.

10

Sitting held on Monday, the  
8th May, 1950.

No. 39.

Writ-of-Summons No. 112/1949.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Court,

20

Upon seeing the Application filed by the Defendant on the 20th April, 1950, submitting that it has become necessary to hear the evidence of Kathleen, the widow of Dr. Anthony Borg, and praying that the said Kathleen Borg, who was not included in the List of Witnesses required by law, be admitted to give evidence in the case and, further, that her evidence be collected by means of Letters of Request — that witness and the other witnesses mentioned in the Minute of the 3rd May, 1950 being absent from these Islands.

Upon seeing the Answer filed by the Plaintiff on the 22nd April, 1950, opposing Defendant's Application.

Upon seeing the Interrogatories filed by the Defendant at the Sitting held on the 3rd May, 1950.

30

Whereas the necessity for hearing the aforesaid witnesses arose *ex abrupto* or *ex improviso* during the hearing of the case; and whereas the Defendant could not have known beforehand of the nature of Plaintiff's evidence.

Allows the application for the admission of the aforesaid witness, notwithstanding that her name was not given in the List of Witnesses as required by section 158 (8) of the Code of Civil Procedure (Chap. 15, Laws of Malta). — And thus disposes of the Application for the admission of that witness.

40

As regards the indispensability of the proposed evidence, whereof in section 613 of the Code aforesaid, the Interrogatories, filed this day

No. 41.  
Decree on  
preceding  
Application.  
—continued.

in accordance with section 614 of the law, make it clear that that evidence is indispensable for the determination of the case.

The Application is therefore admissible, provided that the correctness of the translation of the Interrogatories shall be verified on oath before the Registrar, and that the party applying for the issue of the Letters of Request shall make the affirmation on oath in accordance with section 615 of the law — without prejudice to the rights of the other party in terms of section 616 of that law.

The other party shall appoint his representative in terms of section 616 aforesaid within one month and a half, provided that the Interrogatories shall be accessible to him and saving the procedure laid down in section 618 of the law. — And Plaintiff's Answer, opposing the Application, is thus set aside.

On these grounds:—

Allows the Application, the Costs provisionally to be borne by the Applicant.

(Signed) S. BUGEJA,  
Deputy Registrar.

20

No. 42.  
Procés  
Verbaux.

**No. 42.**  
**Procés Verbaux**

26th June, 1950.

Defendant's Counsel, Dr. Ed. Vassallo, affirms on oath that the translation of the Interrogatories made by him is true and correct.

(Signed) CARM. VELLA,  
Assistant Registrar.

30

26th June, 1950.

Defendant's Counsel has in my presence made the affirmation on oath in terms of section 615 of the Code of Civil Procedure.

(Signed) CARM. VELLA,  
Assistant Registrar.

**No. 43.**  
**Decree ordering the issue of Letters of Request**

No. 43.  
Decree  
ordering  
the issue of  
Letters of  
Request.

H.M. CIVIL COURT  
(First Hall)

Judge:

The Honourable Mr. Justice A.V. Camilleri B.Litt., LL.D.  
Sitting held on Monday the  
30th October, 1950.

10

No. 23.  
Writ-of-Summons No. 112/1949.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Court,

Upon seeing the Decree dated 8th May, 1950, whereby the Plaintiff, in terms of section 615 of the Laws of Procedure, was given the period of one month and a half within which to appoint his Representatives at the place where the proposed witnesses are to be heard.

20

Upon seeing Defendant's Minute dated 26th June 1950, (1) submitting the addresses of the aforesaid witnesses, to wit:—

a) The witness Kathleen, the widow of Dr. Anthony Borg, and the witness Helen Borg — No. 609, Manikin Road, New Zealand.

b) The witness Patricia Borg — No. 70, French Embassy, Canberra, Australia.

Upon seeing the Applications filed by the Plaintiff nomine on the 19th June, 19th July, 19th August, and 15th September, 1950, (2) and the Decrees thereon given by this Court on the 26th June, 20th July, 21st August, and 19th September, 1950, (3) whereby the time fixed by the Court was repeatedly extended on good and lawful grounds.

30

Upon seeing the Minute filed on the 13th October, 1950, (4) whereby the Plaintiff nomine submitted the names and addresses of his Representatives in New Zealand and Australia, to wit:—

a) Messrs. Towle and Cooper, Safe Deposit Buildings, Corner High Street and Vulcan Lane, Auckland, New Zealand.

b) Mr. Raymond Phippard B.A., LL.D., Solicitor, Royal Insurance Building, Canberra A. C. T.

40

Translator's note:— (1) (2) (3) and (4) omitted.

No. 43.  
Decree  
ordering  
the issue of  
Letters of  
Request.  
—continued.

And whereas the period prescribed by section 616 of the law, as extended by the Court, has now expired. —

Orders that the Registrar, H.M. Superior Courts, shall draw up Letters of Request and forward them to His Excellency the Governor for transmission to the authorities at Canberra, Australia, and Auckland, New Zealand — therein requesting that the evidence on oath of the aforesaid witnesses be taken personally, or through a delegate, by one of the Judges at the one place and the other; and orders further that an English translation of all the documents whereof in section 618 of the Laws of Procedure shall be annexed to the Letters of Request.

Costs reserved.

(Signed) S. BUGEJA,  
Deputy Registrar.

No. 44.  
Plaintiff's  
Application.

**No. 44.**  
**Plaintiff's Application**

20

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Application of the Plaintiff nomine.

Respectfully sheweth:—

The Plaintiffs Patricia and Helen Borg, together with their mother, Kathleen Borg, are here in Malta for a short time.

The aforesaid witnesses were not in time to answer the Interrogatories proposed by the Defendant.

It is only fair that, once they are here in Malta, they should give their evidence on the Interrogatories and, where necessary, on other facts and circumstances, before this Honourable Court.

The Plaintiff Helen Borg must be in England by the 7th April, 1951 and, at present, the case stands adjourned to the 6th April, 1951.

The Applicant therefore respectfully prays that, in the circumstances, this Honourable Court may be pleased to order that the case 40

be put on the case-list of an earlier date for the purposes within-stated.

(Signed) A. MAGRI,  
Advocate.

No. 44.  
Plaintiff's  
Application.  
—continued.

" GIUS. MANGION,  
Legal Procurator.

The 26th March, 1951.

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

(Signed) J. DEBONO,  
Deputy Registrar.

10

**No. 45.**  
**Decree on preceding Application**

No. 45.  
Decree on  
preceding  
Application.

H.M. CIVIL COURT  
(First Hall)

Judge:

The Honourable Mr. Justice A. V. Camilleri B.Litt., LL.D.  
The Court,

20 Allows the Application, ordering that the case be put on the case-  
list of the 3rd April, 1951 and that service hereof be made upon the  
parties.

(Signed) EDW. CAUCHI,  
Deputy Registrar.

**No. 46.**  
**Plaintiffs' Minute**

No. 46.  
Plaintiffs'  
Minute.

In H.M. Civil Court, First Hall.

30

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

The Minute of the Plaintiffs Patricia and Helen Borg.

The Plaintiffs, being now in Malta, take up the proceedings in their  
own behalf.

(Signed) A. MAGRI,  
Advocate.

The 3rd April, 1951.

Filed at the Sitting by Dr. A. Magri.

(Signed) S. BUGEJA,  
Deputy Registrar.

No. 47.  
Plaintiffs'  
Minute.

**No. 47.**  
**Plaintiffs' Minute**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

The Minute of the Plaintiffs Patricia and Helen Borg.

Whereby they produce a letter sent to the Plaintiff Patricia Borg  
by Colonel Borg on the 15th September, 1948 (Exhibit "A"). 10

(Signed) A. MAGRI,  
Advocate.

The 3rd April, 1951.

Filed at the Sitting by Dr. A. Magri with one Exhibit.

(Signed) S. BUGEJA,  
Deputy Registrar.

No. 48.  
The  
Evidence of  
Dr. Helen  
Borg.

**No. 48.**  
**The Evidence of Dr. Helen Borg**

20

In H.M. Civil Court, First Hall.

3rd April, 1951.

Doctor Helen Borg, M.B., C.H.B. (New Zealand), at Defendant's  
request, having been duly sworn, states:—

I arrived here in Malta on the 16th March last in company with  
my mother and my two sisters Patricia and Jean.

I was in Malta in the year nineteen thirty two (1932) for about  
three months in company with my father and mother and I was eight  
years of age at the time. 30

I am leaving the Island some time next week and I am going for  
a couple of years to Great Britain.

I have no idea at present as to my future settlement in Malta. I  
had an idea to settle in Malta when I was studying medicine in New  
Zealand. The idea of my settling here depends on my future studies in  
England.

The letter in the record of proceedings at fol. one hundred and  
thirteen (113)\* is in my handwriting and was signed by me. The letter

\* Letter dated "28th Sept." — Exhibit "I".

40

in question concerns the business of the present case before the Court. The letter in question follows a conversation I had with my mother.

No. 48.  
The  
Evidence of  
Dr. Helen  
Borg.  
—continued.

I knew that uncle Ettie was in correspondence on this business with my mother and I saw in her possession several letters regarding this business and one letter addressed to one of my sisters, that is Patricia. The letter which has been shown to me was a consequence and the issue of a conversation on this matter with my mother.

10 We saw, owing to our ignorance of the local law in Malta, the awkwardness of the proposition but we had definite intent to buy off the land in question if the law allows.

At the time when I wrote the letter in question which has been shown to me, dated twenty-eighth (28th) September, nineteen forty eight (1948) I had given up the idea of coming over to Malta to open a clinic on the premises in question.

I do not remember when my mother approached the first time this business now before the Court in this conversation with me.

20 Before signing the power of attorney in the name of my uncle Ettie, I had been informed by my uncle that we were entitled to buy off the land in question according to the laws of Malta. We knew that the property was situated in the centre of the town.

I was too young at the time when I was in Malta to have an idea of the land in question but uncle Ettie immediately before this business gave us an idea of its market value.

30 My explanation for the expressions used in the letter pointed out to me in the records at fol. one hundred and thirteen (113), in the sense that I said: "... if that is being done to get money for Pat and me, etc., the whole proposition could be dropped" was, or may have been due to the fact that I may have written that letter after long hours of work at night and I may not have weighed well the expressions which I was using at the time.

When I wrote that letter I had already signed a power of attorney to Uncle Ettie to start the business before the Court.

I asked my uncle at the bottom of the letter to give me an explanation of the whole question in connection with this business but I received no answer from him but my mother did receive an answer to that effect. I cannot exactly say whether that explanation came before or after the letter written on the twenty-eighth (28th) September, nineteen forty eight (1948). Uncle Ettie just explained the whole proposition to me through my mother.

40 There was never any proposition on the part of uncle Ettie or



No. 48.  
The  
Evidence of  
Dr. Helen  
Borg.  
—continued.

anybody else that in the near future the land in question should be sold to me or to anybody else at a profit in order that they may take advantage of it commercially.

The original idea was to buy off the land in my own name and on behalf of my sister Patricia and keep that land within our estate.

I did not possess nor did my sister possess the necessary sum of money to buy off the land in question.

I never had an idea that the cost of the land in question was so high and uncle Ettie informed us of the amount which it would cost us to buy and he told us of the way in which he planned to get the money for the buying off of the land in question. 10

I realised that if I lost the law suit in question it would mean my financial ruin but that notwithstanding I chose and elected to take the risk. The confidence of my uncle as to the successful issue of this law suit and of the whole business gave me the moral strength to take the risk.

My idea for the repayment of the money to buy off the land in question was to speculate the land itself by erecting buildings on the site.

I do not know whether the interest on the sum alone has up to the present been paid either partially or in toto. That is a matter which I left entirely in the hands of my attorney, uncle Ettie. 20

My uncle stood surety of the payment of the capital and interest and all accessories loaned from the Bank. No advantage was being promised or is going to be had by my attorney for this business.

The information that portions of the site in question are no longer within the sphere of our family but have been transferred to third parties was given to me since I came to Malta last by my uncle.

We left New Zealand before the Rogatory Letters arrived out there although we knew they had to go through the Court. No information was given me as to the contents of the interrogations which were being made to me. When I arrived in Malta my counsel informed me of the contents of the questions. I did not discuss these questions with anybody and they were only read to me by my counsel in his office. I received no instructions from anybody about these questions. 30

I am still hopeful about the success of all this business.

My other sister, Jean, was too young in age to take part in this business. My sister was not informed of this proposition and business by my mother, as far as I know.

I did not sign any conventions to the effect that this land, if this 40

law suit will be successful, will be passed on by us at a profit to third parties. We have no conventions with Uncle Ettie or anybody else that if we lose this law-suit somebody else or Uncle Ettie is going to make good all expenses and capital interest on the loan. We will make that good with our property and in case we fail in that there is our surety to make good for us. In the long run we will have to pay in the case of an unsuccessful attempt the whole expenses for this business even to make good for the sums of money the surety will have paid for us.

No. 48.  
The  
Evidence of  
Dr. Helen  
Borg.  
—continued.

#### CROSS — EXAMINATION

10 When my father was still alive I had the intention to settle down in Malta.

My father used to approach the subject by saying that when he went on pension he would come and settle here in Malta.

I did never intend to withdraw or cancel the power of attorney I gave my uncle on this business when the letter pointed out to me in the records of the Court at fol. one hundred and thirteen was written. When I wrote that letter I repeat that I was just tired at the time.

20 Uncle Ettie did not write letters to inform me of what was going on in Court with regard to this business but he did keep a correspondence on the matter with my mother. We even knew that the case had been in the Appeal Court and I saw the letters which Uncle Ettie had addressed to my mother in this respect.

I never informed Uncle Ettie that I had given up the idea of coming over to Malta. I had given the idea to Uncle Ettie that I would have liked to come and settle in Malta when my father was still living and used to write to Uncle Ettie often.

My father died on July seventh (7th) nineteen forty seven (1947) in Auckland, New Zealand.

30 I was well aware that the site in question had been in the family for a very long time, at least a good portion of it.

We had plans for developing the site in question but these plans remained in the sphere of just a hopeful proposition. This planning of ours was talked about between us since we came over from New Zealand.

I went to see the site in question.

40 I was satisfied with the explanations which my uncle gave me when I wrote the letter at fol. one hundred and thirteen (113) and for which I requested an explanation in the last paragraph of that letter. This explanation I got from my mother.

No. 48.  
The  
Evidence of  
Dr. Helen  
Borg.  
—continued.

When we were in New Zealand we never discussed the plans we had or had ever had as to the development of the site in question. We left that to our attorney but we did discuss the plans when we came over to Malta. Even Uncle Ettie took part in these discussions. We talked about erecting shops and offices and flats on top. We even thought of having a clinic in the lower storey of the premises.

Only my defending counsel did speak to me about the questions contained in the Rogatory Letters and no one else approached the subject. Uncle Ettie was present in the office of Doctor Magri when Doctor Magri spoke to me about these questions but he communicated with my Lawyer in Maltese and I am not conversant with the Maltese language. Uncle Ettie spoke in Maltese with Doctor Magri because he did not want us to understand what he was saying to his Lawyer. 10

#### RE-EXAMINATION

We never discussed whether we would erect the building on the site in question in partnership with somebody else.

(Signed) HELEN K. BORG,

Read over to witness.

(Signed) S. BUGEJA,

Deputy Registrar.

5. 4. 51.

20

No. 49.  
The  
Evidence of  
Patricia  
Borg.

#### No. 49. The Evidence of Patricia Borg

In H.M. Civil Court, First Hall.

3rd April, 1951.

30

Patricia Borg, daughter of the late Doctor Anthony Borg, at Defendant's request, having been duly sworn, states:—

I am at present residing at Number ten, Victoria Avenue, Sliema.

I am one of the Plaintiffs. Uncle Ettie gave us the idea that it was worth while, by way of pre-emption, to buy off the land and site in question. I was living in Australia and not in New Zealand with my mother.

The suggestion to buy off the site in question was made to me in writing by means of correspondence with my solicitor who had received news from Uncle Ettie. The information we had is that we had property in Malta which had been bought by Defendant and 40

that we, by right of pre-emption, were entitled to buy off that same land or site from the Defendant.

No. 49.  
The  
Evidence of  
Patricia  
Borg.  
—continued.

We knew that it was an important property. We knew that it was important as to its market value. We did not have sufficient money to buy off the site in question but we knew that we could borrow money to make good for the purchase of the site. Our uncle told us that the purchase price would be somewhere in the neighbourhood of Thirty Three Thousand Pounds (£33,000) which we did not possess at the time and which he said that he would borrow on our behalf from  
10 some local institution in Malta at three and a half per cent ( $3\frac{1}{2}\%$ ) per annum interest.

Up to the present, as far as I know we have paid no interest for the sum borrowed. I also know that up to the present no one paid that interest.

I cannot answer the question why the interest has not been paid up to the present. My attorney and surety uncle Ettie will be in a position to answer that question more than me.

Since we came over to Malta I have come to know that a portion of the site in question had been transferred to third parties and has  
20 not been left in the family but we were trying to exercise the right of pre-emption on that portion of the site which has always remained within the sphere of the family. We were always after the portion of the site for which we were entitled according to the rights of pre-emption. The Thirty Three Thousand pounds (33,000) which were deposited by us through our attorney were deposited for all the sites over which we had a right of pre-emption.

I do not remember having had any conversation about the portion of the site or which had belonged to third parties. I came to know of this fact from our defending counsel in his office in the presence of our  
30 attorney. I am not conversant with the Maltese language. They were speaking in English during the whole conversation with us but between them my counsel and my attorney talked Maltese.

I wrote one letter to uncle Ettie on this matter that is the letter of seventh January nineteen forty nine (1949) at page one hundred and fourteen (114)\* and following pages in the records of the case and it was in answer to a letter mentioned therein.

I am in possession of the letter of the fifteenth (15th) September, nineteen forty eight (1948) and it is here with me in Malta and I am prepared to file it. My counsel is going to file it today.

40 \* Letter Exhibit "J".

No. 49.  
The  
Evidence of  
Patricia  
Borg.  
—continued.

Besides the letter filed today by my counsel of the fifteenth (15th) September, nineteen forty eight, I received no other letters from Uncle Ettie on the matter.

My mother never mentioned much in her correspondence with me about having received letters from Uncle Ettie on that matter.

Before signing the power of attorney we had had consultation with our solicitor and we considered it advisable to go to Court and have a declaration from the Court in our favour.

Before signing the power of attorney I received a letter from my mother's solicitor inviting me to sign that power of attorney and informing me of all the questions involved in it. I have that letter — not here in Court — but with me in Malta and I am prepared to file it later on in Court. I have no other letters dealing with the subject matter in question. 10

My mother was in correspondence with me. She did mention something about this matter but not much. She never went into details. She just mentioned the business superficially.

I met my mother to come over to Europe from Australia in Sydney.

We did not come out here for this business, I mean to say for the purpose of this business but once we are here we are taking knowledge of it too. 20

I have no private letters of my mother out here in this connection.

I have left the job I was working in Australia. I have made up my mind definitely to settle somewhere, perhaps Malta and perhaps New Zealand. I had thought of staying in Malta for about three months but I have not made any definite plans after my stay of three months in Malta. I may go to England or the Continent, probably to the Continent.

I have not made plans to settle in the true sense of the word by picking up a job anywhere. 30

We have our home in New Zealand which still belongs to us.

There was no proposal for the re-sale or transfer of the property in question made to me by anyone. No arrangement was made with anyone else which shared the site with us except perhaps my sister Jean. We knew that if the case would be unsuccessful we were going to bear the brunt of the whole expense.

I know that uncle Ettie stood surety for us for the capital, interest and expenses on the loan made to us by the Bank.

I knew that before we came over to Malta, that is before giving 40

him the power of attorney, we meant to develop the site in question to the best possible advantage. We have thought about shops, offices and perhaps flats.

No. 49.  
The  
Evidence of  
Patricia  
Borg.  
—continued.

We never discussed this matter of development of the site before we came over to Malta but we did discuss it when we came out here. No plans by any surveyor were prepared for the same development of the site.

10 Uncle Ettie will get no benefit from the development of the site in question. We never thought that we should give any interest or allow any interest or advantage to uncle Ettie before coming out here.

We are insisting to have the site because we want to keep it in the family. We hope to repay the Thirty Three Thousand Pounds (£33,000) loan by the development of the property.

I do not think that my mother has brought any correspondence with her on this matter. I brought all the correspondence and all my possessions I had in Australia where I was living alone.

(Cross-Examination reserved). )

(Signed) PATRICIA BORG.

Read over to the witness.

20

(Signed) S. BUGEJA,  
Deputy Registrar.

5. 4. 51.

### No. 50. Defendant's Minute

No. 50.  
Defendant's  
Minute.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

30 Defendant's Minute.

Whereby the Defendant produces a letter dated 1st. July, 1949.\*

(Signed) ED. VASSALLO,  
Advocate.

This 27th April, 1951.

Filed at the Sitting by Dr. Ed. Vassallo with one Exhibit.

(Signed) S. BUGEJA,  
Deputy Registrar.

40 \* From Messrs. 'Towle & Cooper, Auckland, N.Z. to Miss Patricia Borg, Canberra, Australia.

**No. 51.**  
**The Evidence of Kathleen Borg**

In H.M. Civil Court, First Hall.

27th April, 1951.

Kathleen, widow of Doctor Anthony Borg, having been duly sworn, at Defendant's request, states:—

The letter at fol. one hundred and four (104)\* of the record, document "C" was written and addressed to me by my brother in-law. I believe that this was not the first letter I received on the subject and it seems that I had received another letter before it which just mentioned superficially the subject in question. 10

The letter which is just being shown to me by Defendant's Counsel is a reply by my brother-in-law to a letter from me asking for more information.

I gave most of the letters to my solicitors in New Zealand "Towle & Cooper". I did not bring any letters with me to Malta.

I do not believe that I could obtain the letters from my solicitors in New Zealand but I have the address of my solicitors.

I am not sure whether the first letters I received I passed to my solicitors and I may have them at home. There is no one at home which could fetch those letters and produce them in Court. 20

The letter dated 5th September at fol. one hundred and four (104) was from my brother-in-law.

The first letter about this business was sent to me and I communicated it to my daughters one of whom was with me in New Zealand and the other in Australia. My daughter Helen was living in the same city but not in the same house with me in nineteen forty eight (1948).

I was not present when my daughter Helen signed the power of attorney and she signed it through the solicitors. 30

I never saw the letter which is being shown to me at fol. one hundred and thirteen (113) of the record which my daughter Helen sent to her uncle, Plaintiff, on the twenty eighth September, nineteen forty eight (28.9.1948).

My daughter Helen had told me that she had written a letter to her uncle but she did no mention the contents.

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\* Letter dated 5th Sept. 1948 — Exhibit "C".

I remember that I wrote to my daughter Patricia and sent her the letters but no explanations. My daughters Helen and Pat were of age and I could give them no advice and I just told them what their uncle had said.

No. 51.  
The  
Evidence of  
Kathleen  
Borg.  
—continued.

I did not know the site definitely and I did not know that it was important and I did not know its value and therefore I could not give advice to my daughters and I had to rely on somebody else.

I knew that the law-suit had been started in Malta but apart from that I did not know anything else.

10 My brother-in-law did not keep me informed of what was happening and he did not give my daughters any information about what was happening. I came to know of the developments of the suit in question when I came to Malta and before that I knew very little.

I knew that there was to be a questionnaire through my solicitors "Towle & Cooper" and I did not know that from my brother-in-law directly. I did not know directly that there were to be questions which I had to answer on oath.

I came to know of the loan from the letter at fol. one hundred and one (101)\*.

20 The questionnaire which I have referred to was not read to me before I arrived in Malta but when I came to Malta it was read to me by my Counsel Doctor Magri. I was not given any instructions as to how to answer and the questionnaire was only read to me and nothing else and the question at issue was not discussed.

I delivered the correspondence in New Zealand to my Solicitors of my own accord.

I am leaving the Island and am proceeding to London at an early date.

30 I promise to write to my solicitors in New Zealand to ask them to forward the correspondence which I delivered to them. Some of the letters may not have had anything to do with the case before the Court.

After the first two letters of information there is no further correspondence at all about the case. I just wrote to my daughters telling them what was proposed and they elected to have this case instituted.

I did not give advice to my daughters as I could not give them advice because I did not know the size, importance and value of the site.

40 \* Letter Exhibit "A" dated 22nd April 1948.



## CROSS — EXAMINATION

No. 51.  
The  
Evidence of  
Kathleen  
Borg.  
—continued.

Before coming to Malta after the first letter we discussed what my daughters would do and the result of that discussion was that they decided to write to their uncle to find out what the position was.

The first news we received at Auckland was just superficial and it stated that my daughters had some right to acquire the site and we heard that there was some money needed but the extent of the amount needed was not known.

Nothing was mentioned in the first news but I remember that my brother-in-law mentioned that they had the right to purchase this site and that some money would be needed for the operation.

After I discussed this matter with my daughters there was no conclusion and they said that they would write back to their uncle and leave everything in his hands.

My brother-in-law did not give me any further details.

I remember that my brother-in-law wrote to me that there had been an appeal and that it was won and that this appeal regarded a preliminary plea.

I did not quite learn what the case was about but I learnt about this appeal. 20

There was no agreement or understanding with my brother-in-law. If there had been an agreement or understanding between my daughters and Plaintiff, my daughters would have revealed it to me because we are on friendly terms.

My daughters generally ask for my advice but in this case I had no advice to give.

My husband died in nineteen forty seven (1947). When my husband was alive we had an idea to settle in Malta.

I remember having received a letter dated twenty-second April, 1948 (22. 4. 1948) at fol. one hundred and one (101) of the record, from my brother-in-law and that was the first letter I received about this matter. 30

## RE — EXAMINATION

I was under the impression that all the property was in the family but I knew that there was one part of it belonging to third party. I know this now but I did not know it before.

My daughter Jean was going to be a party to this suit in the first 40

place and we were subsequently informed from Malta that she could not do so as she was still under age.

I do not know whether there is any arrangement with the Bank about the payment or non-payment of the interest.

No. 51.  
The  
Evidence of  
Kathleen  
Borg.  
—continued.

(Signed) KATHLEEN BORG.

Read over to the witness.

(Signed) S. BUGEJA,  
Deputy Registrar.

10

1. 5. 1951.

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**No. 52.**  
**The Further Evidence of Patricia Borg**

No. 52.  
The  
Further  
Evidence  
of Patricia  
Borg.

In H.M. Civil Court, First Hall.

27th April, 1951.

20 Patricia Borg, having been duly sworn, at Defendant's request, states:—

At the time I was in Australia I did not discuss anything with my mother. When I was in Australia I did not discuss the question with my mother who was in New Zealand. I mentioned the letter in question superficially to my mother and we did not discuss it.

I signed the power of attorney and before I signed it my solicitors advised me that it would be a good proposition. That is the reason I signed the power of attorney and not because my mother advised me to sign it.

30 My solicitors were also my mother's solicitors.

My mother was agreeable to the signing of the power of attorney because she had discussed the matter with her solicitors.

CROSS — EXAMINATION

In Doctor Magri's office Colonel Borg spoke in Maltese in order that we might not understand what he was saying to Doctor Magri.

I do not understand Maltese.

40 Before my father died there was an idea of our settling here in Malta but there was nothing definite. After my father's death we never

No. 52.  
The  
Further  
Evidence  
of Patricia  
Borg.  
—continued.

discussed again this question of settling in Malta and there was never anything definite.

(Signed) PATRICIA BORG.

Read over to the witness.

(Signed) S. BUGEJA,  
Deputy Registrar.

I. 5. 1951.

No. 53.  
Defendant's  
Minute.

**No. 53.**  
**Defendant's Minute**

10

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

Defendant's Minute.

The Defendant hereby produces the annexed Note of Submissions.

(Signed) ED. VASSALLO,  
Advocate.

20

" E.G. CARUANA SCICLUNA,  
Legal Procurator.

This 16th May, 1951.

Filed by E.G. Caruana Scicluna L.P. with a Note of Submissions.

(Signed) EDW. CAUCHI,  
Deputy Registrar.

No. 54.  
Defendant's  
Note of  
Submissions.

**No. 54.**  
**Defendant's Note of Submissions**

30

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

Defendant's Note of Submissions.

Respectfully sheweth:—

The Plaintiff nomine, by the two Judicial Letters dated 4th 40  
October, 1948 and 30th November, 1948 (Exhibits A. & B.), called upon

the Defendant to release and sell back to him *the whole property* in respect of which he had exercised the right of pre-emption by Schedule No. 163/1948 (Exhibit C.). The Defendant refused to effect the re-sale. Then, in the writ-of-summons, the Plaintiff nomine claimed he was entitled by reason of the title of consanguinity to the recovery of 283/360th undivided portions of the property in question. That quota, however, is erroneously computed, in that 1/8th of the whole property was taken over by the Apap family — which, as the Plaintiff admits, is an extraneous party — and 1/30th was exchanged with Grace Borg née Cassar Torregiani. The father of Grace Borg, by Deed entered in the Records of Notary R. Frendo Randon on the 5th May, 1940 (Exhibit D), made a donation to her of the property known as “Edith House”; and Grace Borg then exchanged that property with Virginia Borg by Deed entered in the Records of Notary G.C. Chapelle on the 12th October, 1944 (Exhibit E.). The quota acquired by Grace Borg, therefore, was estranged from the blood relationship. The fact that the income accruing from that quota inures to the community of acquets does not mean that the quota itself has not gone out of the family. As regards the correctness of these quotas, the Defendant makes refer-  
10  
20  
ence to the Record of the proceedings for the sale by licitation of the property in question, wherein all the relevant documents are to be found, and to the judgment given thereon by this Honourable Court (“Colonel Borg and Others v. Mgr. G. Chetcuti,” determined 24th July, 1946); and also to the Record of the proceedings for the sale of the property, concluded 1st April, 1948. The Plaintiff gave no indication as to how he arrived at that computation of 283/360th portions,

The fact that the Plaintiffs are not seeking to recover the property for themselves, but in the interests and for the benefit of third parties, has been established beyond dispute, and the Defendant would make  
30  
reference to the depositions given before this Court and to the jurisprudence of these Courts.

As to the question regarding the notice of the proposed sale, it is a fact that, in the case of persons present in Malta, such notice must be given directly and proved by a Certificate of Service. In the case of persons who are absent, however, service is deemed accomplished where an advertisement has been published in the Government Gazette at least one month before the day fixed for the sale — that is to say, before the property has been definitely transferred to the buyer, in that, before then, no sale takes place. It is irrelevant, so far  
40  
as service in that manner is concerned, whether or not the advertisement has come to the notice of the absent persons concerned. In point

No. 54.  
Defendant's  
Note of  
Submissions.  
—continued.

of fact, the Government Gazette, where it refers to them, is equally binding upon those who read the publication and those who do not, upon illiterates and the blind and upon those who are present and those who are absent. The pre-emption exercised by the Plaintiffs, therefore, cannot be deemed valid and lawful.

It is prescribed in section 1520 of the Civil Code (Chap. 23, Laws of Malta) that: "Where the sale was made by judicial auction, the right of pre-emption shall not be competent to the persons to whom notice of the proposed sale was given by service of a copy of the advertisement mentioned in section 314 of the Code of Organization and Civil Procedure (Chapter 15);" and, by Applications filed on the 6th and 16th March, 1948, service was duly made upon those persons who were concerned in the matter and who were in Malta at the time. 10

In the case of absent persons, however, the law provides otherwise, and sub-section (2) of section 1520 above lays down: "The provisions of this section shall also apply to absent persons if the said advertisement shall have been published in the Government Gazette at least one month before the day fixed for the sale".

According to the documents produced, the advertisement was published on the 30th December, 1947 and the sale was made and the property adjudicated and conveyed to the Defendant on the 1st April, 1948 (Exhibit G.). No other advertisement appeared in the Government Gazette between those two dates. 20

It follows that service was duly made upon the Plaintiffs according to law and that therefore they are precluded the exercise of the right of pre-emption.

It is worthy of note that that provision of the law respecting service upon absent persons is to be found, not only where the right of pre-emption and judicial sales are concerned, but also where the law deals with "The Right of Preference in the Lease of Things" and "Prescription." A like provision, in fact, is that of section 1687 and section 2235. Section 1687 reads as follows: "(2) In default of such attorney or person charged as aforesaid or holder or occupier, the notification may be made by means of an advertisement in the Government Gazette. (3) In the cases referred to in this section, the time for accepting the conditions is of one month". And it is laid down in section 2235: "Nevertheless, if the party to be served is absent from these Islands, service shall be deemed to be effected by the publication of a notice in the Government Gazette, within a month to be reckoned from the last day of the aforesaid period, on the demand of 30 40

the party filing the act, as provided in the Code of Organization and Civil Procedure (Chapter 15)".

**No. 54.**  
**Defendant's**  
**Note of**  
**Submissions.**  
*—continued.*

Finally, the Defendant makes reference to the case where, in point of fact, the right of pre-emption was exercised on behalf of an absent person and subsequently waived because one month — 30 days — had elapsed between the date of publication of the advertisement in the Government Gazette (22nd December, 1933) and the day of the sale. (Vide Government Gazette No. 7849 dated 22nd December, 1933). (Exhibits produced together with Giuseppe Bugeja's sub-poena).

10 Therefore the pre-emption exercised by the Plaintiff nomine is not valid according to law.

(Signed) ED. VASSALLO,  
Advocate.

" E.G. CARUANA SCICLUNA,  
Legal Procurator.

20

**No. 55.**  
**Plaintiff's Minute**

**No. 55.**  
**Plaintiff's**  
**Minute.**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

The Minute of the Plaintiff nomine.

Whereby the Plaintiff nomine produces the annexed Note of Submissions.

30

(Signed) A. MAGRI,  
Advocate.

" GIUS. MANGION,  
Legal Procurator.

This 19th May, 1951.

Filed by G. Mangion L.P. with a Note of Submissions.

(Signed) A. BRUNO,  
Deputy Registrar.

**No. 56.**  
**Plaintiff's Note of Submissions**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

The Note of Submissions of the Plaintiff nomine.

Respectfully sheweth:-

As regards the property which is subject to the right of pre-emption, it is agreed that the Apap quota has gone out of the family, so much so that the right of pre-emption is not being exercised in respect thereof. The quota of 1/30th acquired by Grace Borg in the course of her marriage with the Plaintiff nomine, however, was and still is within the family. In fact, that quota, which Grace Borg acquired from Virginia Borg, Plaintiff's mother, entered into the community of acquests — of which the Plaintiff is undoubtedly the head — and therefore became Plaintiff's property in the same way as if the Plaintiff himself had acquired it. Some considerations thereanent may be found in Pothier (Retratto, No. 196) and in the jurisprudence of these Courts (Collection of Judgments, Vol. VII, 481 and Vol. XVII, II, 422).

It is to be observed that the right of pre-emption was not exercised in respect of a determinate quota, but in respect of 283/360th undivided portions, "or other varying portion, even larger."

The Defendant, after discussing the size of the quotas, and the documentary evidence in support thereof, raised the question as to the validity of the right of pre-emption exercised, maintaining that, in terms of section 1520 of the Civil Code, over a month had elapsed between the date of the publication of the notice or advertisement in the Government Gazette and the day of the sale.

It is to be observed in the first place that it is specifically laid down in that section of the law that, for forfeiture to be incurred, it is necessary that at least one month shall have elapsed before the day *fixed for the sale*. That is something different from the day on which the sale has been actually carried into effect. Now even if one were to take it for granted that the notice is that which is published for the purpose of the sale, and not a special notice, one finds that the notice in question was published on the 30th December, 1947 and that the date of the sale which appeared therein was that of the 22nd January, 1948. In other words, the period of one month prescribed by law had not yet elapsed.

The law, in such a delicate matter as that which involves the forfeiture of a right, must be interpreted *literally*; and if the law has not been observed "ad unguem", the forfeiture therein envisaged is no longer operative and applicable. The rigour of the law is such in this instance that a departure is made from the procedure that is followed in connection with ordinary sales by auction. In fact, whilst it is sufficient, where ordinary sales by auction are concerned, for the notice to be affixed in the corridor of the Courts, and no publication thereof in the Government Gazette is required except when and if ordered by  
10 the Court — in the case under discussion, the notice must be given "per edictum", with the utmost solemnity and the utmost publicity. Even the interval that must elapse between the day of publication and the day of the sale is different — fifteen days in the one case and *at least one month* in the other.

It follows that if that period of time had not run its course up to the day on which *the sale was advertised to take place*, there was lacking the necessary condition for absent persons to be divested of the right to the exercise of pre-emption. It is therefore impossible to maintain the legal assumption that service had been made upon the Plain-  
20 tiffs. On the contrary, the notice must be taken as having never been published and as having never come to Plaintiffs' knowledge. And therefore the right to the exercise of pre-emption remained vested in the Plaintiff nomine — and is still vested in him to this day.

Nor was that defect remedied by the publication of any subsequent notice in the Government Gazette. The Defendant himself admits that no other notice appeared after the publication of the first notice.

It avails naught that the sale was repeatedly adjourned, for those adjournments were not made according to law and the absent  
30 parties could not have come to know of them — *no fresh advertisements having been published as prescribed by law* (Section 325, 326, and 327, Laws of Procedure). Yet the publication of these advertisements is a *substantial formality* (Collection of Judgments, Vol. XXII, I, 233) and otherwise than tantamount merely to an adjournment of the auction.

Therefore, where no publication was made of those fresh advertisements, what was done cannot impair the rights held by third parties — especially when the third parties concerned were absent from the Island.

40 The advertisement that is published in the Government Gazette *guarantees* the subsistence of the thing, together with all the particulars



No. 56.  
Plaintiff's  
Note of  
Submissions.  
—continued.

thereof (Collection, Vol. IX, 481); and if the particulars required by law are not disclosed in the advertisement (section 314 (2), Laws of Procedure) — such as, for instance, the estimated value — then the advertisement itself is null and void. It was simply stated in the advertisement in question that the property would be sold “as more fully described in the Report filed by Mr. Albert Vassallo A. & C.E. on the 19th April, 1947;” and no mention was made therein of the estimated value. Consequently, that advertisement, as an advertisement that was null and void, could not have prejudiced and much less deprived the Plaintiff of the right to the exercise of pre-emption. 10

It must be borne in mind that section 1520 of the Civil Code prescribes forfeiture, and that, therefore, it must be restrictively interpreted. (Collection, Vol IX, 346).

As above suggested, the law, where it makes mention of the advertisement, seems to convey that that envisaged is a *special* advertisement issued for the purpose of notifying the sale to absent parties. Such an interpretation is in accordance with tradition. In fact, the Codex de Rohan provides that: “In all sales by auction, held voluntarily or by reason of necessity, pre-emption shall not take place unless the parties who have the right to recover possession, being the holders of established titles, shall have been served personally with a copy of the *Ban*; and in the case of persons whose title is uncertain, or who are absent, unless, besides the *Ban*, a notice is published in the parish of the debtor or the vendor (Chap. X, Book III, No. XVIII). 20

By his attitude, the Defendant implied that he had waived the plea as to the invalidity of the pre-emption exercised by the Plaintiff nomine, in that he had throughout discussed the question regarding the quotas and their origin, and had in fact reached the point where the deed for the re-sale was actually drawn up for enrolment: which attitude is incompatible with the plea of invalidity so tardily raised. Therefore, in accordance with the principles established in the text-books and jurisprudence — including our own — it is to be understood that the Defendant had waived the plea above-mentioned. 30

Where any doubt exists, that plea should be dismissed in that it involves the forfeiture of a right which the law itself confers upon the Plaintiff.

It is therefore submitted that Plaintiff's claims should be allowed with Costs.

(Signed) A. MAGRI,

Advocate. 40

” GIUS. MANGION,

Legal Procurator.

**No. 57.**  
**Plaintiff's Minute**

No. 57.  
Plaintiff's  
Minute.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A.&C.E.

The Minute of the Plaintiff nomine.

10 The Plaintiff takes up the proceedings in his capacity as attorney  
for Patricia and Helen Borg, who are now absent from the Island.

(Signed) A. MAGRI,  
Advocate.

This 28th May 1951.

Filed at the Sitting by Dr. A. Magri without Exhibits.

(Signed) S. BUGEJA,  
Deputy Registrar.

20

**No. 58.**  
**Judgment, H.M. Civil Court, First Hall**

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.

H.M. CIVIL COURT

(First Hall)

Judge:

The Honourable Mr. Justice A.V. Camilleri B.Litt., LL.D.

Sitting held on Monday, the  
28th May, 1951.

30 Writ-of-Summons No. 112/1949.

Colonel Stephen J. Borg, in his  
capacity as attorney for and on  
behalf of Patricia and Helen Borg,  
absent from these Islands, appoint-  
ed by instrument annexed to the  
Deed enrolled in the Records of  
Notary John Spiteri Maempel on  
the 2nd September, 1948, true copy

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

whereof is annexed hereto (Exhibit "A"); — and, by Minute filed on 3rd April, 1951, Patricia and Helen Borg, who, having returned to the Island, took up the proceedings; — and, by Minute filed on 28th May, 1951, Colonel Stephen J. Borg who, on the departure from the Island of Patricia and Helen Borg, again took up the proceedings on their behalf. 10

v.

Gustavo Romeo Vincenti,  
Architect & Civil Engineer.

The Court,

Upon seeing the preliminary judgment given by this Court in this case on the 4th May, 1949, recapitulating the claim of the Plaintiff nomine as well as the pleas set up in the initial stage of the proceedings — and dismissing the two pleas whereby the Defendant sought a judicial declaration respecting the nullity of the initial act of the proceedings, namely, the plea as to want of clearness in the writ-of-summons and that as to lack of supporting documents; and, in view of the merits, ordering each party to bear its own Costs. 20

Upon seeing the judgment given by H.M. Court of Appeal on the 14th November, 1949, dismissing the Appeal entered by the Defendant from the preliminary judgment given by this Court on the 4th May, 1949, with Costs, and affirming that judgment.

Upon seeing Defendant's further Statement of Defence, submitting: (1) That the two Plaintiffs have not established the bond — and degree — of consanguinity between the pre-emptors and the vendors, and praying that, in default, the claims be dismissed; (2) That the two Plaintiffs who are absent from these Islands and who are represented by Colonel Borg were duly notified according to law of the Notice respecting the sale and that they are not therefore entitled to the exercise of the right of pre-emption in respect of the property in question; (3) That the two Plaintiffs are not exercising the right of pre-emption in their own interests, but on behalf and for the benefit of third parties. 30 40

Upon seeing the Declaration filed by the Defendant together with his aforesaid Statement of Defence.

Upon seeing the Minute filed by the Plaintiffs on the 11th January, 1950 and the Exhibit annexed thereto.

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

Upon seeing the procès verbal dated 30th January, 1950, recording the statement made by Defendant's Counsel to the effect that he had no further objections to raise as regards the documentary evidence and that he would proceed to deal with the other questions involved.

Upon hearing the evidence *hinc inde* produced by the contending parties.

10 Upon seeing the Minute filed on the 3rd April, 1951, whereby the Plaintiffs, Patricia and Helen Borg, having returned to the Island, took up the proceedings in their own behalf.

Upon seeing the Minute filed this day by Colonel Stephen J. Borg who, on the departure from the Island of Patricia and Helen Borg, again took up the proceedings on their behalf.

Upon seeing the Notes of Submissions filed by the contending parties.

Upon hearing Counsel on both sides.

Having considered :

20 After making the statement recorded in the procès verbal dated 30th January, 1950, the Defendant proceeded to bring forward evidence — abundant, prolonged and voluminous — in substantiation of the third plea set up in his second Statement of Defence, to the effect that the Plaintiffs were exercising the right of pre-emption, not in their own interests, but on behalf and for the benefit of third parties; and the Defendant never again mentioned the second plea. Then, when all available evidence had been brought to bear on the point, and when the case, so far as that point was concerned, had matured for judgment, the Defendant disinterred the second plea and pressed for a  
30 decision thereanent. It need scarcely be stated that the Defendant would have acted with more propriety, and with greater regard to the need for economy in the matter of time and costs, if, instead of proceeding with the evidence in respect of the third plea, he had insisted at the outset, as undoubtedly he had every right to do, upon a decision on the second plea — a plea which, if successful, would put the action out of Court.

So far as the Plaintiffs were concerned, that line of action on Defendant's part was taken to mean that the second plea had been  
40 thus occasioned, which might well have its repercussions on the order

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

as to costs if the second plea in question were to succeed. Nevertheless, legally and juridically, the Court feels unable to state that, so far as the Record goes, the plea is to be deemed waived by the Defendant; and, in any case — vis-à-vis the contention to the contrary subordinately advanced by the two Plaintiffs in their Note of Submissions — the uncertainty arising out of the procès verbal of the 30th January, 1950, recording the statement made by Defendant's Counsel, must in the light of juridical logic be interpreted more in favour than against the view that the Defendant had not in fact waived that second plea.

It is therefore incumbent upon the Court — *rebus sic stantibus* — 10  
to go into and determine the question regarding the invalidity of the pre-emption exercised by the Plaintiff nomine, raised by the Defendant on the grounds set out in section 1520 of the Civil Code.

To begin with, it may not be idle to make certain observations of a legal nature.

A comparison between sections 1518 and 1520 of the Civil Code (Chap. 23, Laws of Malta), and other provisions of the laws hereunder mentioned, shows clearly that, *as regards the period within which the right of pre-emption may be exercised*, a distinction is made in the law between the case where the conveyance of property subject to that right 20  
of pre-emption has been made extra-judicially and voluntarily and that where the conveyance thereof follows as the result of a sale by auction under the authority of the Court. Where the sale has been made extra-judicially, the normal period within which the right of pre-emption may be exercised is of one year, with effect from the date of the registration of the respective deed of sale in the Public Registry, and, if the sale is made subject to a suspensive condition, with effect from the date of the instrument whereby the seller and the buyer declare that the condition has been fulfilled. That period may be shortened by the buyer or the seller to a period of two months from 30  
the day on which service is made of the Judicial Letter referred to in section 1519 of the Civil Code, provided the conditions laid down in that section of the law have been satisfied. It may be mentioned also that the dominus or emphyteuta entitled to the right of preference in terms of section 1595 of the Civil Code may, in the case of voluntary or extra-judicial alienation, exercise that right of preference up to and until the expiration of one year from the day on which he came to know of the alienation (*a die scientiae*). — (Vide section 1600 (1) Civil Code). That right of preference, however, ceases if the dominus or emphyteuta 40  
entitled thereto, within two months from the day on which the sale is notified to him by the alienor or alienee, fails to declare, as required by

law on pain of nullity, that he accepts the terms of the alienation made. (Vide sections 1598 and 1599 Civil Code). The upshot is that the period originally established by law for the exercise of the right of preference may also be effectively curtailed. On the other hand, where property which is subject to the right of pre-emption or to the right of preference (excepting the case where the right of preference has not been expressly covenanted in the emphyteutical contract and saving the exceptions whereof in section 1613 of the Civil Code) is sold by auction under the authority of the Court, the right of pre-emption or the right

10 of preference (saving the exceptions above-mentioned) shall not be competent to those persons who have been served with a copy of the advertisement whereof in section 314 of the Code of Organization and Civil Procedure (Chap. 15, Laws of Malta) — saving of course the provisions of section 356 of that Code. The section of the law last mentioned envisages two propositions respecting the exercise of *jus luendi* or *redimendi*, which are dependant upon service or default of service of the advertisement of the sale; and while the debtor may exercise the right in either case, the other persons may do so only in the case where they have not been served with the advertisement. It is true that,

20 in default of service of the advertisement, the persons entitled to the exercise of the right of pre-emption under section 1510 of the Civil Code, and those entitled to the exercise of the right of preference under section 1595 of that Code — and also the debtor — may exercise the right of pre-emption or redemption in respect of property sold under the authority of the Court within four months from the day of the registration of the sale in the Public Registry. No mention of that time-clause is made in section 1518 of the Civil Code. Nevertheless, it is, on interpretation, virtually implicit in the conception and diction of section 1520 of that Code, wherein — in accordance with the aphorism

30 *inclusio unius fit exclusio alterius* — the proposition that persons who have been served with the advertisement are debarred the exercise of the right implies and must logically be taken to include the contrary proposition that persons who have not been served with the advertisement retain their rights unimpaired. Such is the conclusion to be drawn if that section of the law is read in conjunction with section 356 of the Code of Civil Procedure, in that the laws of the State must be interpreted as a whole and in their relation to each other and — unless the contrary is palpably clear — any interpretation of the various enactments governing the same subject-matter that leads to irreconcilable

40 and absurd consequences must be discarded as other than a just and reasonable interpretation. On the other hand, according to section 356 of the Code of Civil Procedure, all those persons mentioned in sections

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

1510 and 1595 of the Civil Code — with the exception of the debtor — are to be considered as having forfeited their rights if and when service has been made upon them of the advertisement of the sale.

It follows therefore (1) that, as regards the time-limit within which the aforementioned rights may be exercised, the law makes a difference, or better still, a distinction, between sales that have been made extra-judicially and voluntarily and sales that have been made judicially or compulsorily; (2) that, both in the case of voluntary and compulsory sales, the abridgement of the time-limit is subject (a) to certain conditions, and (b) to the positive action of the parties in whose interests it is to curtail that time-limit — the actual curtailment of which varies according to the various provisions of the law; and (3) that, in judicial sales, the abridged time-limit may lapse altogether in respect of all the persons concerned where such persons have been served with the advertisement of the sale — *excepting however the debtor* (and, according to jurisprudence, also the heirs of the debtor in respect of the right of redemption — vide Appeal 9th April, 1877, Collection of Judgments, Vol III p. 153 and, especially, p. 157), in respect of whom, service of the advertisement, necessary in his case following the issue of execution, must not impair or neutralize his rights thereanent, which rights, consequently, remain vested in him even in the case above envisaged.

The logico-juridical reason for (1) and (2) above lies in the fact that, thereby, a protracted state of uncertainty in respect of the sale is avoided and the interested parties and the title-holders are given the opportunity to define and settle their juridical position in a relatively short period of time, thus obviating the losses and suspensions of material and economic benefits that would be incurred in consequence of the state of uncertainty created by the supervening necessity for the determination of competing claims. The reasons for (3) are due to considerations of a humanitarian nature — and, partly, also to legal considerations — in that the debtor may find it possible in some way or other to satisfy the creditor without incurring the loss of his property by compulsory sale.

The foregoing considerations having been premised, it is now incumbent upon the Court directly to consider the section — or, rather, the sub-section — *de quo agitur*.

Sub-section (2) of section 1520 runs as follows:—

“The provisions of this section shall also apply to absent persons if the said advertisement” — that is, the advertisement mentioned in section 314 of the Code of Civil Procedure — “shall have been

published in the Government Gazette at least one month before the day fixed for the sale”.

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

Therefore, for the logico-juridical reasons above-stated, it was the aim of the legislator that, in judicial auctions, persons entitled to the right of pre-emption and the right of preference under sections 1510 and 1595 of the Civil Code — saving the exceptions above-mentioned — should be precluded the exercise of their rights whether they are present or whether they are absent from the island at the time of the auction, devising for that purpose a method whereby the procedure laid  
10 down in respect of the former is rendered applicable to the latter.

Judge Dr. Paolo Debono, in his comments on article 1183 of Ordinance VII of 1868, and with reference also to article 1184 (now sections 1519 and 1520 of the Civil Code), states that default in the observance of the procedure laid down in those sections of the law extinguishes the substantial right therein envisaged — a comment that shows how grave and irreparable are the consequences attending such default. It is true that the serious consequences referred to are implicit in the letter of the law, but the legal inference to be drawn from the observation of the learned judge is that he considered the loss of rights  
20 envisaged in those two sections of the law as loss incurred by reason of default inasmuch as loss by default strikes at the right rather than the action — although he who incurs forfeiture of a right forfeits also the exercise of the action, as affirmed by Dalloz in the Repertoire (“Decheance”. Vol 15, p. 6 para: 6). It remains a fact, however, that Judge Debono considered that provision as a penalty created by the law — as a matter of social necessity — for the negligence and carelessness of those, who, within the time and in the manner prescribed, fail or omit to do what is required of them to maintain their rights.

It may also be stated, before proceeding further, that, legally, it is only  
30 in the case where there has been strict and rigid observance of the law that prescribes forfeiture, which is of a presumptive character and of the utmost rigour — and which, as stated, presupposes negligence on the part of the person entitled to the exercise of the right — that forfeiture itself may be deemed to have occurred and to be completed as the result of that procedure — a procedure created for reasons of public policy rather than legal necessity. That that is so is to be deduced from the fact that the law makes no exception in regard to any absent and any entitled person where such loss of rights is concerned — that is to say, it applies to those who have definitely severed all ties of  
10 affection and of economic interest with the Island and who presumably do not easily come across the local Government Gazette, as well as to



No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

those who have to some extent retained their connections with the island and who may therefore come to know of the advertisement.

In order that forfeiture as above may become operative as of right, two things are necessary: (1) the advertisement as required by section 314 of the Code of Civil Procedure, and (2) the publication of that advertisement in the Government Gazette *at least one month before the day fixed for the sale.*

The advertisement in question, duly signed by the Registrar, must state: (1) the date of the judgment or decree ordering the sale by auction; (2) the nature of the thing to be sold; (3) the place of the sale and the day and hour in which the sale is to begin and end; and (4) where a valuation has been made, the estimated value. (Vide section 314, Code of Civil Procedure). 10

The scope of the advertisement is to give the proposed sale the widest possible publicity, thus to attract as many people as possible to come forward with their bids; and it must be posted up at the main entrance of the building in which the Court sits, and, *if so deemed necessary*, in the principal streets of the place where the auction is to be held and of the place in which the debtor resides. (Vide section 315 (1), Code of Civil Procedure). It must be published in one or more local newspapers *if so ordered by the Court.* (Vide section 315 (2) *idem*). 20  
And, according to the Regulations made by H.M. Judges on the 5th November 1884, published in the Government Gazette of the Year 1884, page 355 (vide Vol. VI Laws of Malta, Revised Ed., p. 40 et seq.), where the Court shall not have dispensed with its publication, or where the Court shall not have stated in which paper it is to be published, the notice shall be published in the Government Gazette. Normally, *in the case of immovable property, or of ships, publication of the advertisement shall take place at least 15 days before the day appointed for the sale by auction*, and, in the case of movable property, at least 4 days before the day appointed for the sale. (Vide section 315 (3) Code of Civil Procedure). The time within which the sale may take place may be reduced by the Court (section 317 *idem*) and the Marshal is required to draw up a certificate of the service and publication on the original advertisement. 30

According to the Record of the proceedings of the judicial sale "Colonel Stephen J. Borg and Others v. Mgr. Canon Gerolamo Chetcuti (Vol I, 1948, Sales by Auction, Civil Court, First Hall, January — July — No.8), the advertisement (No. 396) prescribed in section 314 of the Code Civil Procedure, respecting the sale of the immovable property in question, was published in Government Gazette 40

No. 9633 dated 30th December, 1947. In substance, that Notice (No. 396) gave all the required particulars and stated that the sale had been fixed to take place on Thursday, 22nd January, 1948, at and from 9 a.m. onwards — without mentioning the time at which it would end. According to the Record above-mentioned, the property was finally adjudicated on the 1st April, 1948. *It is agreed between the parties that, after publication of Notice No. 396 above-mentioned, and up to the day of final adjudication, no other notice was published in the Government Gazette.*

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

10 It follows therefore that the period of time that elapsed between the date of publication of the advertisement (No. 9633 — 30th Dec., 1947) and the day therein fixed for the sale (22nd January, 1948), fell short of the minimum period of time required by section 1520 of the Civil Code for forfeiture to occur; and it cannot therefore be held that the Plaintiffs had forfeited their right to the exercise of pre-emption.

That that provision of the law has to be so interpreted is borne out by the following considerations:—

1. Therein, the law prescribes forfeiture and the rules of law envisaging forfeiture of rights must be strictly interpreted (Vide Judgment, H.M. Civil Court, First Hall, 5th March, 1881, in re “Sant v. Apap” — Vol. IX, p. 346, and, more particularly, p. 349, col. 2). One must therefore adhere to the strict wording of the law, neither extending nor restricting the meaning and purport thereof. The day of adjudication is not mentioned in that section of the law.

2. It is not enough, in the eyes of the law, to be cognisant of the proposed sale: the law expressly requires that an advertisement be published in the Government Gazette at least one month before the day fixed for the sale. This means that even if it were established that Patricia and Helen Borg had after the first appointed day become 30 cognisant of the subsequent adjournments, the fact, at law, would not suffice to divest them of their rights. After all, whether Patricia and Helen Borg were, or were not, cognisant of the adjournments, is irrelevant, in that neither in the affirmative nor in the negative case does such cognisance correspond to the terms of the imperative provision of the law under discussion. (Vide argument to be drawn from the judgment above-mentioned).

3. The legislator was so fully conscious of the gravity of the consequences of these provisions of the law, impelled by reasons of social rather than legal usefulness, that, for the purpose of notifying absent persons, a time-clause or a special procedure was imposed wherever such absent persons were included in the various Codes. The following may be 40

No. 58.  
 Judgment,  
 H.M.  
 Civil Court,  
 First Hall.  
 —continued.

taken as example: The procedure laid down respecting interruption of prescription envisaged in section 2235 of the Civil Code, whereunder (2) service of the judicial act causing interruption is deemed to have been made if a Notice is published in the Government Gazette within a month to be reckoned from the last day of the period for prescription. (Vide Notices Government Gazette No. 2458 of 30th September, 1870, No. 55, p. 311; Government Gazette No. 2749 of 20th December, 1877, No. 745, pp. 352-353; Government Gazette No. 2713 of 31st January, 1877, No. 671, p. 32; Government Gazette No. 2800 of 5th February, 1879, No. 859 p. 28; — Notices whereby conditions respecting new leases are notified to absent persons entitled to the right of preference, as laid down in section 1687 of the Civil Code; — Notices under section 500 of the Code of Civil Procedure respecting the issue of Edicts for the discharge of burthens on immovable property (vide innumerable instances in Government Gazette between 1870 and 1884); — and, finally, the procedure to be observed in respect of the withdrawal of deposits (other than deposits of money) in the cases envisaged in section 949 of the Code of Civil Procedure. (Vide Notice No. 113, p. 76, Government Gazette No. 2477 of 12th May, 1871; Notice No. 542, p. 304, Government Gazette No. 2659 of 10th September, 1875; — and others).

4. In the matter of the interpretation of law, it is a settled principle that *leges posteriores ad priores pertineant nisi contrariae sint* (L. 28 Digest 1.3), so that the reflux of the laws in force on the preceding laws may elucidate the "mens" of the former. As the Plaintiff has submitted, the Municipal Code (Liber III, Chap. X), in para: XVIII, laid down that pre-emption shall not be exercised in respect of property transferred in virtue of voluntary or judicial sales unless the party possessing a certain right thereto is summoned *personally* by means of a copy of the Ban — the equivalent of the present-day advertisement of the sale; and, as regards uncertain or absent parties (*incerti ed assenti*) — vide interpretation of the word *incerti* given by the *Supremo Magistrato di Giustizia* on 27th August, 1713 — *in addition to the Ban*, an announcement (amounting to the Bans which are published in the villages even at the present day, especially in connection with the lease of rural property) had to be made in the Parish where the debtor or the vendor had his residence — a provision of the law which shows clearly that the legislator of that time, having regard to the grave consequences to which the enactment might give rise, felt the necessity of laying down some special procedure. As shall be stated later on, the framers of the more recent laws, too, evinced the same pre-occupation, and, prior to the year 1884, they prescribed what was altogether a

special procedure, and, later, if not altogether a special procedure, certainly a formality and a time-clause *ad hoc*.

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

5. At the time when, by article 1184 of Ordinance VII of 1868 (now section 1520 of the Civil Code), the legislator virtually amended article 383 (now section 356) of the Code of Civil Procedure as regards the advertisement envisaged in article 383 above-mentioned and established by the preceding article 341 (now section 314) of the same laws (vide Appeal Judgment, 9th April, 1877, in re "Muscat & Others v. Meli", Vol VIII, p. 153 — more especially p. 157), and as regards the  
 10 cessation of the right of pre-emption on the part of the persons included in section 1510 of the Civil Code and on the part of absent title-holders, the conditions respecting sales, where ordered, were published through one or more privately-owned newspapers and not through the Government Gazette. (Vide Government Gazette between the year 1868 and the year 1883 in which no sale notices are to be found, and in which, as regards the matter in which we are interested, only edicts appear — apart from the notices respecting prescription and deposits mentioned above). This shows that, up to the year 1884, the publication in the Government  
 20 Ordinance VII of 1868 was more of an extraordinary than a normal event, and, presumably, an application to that end had to be made. When, however, on the 5th November, 1884, pursuant to article 30 of the Code of Civil Procedure, H.M. Judges made the Rule of Court set out in Government Notice No. 108/1884, approved by the Governor on the 10th November, 1884 — and so made far the reasons therein stated and for no reason having anything to do with the aims and purposes of article 1184 of Ordinance VII of 1868, now section 1520 of the Civil Code — notices or advertisements of sales of movable and immovable property began to appear for the first time in  
 30 the Government Gazette. (Vide Government Gazette from November 1884 to the present day). In some of those advertisements respecting the sale of immovable property, the interval between the date of publication and the day fixed for the sale used to be generally of 15 or more days, as required by law, but was never extended to less than at least one month; and only sporadically and in very few cases was the interval between the two dates of at least one month. (Vide, amongst many under the normal period, Notice No. 69, Government Gazette No. 3072, p. 74, 20th March, 1885 and Notice No. 87, Government Gazette No. 3075, p. 100, 20th April, 1885, in which the period is of one month or  
 40 more). It is to be added that, in the Rules of Court above referred to, it was left to the discretion of the Court, as it is at the present day in

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

the laws of procedure, *expressly* to dispense with the publication of the advertisement; and it was therein provided that (1) where publication shall not be so expressly dispensed with by the Court, or (2) where the Court, in ordering the publication, shall not indicate the privately-owned newspaper or periodical in which it is to be made, then, and only then, shall the Registrar cause the advertisement to be inserted only in the Government Gazette. It follows therefore that although publication in the Press of advertisements of sales by auction is not *imperatively required and ordered by law*, so much so that it may be expressly dispensed with by the Court — the advertisement must in 10 the cases envisaged be published in the Government Gazette and that the advertisement to be published is the normal advertisement subject to the time-clause whereof in section 315 (3) of the Code of Civil Procedure, that being the general, normal and ordinary period of time absolutely imposed by the law. Where, therefore, for some particular reason or other, the debtor or the vendor or other interested party shall require the period in question to be extended — and he has the right according to law so to extend it — then presumably an application to that end must be made, even verbally; and it is only in that sense that the advertisement whose interval of time has been so 20 extended may at the present day be termed an advertisement or an act under a special procedure. *There is nothing to show that any such application was made by any interested party in the case at issue*, though other applications were made for service of the advertisement to be effected upon persons who may eventually have found it in their interests to exercise the right of pre-emption in respect of the property in question (vide Applications by Bice, the widow of Lorenzo Demartino, one of the co-vendors, dated 6th and 16th March, 1948, filed in the Record of the sale proceedings). This opinion is strengthened by the fact that article 1184 of Ordinance 30 VII of 1868 was promulgated before the issue of Government Notice No. 108 of the year 1884, so that, prior to the issue of that Government Notice, when the advertisements were published in newspapers other than the Government Gazette, it was necessary — if para: 2 of that article were to become operative — for an application to be made *ad hoc*. This leads to the logical and natural conclusion that section 1520 of the Civil Code must be very strictly interpreted — *ad unguem*.

Therefore, in the absence of the period of not less at least than one month between the date of publication of the advertisement and the day 40 fixed for the sale, the provisions of sub-section 2 of section 1520 of the

Civil Code failed to become operative in respect of Patricia and Helen Borg.

In view of the foregoing considerations, based on established fact and law, Defendant's plea, resting on the provisions of section 1520 of the Civil Code, cannot in the opinion of this Court be allowed.

On these grounds

The Court

10 Adjudges, declaring that Defendant's line of action does not amount to a waiver of the plea of invalidity respecting the right of pre-emption exercised, such as to preclude and render inadmissible any such plea, and dismissing the second plea set up by the Defendant in his second or subsequent Statement of Defence — the Costs to be borne, 4/5ths by the Defendant and 1/5th by the Plaintiffs, bar the Registry fees, which shall be paid by the Defendant.

(Signed) S. BUGEJA,  
Deputy Registrar.

No. 58.  
Judgment,  
H.M.  
Civil Court,  
First Hall.  
—continued.

**No. 59.**  
**Procés Verbal**

No. 59.  
Procés  
Verbal.

In H.M. Civil Court, First Hall.

20

28th May, 1951.

A preliminary judgment has been given in the case.

Dr. A. Magri demands that the time within which the Defendant may enter appeal be abridged.

Dr. Ed. Vassallo opposes the demand on the ground that the judgment requires study and consultation.

The Court has pronounced a Decree.

(Signed) S. BUGEJA,  
Deputy Registrar.

**No. 60.**  
**Decree on Plaintiff's Application**

No. 60.  
Decree on  
Plaintiff's  
Application.

30

H.M. CIVIL COURT, FIRST HALL

Judge:

The Honourable Mr. Justice Alb. V. Camilleri B.Litt., LL.D.

The Court,

Whereas according to law the case is mature for judgment on the evidence produced and, if the present question had not arisen, would

No. 60.  
Decree on  
Plaintiff's  
Application.  
—continued.

have been determined before the Law Vacations; and whereas the value of the matter in dispute is considerable and the Court feels that the time-limit should be abridged.

Having seen section 241 (1) of the Code of Organization and Civil Procedure. —

Orders that the Defendant shall file the Note of Appeal within 5 days and the Petition within 8 days.

Costs reserved.

The case stands adjourned *sine die* and may be restored to the 10 case-list on verbal demand.

(Signed) S. BUGEJA,  
Deputy Registrar.

(28. 5. 1951.)

No. 61.  
Defendant's  
Note of  
Appeal.

**No. 61.**  
**Defendant's Note of Appeal**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E. 20

Defendant's Note of Appeal.

The Defendant, deeming himself aggrieved by the preliminary judgment given by this Court in the above case on the 28th May, 1951, hereby enters appeal therefrom to H.M. Court of Appeal.

(Signed) ED. VASSALLO,  
Advocate.  
" E.G. CARUANA SCICLUNA,  
Legal Procurator.

This 2nd June, 1951.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

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(Signed) J. DEBONO,  
Deputy Registrar.

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**IN H.M. COURT OF APPEAL**

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**No. 62.**  
**Defendant's Petition**

**No. 62.**  
**Defendant's**  
**Petition.**

In H.M. Court of Appeal.

Writ-of-Summons No. 112/1949.

10

Colonel Stephen J. Borg, in his capacity as attorney for and on behalf of Patricia and Helen Borg, absent from these Islands, appointed by instrument annexed to Deed enrolled in the Records of Notary John Spiteri Maempel on the 2nd September, 1948, true copy whereof is annexed hereto, marked Exhibit "A"; — and, by Minute filed on 3rd April, 1951, Patricia and Helen Borg who, having returned to the Island, took up the proceedings; — and, by Minute

20

filed on 28th May, 1951, Colonel Stephen Borg who, on the departure from the Island of Patricia and Helen Borg, again took up the proceedings on their behalf.

v.

Gustavo Romeo Vincenti, Architect  
and Civil Engineer.

30     The Petition of the Defendant, Romeo Gustavo Vincenti A. & C.E.  
Respectfully sheweth:—

The Plaintiff, by Writ-of-Summons filed in H.M. Civil Court, First Hall, on the 11th February, 1949, premising:— That, at the Judicial sale held on 1st April, 1948, the property at the corner between Kingsway and Saint John Street, Valletta, formerly the block of building at Nos. 45, 46, 47, Kingsway, and Nos. 46, 47, and 48, Saint John Street, inclusive of the cellar underlying Nos. 45, 46, and 47, Kingsway, at present demolished as the result of enemy action, free from and unencumbered by burthens and servitudes, and carrying

40 with it the right to the amount of compensation payable by the War Damage Commission, was finally adjudicated to the Defendant for the

No. 62.  
Defendant's  
Petition.  
—continued.

sum of Thirty-two Thousand Two Hundred Pounds (£32,200); — that, by Schedule No. 163 dated 3rd September 1948 (Exhibit "B"), the Plaintiff nomine, by virtue of the title of consanguinity, and any other whatsoever title appertaining to the said Patricia and Helen Borg, exercised the right of pre-emption in respect of the aforesaid property; — and that, notwithstanding the reiterated requests made to him by Judicial Letter, and notwithstanding previous agreement on his part to effect the re-sale of certain portions of the property (Exhibit "C"), the Defendant has now refused to surrender even those portions thereof; — prayed that a judicial declaration be made to the effect that the right of pre-emption exercised by the Plaintiff nomine was validly and lawfully exercised; — that liquidation be made, if necessary, of any legitimate expenses incurred by the Defendant in connection with the purchase of the property, over and above those lodged by the aforesaid Schedule; — that the Defendant be condemned to effect the re-sale to the Plaintiff nomine, within a short and peremptory period of time, of 283/360th portions of the property above-mentioned, or other varying portion thereof, even larger — and this subject to the proviso that, in default, the re-sale shall be deemed so effected in virtue of the judgment of the Court; — and that the Defendant be condemned to pay to the Plaintiff nomine all the damages sustained and that may be sustained by him in consequence of delay and default on Defendant's part, such damages being assessed by Judicial Referees appointed for the purpose. — With interest according to law and with Costs.

The Defendant, in his Statement of Defence, pleaded that the Plaintiff nomine has no right to exercise the right of pre-emption on behalf of Patricia and Helen Borg, in that Patricia and Helen Borg had been duly notified of the sale according to law.

H.M. Civil Court, First Hall, by judgment given on the 28th May, 1951, dismissed the foregoing preliminary plea set up by the Defendant, ordering that the Costs in respect thereof be borne, 4/5ths by the Defendant, and 1/5th by the Plaintiff — the Defendant to pay all Registry fees.

The Defendant, deeming himself aggrieved by that judgment, entered appeal therefrom to this Honourable Court by Minute filed on the 2nd June, 1951.

The grievance is manifest. In fact, in dismissing the plea that the Plaintiffs had been duly notified according to law and that they were not therefore entitled to exercise the right of pre-emption, the Court below gave an arbitrary interpretation of the law which is at variance both with the letter and the spirit thereof — imposing a restriction

which is nowhere to be found in section 1520 of the law, wherein it is laid down (2) that "The provisions of this section shall also apply to absent persons if the said *advertisement* shall have been published in the *Government Gazette* at least one month before the day fixed for the sale."

No. 62.  
Defendant's  
Petition.  
—continued.

It is established in the Record of the case, as well as in the Record of the proceedings in connection with the sale, that *the advertisement in the Government Gazette* was published twice, once on the 20th June, 1947 (Notice No. 9563) and once on the 30th December, 1947 (Notice  
10 No. 396).

As for *the day fixed for the sale*, there were no fewer than seven, namely:—

*18th July, 1947.* — the date first appointed for the sale (Notice appearing in the *Government Gazette* of the 20th June, 1947 — Exhibit V), adjourned on the eve, that is, on the 17th July, 1947, and confirmed by Decree given on the 30th July, 1947 (Vide Record of sale proceedings dated 1st April, 1948).

*22nd January, 1948.* — On Application, the sale was again and for the second time fixed to take place on this date, the 22nd January,  
20 1948 (Notice appearing in the *Government Gazette* on the 30th December, 1947). The Decree of even date affirms: "The sale by licitation ... had to take place ... this day ... The sale was put off for continuation on Thursday, 29th January, 1948, in the hope of more advantageous bids (Vide Exhibit "W" annexed).

*29th January, 1948* — the date to which the sale was adjourned for the third time. The Decree given on that date states: "The sale, in the hope of more advantageous bids, has been adjourned for continuation on the 19th, 26th and 28th February, 1948 (Vide Exhibit "X" annexed).

*19th February, 1948.* — Fourth adjournment and the sale again  
30 adjourned to 26th February, 1948.

*26th February, 1948.* — Fifth adjournment and the sale again adjourned to 28th February, 1948.

*28th February, 1948.* — Sixth adjournment, this being the date of commencement of the *quindena*, or the period of 15 days established by law for new bids to be made. The period was interrupted and the Decree given on the 3rd March, 1948 reads: "Appoints Thursday, 1st April, 1948, for the sale by licitation and final adjudication of the block of buildings above-mentioned" (Vide Exhibit "Y" annexed).

*1st April, 1948.* — For the seventh and last time and, in the  
40 Decree given on the same date, the following occurs for the first time: "The sale by licitation was *effected* ... this day (Vide Exhibit "Z").

No. 62.  
Defendant's  
Petition.  
—continued.

It follows therefore that the two periods necessary for notifying absent persons; (i) publication of the advertisement in the Government Gazette — not one, but two advertisements; and (ii) day fixed for the sale — not one, but seven — were completed.

According to section 1520 of the Civil Code, the notice, in ordinary cases, becomes operative *immediately*, whilst in the case of absent persons it becomes operative *one month after the advertisement is published in the Government Gazette*. Therefore, as regards the persons who were absent, the notice advertising the sale, published in the Government Gazette on the 20th June, 1947, became operative on the 20th July, 1947. The Judgment appealed from totally ignored the first notice or advertisement so published in the Government Gazette. If only the second notice were to be considered, this was published in the Government Gazette on the 30th December, 1947, and, therefore, became operative on the 30th January, 1948.

The judgment appealed from considered only the 22nd January, 1948 as the day fixed for the sale, on which day the sale did not take place and was adjourned; — and the word *sale* is to be understood in terms of sections 1396 and 1397 of the law, wherein it is laid down that the sale is complete between the parties, and the property of the thing is transferred to the buyer, as soon as the thing and the *price* have been *agreed upon*. On the 22nd January, 1948, there was no agreement between the parties as regards the price and the conveyance, for higher bids continued to be made, and the sale was *effected* (Vide Exhibit Z) on the 1st April, 1948 — that is to say, ten months after the advertisement appearing in the Government Gazette on the 20th June 1947 and three months after the advertisement appearing in the Government Gazette on the 30th December, 1947. The 1st April, 1948, when the sale was *effected*, was “the day fixed for the sale”.

To become operative, the interpretation given in the judgment appealed from requires at least one of the following suppositions:—

a) That the sale had been *effected*, and was concluded without adjournment to a subsequent date, on the 18th July, 1947, or, if that of the last advertisement is to be taken as the relevant date, on the 22nd January, 1948.

b) That the addition of one at least of the following provisos was included in section 1520 of the law:—

1. (The first) day fixed for the sale.
2. The day fixed (for the opening or the commencement) of the sale.

3. The day fixed for the sale (in the Government Gazette).

In the absence of any such restrictive proviso, therefore, "the day fixed for the *sale*" cannot mean anything else but the day on which the parties have agreed on the price and the property has been transferred to the buyer — in the case at issue, *the 1st of April, 1948*.

No. 62.  
Defendant's  
Petition.  
—continued.

The law requires that the Notice respecting the sale, otherwise the advertisement, be published in the Government Gazette *one month* before the day fixed for the sale. If, however, the sale is not carried through on the first appointed day, the law permits adjournment to be  
10 made and the Court appoints another day.

There is not one word in the law to suggest that subsequent adjournments of the days fixed in the Government Gazette apply only in the case of persons present on the island — and not also in the case of absent persons. If that were so, absent persons would be placed in a privileged position vis à vis competitors actually in Malta — a state of affairs that the framers of the law never even envisaged as a juridical possibility. To consider the 22nd January, 1948 as the day fixed for the *sale* is tantamount to a denial of the actual facts, for it is affirmed in the Decrees given on that day: "The sale ... had to take  
20 place ... this day;" and "The sale has been put off for continuation..."

Just as the subsequent and more advantageous bid succeeds the former and less advantageous bid, so the subsequent day replaces the former — and so also the day on which the sale is actually made ousts the day on which the sale does not take place.

After the notice to the absent parties had become operative (20th July, 1947 or 30th January, 1948), they, the absent parties, had six (or five) occasions on different dates in which to bid for and buy the property. In fact, F.K. Gollcher made his first appearance in the sale on the 1st April, 1948.

30 The legislator showed clearly that the period of one month, to run from the date on which the *advertisement* appears in the Government Gazette, should be at the disposal of absent persons in order that they may have the opportunity to communicate with and instruct an attorney to bid on their behalf. In this case, the absent persons had ten months at their disposal and six occasions on which to make their bids before the sale and transfer of the property was effected. The sale was opened and continued, and eventually concluded, in terms of the judgment given on the 24th July, 1946 (Vide Decrees). It was  
40 adjourned from time to time in pursuance of the same proceedings and it was never abandoned or annulled.

No. 62.  
 Defendant's  
 Petition.  
 —continued.

The foregoing makes it clear that the construction placed upon sections 1520 and sections 1396 and 1397 is repugnant to the very wording of the law which imposes none of the provisos above-mentioned and which defines the word "sale".

Wherefore, producing the under-mentioned surety for the Costs of the Appeal, making reference to the evidence adduced and reserving the right to produce all further evidence admissible at law, the Defendant Appellant humbly prays that this Honourable Court may be pleased to vary the judgment appealed from, given by H.M. Civil Court, First Hall, on the 28th May, 1951, in the sense, that is, that that judgment be affirmed in so far as it was therein declared that Defendant's line of action does not amount to a waiver of the plea of invalidity respecting the right of pre-emption exercised, such as to preclude and render inadmissible any such plea, and that it be reversed in so far as it dismissed the second plea set up by the Defendant in his further Statement of Defence — that plea being allowed and a declaration being made to the effect that Patricia and Helen Borg had been lawfully notified of the sale held on the 1st April, 1948 of the property whereof in the writ-of-summons, and that, consequently, they are not entitled to exercise the right of pre-emption in respect of the property in question; — and, further, that the order as to costs be affirmed in so far as the Defendant Appellant succeeds thereunder and reversed in so far as he is adversely affected thereby — an order being made for the Plaintiff Respondents to bear all the costs, both those of the First and those of this Second Instance in respect of the preliminary plea tendered by the Appellant. 10 20

(Signed) ED. VASSALLO,  
 Advocate.

" E.G. CARUANA SCICLUNA,  
 Legal Procurator. 30

This 9th June, 1951.

Filed by E.G. Caruana Scicluna L.P. with five Exhibits.

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

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**No. 63.**  
**Defendant's List of Exhibits**

No. 63.  
Defendant's  
List of  
Exhibits.

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine,  
v.

Gustavo Romeo Vincenti A. & C.E.

List of the Exhibits produced by the Defendant Appellant together with his Petition.

**10** *Exhibit V.* — Copy of Notice No. 208 published in the Government Gazette of the 20th June, 1947.\*

*Exhibit W.* — Decree dated 22nd January, 1948 — whereby, in the hope of securing more advantageous bids, the sale which had to take place that day was put off for continuation on Thursday, the 29th January, 1948.

*Exhibit X.* — Decree dated 29th January, 1948 — whereby, again in the hope of more advantageous bids, the sale was put off for continuation on the 19th, 26th, and 28th February, 1948.

**20** *Exhibit Y.* — Decree dated 3rd March, 1948 — whereby the Court appointed Thursday, 1st April, 1948, for the sale and final adjudication of the property.

*Exhibit Z.* — Decree dated 1st April, 1948, declaring that the sale by licitation ordered on the 24th July, 1946 had been made that day and that the property had been adjudicated to the Defendant for the sum of £32,200.

The five documents above described are copies taken from the Record of the Sale concluded 1st. April, 1948, to which the Defendant and then the Court of First Instance made reference: They are not therefore fresh documents and they are being produced for the convenience of this Honourable Court.

**30**

(Signed) ED. VASSALLO,  
Advocate.

" E.G. CARUANA SCICLUNA,  
Legal Procurator.

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\* Government Gazette No. 9568.



No. 64.  
Defendant's  
Surety  
Bond.

**No. 64.**  
**Defendant's Surety Bond**

Ettore G. Caruana Scicluna, Legal Procurator, son of the late Dr. Giuseppe Caruana Scicluna and the late Maria Carmela née Vella, born at Cospicua, residing at Floriana, appears and stands joint surety with the Defendant Appellant, Gustavo Romeo Vincenti, Architect and Civil Engineer, for the Costs of this Appeal, hypothecating the whole of his present and future property and renouncing every benefit accorded by law.

(Signed) E.G. CARUANA SCICLUNA. 10

The said E. G. Caruana Scicluna L.P. has affixed his signature hereto in my presence.

This 8th June, 1951.

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

No. 65.  
Plaintiff's  
Answer.

**No. 65.**  
**Plaintiff's Answer**

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine,  
v. 20  
Gustavo Romeo Vincenti A. & C.E.

The Answer of the Plaintiff nomine.

Respectfully sheweth:—

The surety produced is not considered suitable and is therefore declined for all the ends and purposes of the law.

On the merits, the judgment is fair and just and should be affirmed.

**It is to be observed, however, that the Defendant Appellant should have asked for the variation, and not the reversal, of that judgment.** It is therefore necessary for directions to be given in accordance with section 142 (3) of the Code of Civil Procedure. 30

(Signed) A. MAGRI,

Advocate.

" GIUS. MANGION,  
Legal Procurator.

This 13th June, 1951.

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

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

**No. 66.**  
**Plaintiff's Application**

No. 66.  
Plaintiff's  
Application.

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine,  
v.

Gustavo Romeo Vincenti A. & C.E.

The Application of the Plaintiff nomine.

Respectfully sheweth:—

10 The proceedings have been concluded according to law.

The case is urgent in view of the damages being occasioned to the parties (5% interest on a sum of about £33,000 and the risk that the Government will withdraw the permit for the re-building of the site). Further, as declared by the Court below, the case, as it stands, is mature for judgment on the remaining part of the merits — and it may not therefore be unduly delayed. (Section 209, Code of Civil Procedure — Collection of Judgments Vol. XXIV, I, p. 1052).

20 The urgency of the case has been acknowledged by the Court below, which abridged the time within which the Defendant should enter Appeal.

The Applicant therefore respectfully prays that this Honourable Court may be pleased to order that the case be put down for hearing as an urgent case — the legal period being abridged.

(Signed) A. MAGRI,

Advocate.

" GIUS. MANGION,

Legal Procurator.

This 13th June, 1951.

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

30 (Signed) J.N. CAMILLERI,  
Deputy Registrar.

**No. 67.**

**Decree on preceding Application**

H.M. COURT OF APPEAL

No. 67.  
Decree on  
preceding  
Application.

The Court,

Upon seeing the Application: —

40 Whereas the case, introduced on the 11th February, 1949, was determined, only in part, on the 28th May, 1951, that is, over two years and three months later.

No. 67.  
Decree on  
preceding  
Application.  
—continued.

And whereas the question at issue on the Appeal is not such as may conveniently be determined with urgency. —  
Disallows the Application.

The 14th June, 1951.

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

No. 68.  
Judgment,  
H.M. Court  
of Appeal.

**No. 68.**  
**Judgment, H.M. Court of Appeal**

10

H.M. COURT OF APPEAL  
(Civil Hall)

Judges:

His Honour L.A. Camilleri LL.D., Acting President.  
The Honourable Mr. Justice A.J. Montanaro Gauci LL.D.  
The Honourable Mr. Justice T. Gouder LL.D.

Sitting held on Monday, the 4th February, 1952. 20

No. 26.  
Writ-of-Summons No. 112/1949.

Colonel Stephen J. Borg nomine,  
**v.**  
Gustavo Romeo Vincenti A. & C.E.

The Court,

Upon seeing the judgment given by this Court of Appeal on the 14th November, 1949, recapitulating Plaintiff's claims and Defendant's pleas and affirming the judgment given by the Court below on the 4th May, 1949, whereby that Court dismissed the two pleas set up by the Defendant as to want of clearness in the writ-of-summons and lack of documents in support of the claim — both tending towards a judicial declaration of the nullity of the initial act; and whereby that Court ordered each party to bear its own costs. 30

Upon seeing Defendant's further Statement of Defence, pleading: (1) that no evidence has been produced to establish the bond and degree of consanguinity between the pre-emptors and the vendors, and praying that, in default of such evidence, the claims be dismissed; (2) that the two Plaintiffs who are absent from the Island and who are represented by Colonel Borg were duly notified according to law of 40

the Notice advertising the sale, and that, therefore, they had no right to exercise the right of pre-emption in respect of the property in question; and (3) that the two Plaintiffs aforesaid are not exercising the right of pre-emption in their own interests, but on behalf and for the benefit of third parties.

No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

Upon seeing the judgment given by H.M. Civil Court, First Hall, on the 28th May, 1951, declaring that Defendant's line of action does not amount to a waiver of the plea of invalidity respecting the right of pre-emption exercised, such as to preclude and render inadmissible  
10 any such plea, dismissing the second plea set up by the Defendant in his further Statement of Defence and ordering that the Costs in respect thereof be borne, 4/5ths by the Defendant, and 1/5th by the Plaintiff — the Defendant to pay the Registry fees.

That Court having considered:—

After making the statement recorded in the procès verbal dated 30th January, 1950, the Defendant proceeded to bring forward evidence — abundant, prolonged and voluminous — in substantiation of the third plea set up in his second Statement of Defence, to the effect that the Plaintiffs were exercising the right of pre-emption, not in their  
20 own interests, but on behalf and for the benefit of third parties; and the Defendant never again mentioned the second plea. Then, when all available evidence had been brought to bear on the point, and when the case, so far as that point was concerned, had matured for judgment, the Defendant disinterred the second plea and pressed for a decision thereanent. It need scarcely be stated that the Defendant would have acted with more propriety, and with greater regard to the need for economy in the matter of time and costs, if, instead of proceeding with the evidence in respect of the third plea, he had insisted at the outset, as undoubtedly he had every right to do, upon a decision  
30 on the second plea — a plea which, if successful, would put the action out of Court.

So far as the Plaintiffs were concerned, that line of action on Defendant's part was taken to mean that the second plea had been renounced. The Court cannot but give due weight to the inconvenience thus occasioned, which might well have its repercussions on the order as to costs if the second plea in question were to succeed. Nevertheless, legally and juridically, the Court feels unable to state that, so far as the Record goes, the plea is to be deemed waived by the Defendant; and, in any case — vis-à-vis the contention to the contrary  
40 subordinately advanced by the two Plaintiffs in their Note of Submissions — the uncertainty arising out of the procès verbal of the 30th

No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

January, 1950, recording the statement made by Defendant's Counsel, must in the light of juridical logic be interpreted more in favour than against the view that the Defendant had not in fact waived that second plea.

It is therefore incumbent upon the Court — *rebus sic stantibus* — to go into and determine the question regarding the invalidity of the pre-emption exercised by the Plaintiff nomine, raised by the Defendant on the grounds set out in section 1520 of the Civil Code.

To begin with, it may not be idle to make certain observations of a legal nature. 10

A comparison between sections 1518 and 1520 of the Civil Code (Chap. 23, Laws of Malta), and other provisions of the laws hereunder mentioned, shows clearly that, *as regards the period within which the right of pre-emption may be exercised*, a distinction is made in the law between the case where the conveyance of property subject to that right of pre-emption has been made extra-judicially and voluntarily and that where the conveyance thereof follows as the result of a sale by auction under the authority of the Court. Where the sale has been made extra-judicially, the normal period within which the right of pre-emption may be exercised is of one year, with effect from the date of the registration of the respective deed of sale in the Public Registry, and, if the sale is made subject to a suspensive condition, with effect from the date of the instrument whereby the seller and the buyer declare that the condition has been fulfilled. That period may be shortened by the buyer or the seller to a period of two months from the day on which service is made of the Judicial Letter referred to in section 1519 of the Civil Code, provided the conditions laid down in that section of the law have been satisfied. It may be mentioned also that the dominus or emphyteuta entitled to the right of preference in terms of section 1595 of the Civil Code may, in the case of a voluntary or extra-judicial alienation, exercise that right of preference up to and until the expiration of one year from the day on which he came to know of the alienation (*a die scientiae*). — (Vide section 1600 (1) Civil Code). That right of preference, however, ceases if the dominus or emphyteuta entitled thereto, within two months from the day on which the sale is notified to him by the alienor or alienee, fails to declare, as required by law on pain of nullity, that he accepts the terms of the alienation made. (Vide sections 1598 and 1599 Civil Code). The upshot is that the period originally established by law for the exercise of the right of preference may also be effectively curtailed. On the other hand, where property which is subject to the right of pre-emption or to the right 20  
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of preference (excepting the case where the right of preference has not been expressly covenanted in the emphyteutical contract and saving the exceptions whereof in section 1613 of the Civil Code) is sold by auction under the authority of the Court, the right of pre-emption or the right of preference (saving the exceptions above-mentioned) shall not be competent to those persons who have been served with a copy of the advertisement whereof in section 314 of the Code of Organization and Civil Procedure (Chap. 15, Laws of Malta) — saving of course the provisions of section 356 of that Code. The section of the

10 law last mentioned envisages two propositions respecting the exercise of *jus luendi* or *redimendi*, which are dependant upon service or default of service of the advertisement of the sale; and while the debtor may exercise the right in either case, the other persons may do so only in the case where they have not been served with the advertisement. It is true that, in default of service of the advertisement, the persons entitled to the exercise of the right of pre-emption under section 1510 of the Civil Code, and those entitled to the exercise of the right of preference under section 1595 of that Code — and also the

20 debtor — may exercise the right of pre-emption or redemption in respect of property sold under the authority of the Court within four months from the day of the registration of the sale in the Public Registry. No mention of that time-clause is made in section 1518 of the Civil Code. Nevertheless, it is, on interpretation, virtually implicit in the conception and diction of section 1520 of that Code, wherein — in accordance with the aphorism *inclusio unius fit exclusio alterius* — the proposition that persons who have been served with the advertisement are debarred the exercise of the right implies and must logically be taken to include the contrary proposition that persons who have not been served with the advertisement retain their rights unimpaired.

30 Such is the conclusion to be drawn if that section of the law is read in conjunction with section 356 of the Code of Civil Procedure, in that the laws of the State must be interpreted as a whole and in their relation to each other and — unless the contrary is palpably clear — any interpretation of the various enactments governing the same subject-matter that leads to irreconcilable and absurd consequences must be discarded as other than a just and reasonable interpretation. On the other hand, according to section 356 of the Code of Civil Procedure, all those persons mentioned in sections 1510 and 1595 of the Civil Code — with the exception of the debtor — are to be considered

40 as having forfeited their rights if and when service has been made upon them of the advertisement of the sale.

No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

It follows therefore (1) that, as regards the time-limit within which the aforementioned rights may be exercised, the law makes a difference, or, better still, a distinction, between sales that have been made extra-judicially and voluntarily and sales that have been made judicially or compulsorily; (2) that, both in the case of voluntary and compulsory sales, the abridgement of the time-limit is subject (a) to certain conditions, and (b) to the positive action of the parties in whose interests it is to curtail that time-limit — the actual curtailment of which varies according to the various provisions of the law; and (3) that, in judicial sales, the abridged time-limit may lapse altogether in respect of all the persons concerned where such persons have been served with the advertisement of the sale — *excepting however the debtor*, (and, according to jurisprudence, also the heirs of the debtor in respect of the right or redemption — vide Appeal 9th April, 1877, Collection of Judgments, Vol. III, p. 153 and, especially, p. 157) in respect of whom, service of the advertisement, necessary in his case following the issue of execution, must not impair or neutralize his rights thereanent, which rights, consequently, remain vested in him even in the case above envisaged. 10

The logico-juridical reason for (1) and (2) above lies in the fact that, thereby, a protracted state of uncertainty in respect of the sale is avoided and the interested parties and the title-holders are given the opportunity to define and settle their juridical position in a relatively short period of time, thus obviating the losses and suspensions of material and economic benefits that would be incurred in consequence of the state of uncertainty created by the supervening necessity for the determination of competing claims. The reason for (3) are due to considerations of a humanitarian nature — and, partly, also to legal considerations — in that the debtor may find it possible in some way or other to satisfy the creditor without incurring the loss of his property by compulsory sale. 20 30

The foregoing considerations having been premised, it is now incumbent upon the Court directly to consider the section — or, rather, the sub-section — *de quo agitur*.

Sub-section (2) of section 1520 runs as follows:—

“The provisions of this section shall also apply to absent persons if the said advertisement” — that is, the advertisement mentioned in section 314 of the Code of Civil Procedure — “shall have been published in the Government Gazette at least one month before the day fixed for the sale.” 04

Therefore, for the logico-juridical reasons above-stated, it was the aim of the legislator that, in judicial auctions, persons entitled to the right of pre-emption and the right of preference under sections 1510 and 1595 of the Civil Code — saving the exceptions above-mentioned — should be precluded the exercise of their rights whether they are present or whether they are absent from the island at the time of the auction, devising for that purpose a method whereby the procedure laid down in respect of the former is rendered applicable to the latter.

No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

Judge Dr. Paolo Debono, in his comments on article 1183 of Ordinance VII of 1868, and with reference also to article 1184 (now sections 1519 and 1520 of the Civil Code) states that default in the observance of the procedure laid down in those sections of the law extinguishes the substantial right therein envisaged — a comment that shows how grave and irreparable are the consequences attending such default. It is true that the serious consequences referred to are implicit in the letter of the law, but the legal inference to be drawn from the observation of the learned judge is that he considered the loss of rights envisaged in those two sections of the law as a loss incurred by reason of default, inasmuch as loss by default strikes at the right rather than the action — although he who incurs forfeiture of a right forfeits also the exercise of the action, as affirmed by Dalloz in the Repertoire. (“Decheances”, Vol. 15, p. 6 para:6). It remains a fact, however, that Judge Debono considered that provision as a penalty created by the law — as a matter of social necessity — for the negligence and carelessness of those who, within the time and in the manner prescribed, fail or omit to do what is required of them to maintain their rights.

It may also be stated, before proceeding further, that, legally, it is only in the case where there has been strict and rigid observance of the law that prescribes forfeiture, which is of a presumptive character and of the utmost rigour — and which, as stated, presupposes negligence on the part of the person entitled to the exercise of the right — that forfeiture itself may be deemed to have occurred and to be completed as the result of that procedure — a procedure created for reasons of public policy rather than legal necessity. That that is so is to be deduced from the fact that the law makes no exception in regard to any absent and any entitled person where such loss of rights is concerned — that is to say, it applies to those who have definitely severed all ties of affection and of economic interest with the Island and who presumably do not easily come across the local Government Gazette, as well as to those who have to some extent retained their connections with the island and who may therefore come to know of the advertisement.



No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

In order that forfeiture as above may become operative as of right, two things are necessary: (1) the advertisement as required by section 314 of the Code of Civil Procedure, and (2) the publication of that advertisement in the Government Gazette at least *one month before the day fixed for the sale*.

The advertisement in question, duly signed by the Registrar, must state: (1) the date of the judgment or decree ordering the sale by auction; (2) the nature of the thing to be sold; (3) the place of the sale and the day and hour in which the sale is to begin and end; and (4) where a valuation has been made, the estimated value (Vide section 314, Code of Civil Procedure). 10

The scope of the advertisement is to give the proposed sale the widest possible publicity, thus to attract as many people as possible to come forward with their bids; and it must be posted up at the main entrance of the building in which the Court sits, and, *if so deemed necessary*, in the principal streets of the place where the auction is to be held and of the place in which the debtor resides. (Vide section 315 (1), Code of Civil Procedure). It must be published in one or more local newspapers *if so ordered by the Court*. (Vide section 315 (2) *idem*). And, according to the Regulations made by H.M. Judges on the 5th November, 1884, published in the Government Gazette of the Year 1884, page 355 (vide Vol. VI, Laws of Malta, Revised Ed., p. 40 et seq.), where the Court shall not have stated in which paper it is to be published, the notice shall be published in the Government Gazette. Normally, *in the case of immovable property, or of ships, publication of the advertisement shall take place at least fifteen days before the day appointed for the sale by auction*, and, in the case of movable property, at least four days before the day appointed for the sale. (Vide section 315 (3) Code of Civil Procedure). The time within which the sale may take place may be reduced by the Court (section 317 *idem*) and the Marshal is required to draw up a certificate of the service and publication on the original advertisement. 20 30

According to the Record of the proceedings of the judicial sale "Colonel Stephen J. Borg and Others v. Mgr. Canon Gerolamo Chetcuti (Vol. I, 1948, Sales by Auction, Civil Court, First Hall, January — July — No. 8), the notice or advertisement prescribed in section 314 of the Code of Civil Procedure, respecting the sale of the immovable property in question, was published in Government Gazette No. 9633 dated 30th December, 1947. In substance, that Notice (No. 396) gave all the required particulars and stated that the sale had been fixed to take place on Thursday, 22nd January, 1948, at and from 9 a.m. onwards 40

— without mentioning the time at which it would end. According to the Record above-mentioned, the property was finally adjudicated on the 1st April, 1948. *It is agreed between the parties that, after publication of Notice No. 396 above-mentioned, and up to the day of final adjudication, no other notice was published in the Government Gazette.*

No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

It follows therefore that the period of time that elapsed between the date of publication of the advertisement (No, 9633 — 30th December, 1947) and the day therein fixed for the sale (22nd January, 1948), fell short of the minimum period of time required by section 1520 of the  
10 Civil Code for forfeiture to occur; and it cannot therefore be held that the Plaintiffs had forfeited their right to the exercise of pre-emption.

That that provision of the law has to be so interpreted is borne out by the following considerations:—

1. Therein, the law prescribes forfeiture and the rules of law envisaging forfeiture of rights must be strictly interpreted (Vide Judgment, H.M. Civil Court, First Hall, 5th March, 1881, in re “Sant v. Apap” — Vol. IX, p. 346, and, more particularly, p. 349, col. 2). One must therefore adhere to the strict wording of the law, neither extending nor restricting the meaning and purport thereof. The day of  
20 adjudication is not mentioned in that section of the law.

2. It is not enough, in the eyes of the law, to be cognisant of the proposed sale: the law expressly requires that an advertisement be published in the Government Gazette at least one month before the day fixed for the sale. This means that even if it were established that Patricia and Helen Borg had after the first appointed day become cognisant of the subsequent adjournments, the fact, at law, would not suffice to divest them of their rights. After all, whether Patricia and Helen Borg were, or were not, cognisant of the adjournments, is irrelevant, in that neither in the affirmative nor in the negative case  
30 does such cognisance correspond to the terms of the imperative provision of the law under discussion. (Vide argument to be drawn from the judgment above mentioned).

3. The legislator was so fully conscious of the gravity of the consequences of these provisions of the law, impelled by reasons of social rather than legal usefulness, that, for the purpose of notifying absent persons, a time-clause or a special procedure was imposed wherever such absent persons were included in the various Codes. The following may be taken as examples: The procedure laid down respecting interruption of prescription envisaged in section 2235 of the Civil Code,  
40 whereunder (2) service of the judicial act causing interruption is

No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

deemed to have been made if a Notice is published in the Government Gazette within one month to be reckoned from the last day of the period for prescription — Vide Notices Government Gazette No. 2458 of 30th September, 1870, No. 55, p. 311; Government Gazette No. 2749 of 20th December, 1877, No. 745, pp. 352-353; Government Gazette No. 2713 of 31st January, 1877, No. 671, p. 32; Government Gazette No. 2800 of 5th February, 1879, No. 859, p. 28; — Notices whereby conditions respecting new leases are notified to absent persons entitled to the right of preference, as laid down in section 1687 of the Civil Code; — Notices under section 500 of the Code of Civil Procedure respecting the issue of Edicts for the discharge of burdens on immovable property (vide innumerable instances in Government Gazette between 1870 and 1884); — and, finally, the procedure to be observed in respect of the withdrawal of deposits (other than deposits of money) in the cases envisaged in section 949 of the Code of Civil Procedure. (Vide Notice No. 113, p. 76, Government Gazette No. 2477 of 12th May, 1871; Notice No. 542, p. 304, Government Gazette No. 2659 of 10th September, 1875; — and others).

4. In the matter of the interpretation of laws, it is a settled principle that *legis posteriores ad priores pertineant nisi contrariae sint* (L. 28 Digest 1.3), so that the reflux of the laws in force on the preceding laws may elucidate the “mens” of the former. As the Plaintiff has submitted, the Municipal Code (Liber III, Chap. X), in para: XVIII, laid down that pre-emption shall not be exercised in respect of property transferred in virtue of voluntary or judicial sales unless the party possessing a certain right thereto is summoned *personally* by means of a copy of the Ban — the equivalent of the present-day advertisement of the sale; and, as regards uncertain or absent parties (*incerti ed assenti*) — vide interpretation of the word *incerti* given by the *Supremo Magistrato di Giustizia* on 27th August, 1713 — *in addition to the Ban*, an announcement (amounting to the Bans which are published in the villages even at the present day, especially in connection with the lease of rural property) had to be made in the Parish where the debtor or the vendor had his residence — a provision of the law which shows clearly that the legislator of that time, having regard to the grave consequences to which the enactment might give rise, felt the necessity of laying down some special procedure. As shall be stated later on, the framers of the more recent laws, too, evinced the same preoccupation, and, prior to the year 1884, they prescribed what was altogether a special procedure, and, later, if not altogether a special procedure, certainly a formality and a time-clause *ad hoc*.

5. At the time when, by article 1184 of Ordinance VII of 1868 (now section 1520 of the Civil Code), the legislator virtually amended article 383 (now section 356) of the Code of Civil Procedure as regards the advertisement envisaged in article 383 above-mentioned and established by preceding article 341 (now section 314) of the same laws (vide Appeal judgment, 9th April, 1877, in re "Muscat & Others v. Meli", Vol. III, p. 153 — more especially p. 157), and as regards the cessation of the right of pre-emption on the part of the persons included in section 1510 of the Civil Code and on the part of absent

**10** title-holders, the conditions respecting sales, where ordered, were published through one or more privately-owned newspapers and not through the Government Gazette. (Vide Government Gazette between the year 1868 and the year 1883, in which no sale notices are to be found, and in which, as regards the matter in which we are interested, only Edicts appear — apart from the notices respecting prescription and deposits mentioned above). This shows that, up to the year 1884, the publication in the Government Gazette of a notice of sale such as that envisaged in article 1184 of Ordinance VII of 1868 was more of an extraordinary than a normal event, and, presumably, an application to

**20** that end had to be made. When, however, on the 5th November, 1884, pursuant to article 30 of the Code of Civil Procedure, H.M. Judges made the Rule of Court set out in Government Notice No. 108/1884, approved by the Governor on the 10th November, 1884 — and so made for the reasons therein stated and for no reason having anything to do with the aims and purposes of article 1184 of Ordinance VII of 1868, now section 1520 of the Civil Code — notices or advertisements of sales of movable and immovable property began to appear for the first time in the Government Gazette. (Vide Government Gazette from November 1884 to the present day). In some of those

**30** advertisements respecting the sale of immovable property, the interval between the date of publication and the day fixed for the sale used to be generally of fifteen days or more, as required by law, but was never extended to less than at least one month; and only sporadically and in very few cases was the interval between the two dates of at least one month. (Vide amongst many under the normal period, Notice No. 69, Government Gazette No. 3072, p. 74, 20th March, 1885 and Notice No. 87, Government Gazette No. 3075, p. 100, 20th April, 1885, in which the period is of one month or more). It is to be added that, in the Rules of Court above referred to, it was left to the discretion of

**40** the Court, as it is at the present day in the laws of procedure, expressly to dispense with the publication of the advertisement; and it was therein provided that (1) where publication shall not be so expressly dis-

No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

dispensed with by the Court, or (2) where the Court, in ordering the publication, shall not indicate the privately-owned newspaper or periodical in which it is to be made, then, and only then, shall the Registrar cause the advertisement to be inserted in the Government Gazette. It follows therefore that although publication in the Press of advertisements of sales by auction is not *imperatively required and ordered by law*, so much so that it may be expressly dispensed with by the Court — the advertisement must in the cases envisaged be published in the Government Gazette; and that the advertisement to be so published is the normal advertisement subject to the time-clause whereof in section 313 (3) of the Code of Civil Procedure, that being the general, normal and ordinary period of time absolutely imposed by the law. Where, therefore, for some particular reason or other, the debtor or the vendor or other interested party shall require the period in question to be extended — and he has the right according to law so to extend it — then presumably an application to that end must be made, even verbally; and it is only in that sense that the advertisement whose interval of time has been so extended may at the present day be termed an advertisement or an act under a special procedure. There is nothing to show that any *such application was made by any interested party in the case at issue*, though other applications were made for service of the advertisement to be effected upon persons who may eventually have found it in their interests to exercise the right of pre-emption in respect of the property in question (vide Applications by Bice, the widow of Lorenzo Demartino, one of the co-vendors, dated 6th and 16th March, 1948, filed in the Record of the sale proceedings). This opinion is strengthened by the fact that article 1184 of Ordinance VII of 1868 was promulgated before the issue of Government Notice No. 108 of the year 1884, so that, prior to the issue of that Government Notice, when the advertisements were published in newspapers other than the Government Gazette, it was necessary — if para: 2 of that article were to become operative — for an application to be made *ad hoc*. The foregoing leads to the logical and natural conclusion that section 1520 of the Civil Code must be very strictly interpreted — *ad unguem*.

Therefore, in the absence of the period of not less at least than one month between the date of publication of the advertisement and the day fixed for the sale, the provisions of sub-section 2 of section 1520 of the Civil Code failed to become operative in respect of Patricia and Helen Borg.

In view of the foregoing considerations, based on established fact and law, Defendant's plea, resting on the provisions of section 1520 of the Civil Code, cannot in the opinion of this Court be allowed.

Upon seeing Defendant's Note of Appeal, and his Petition (as corrected in terms of the Decree dated 30th January, 1952), praying that the judgment given by H.M. Civil Court, First Hall, on the 28th May, 1951, be varied, in the sense, that is, that that judgment be affirmed in so far as it was therein declared that Defendant's line of action does not amount to a waiver of the plea of invalidity respecting the right of pre-emption exercised, such as to preclude and render inadmissible any such plea, and that it be reversed in so far as it dismissed the second plea set up by the Defendant in his further Statement of Defence — that plea being allowed and a declaration being made to the effect that Patricia and Helen Borg had been lawfully notified of the sale held on the 1st April, 1948 of the property whereof in the writ-of-summons, and that, consequently, they are not entitled to exercise the right of pre-emption in respect of the property in question; — and, further, that the Order as to costs be affirmed in so far as the Defendant Appellant succeeds thereunder and reversed in so far as he is adversely affected thereby — an Order being made for the Plaintiff Respondent to bear all the costs, both those of the First and of this Second Instance, in respect of the preliminary plea tendered by the Appellant.

Upon seeing the Answer filed by the Plaintiff nomine, submitting that the judgment appealed from is fair and just and praying that Defendant's Appeal be dismissed with costs.

Upon seeing the Decree dated 26th November 1951, whereby — on the question raised by the Plaintiff nomine as regards the deposit lodged by the Appellant in respect of the costs of the Appeal, following the Registrar's taxation of costs — the Plaintiff was given the period of eight days within which to bring an appropriate action according to law. — Costs reserved to the final judgment on the incident.

Having taken note that no steps have been taken by the Plaintiff nomine within the aforesaid period of eight days, so that there is no further need for directions to be given on the merits of the incident in question.

Having examined all the acts filed in the Record.

Having heard Counsel on both sides.

Considering :

The property in question was sold by licitation under the authority of H.M. Civil Court, First Hall, and, on the first April, 1948, it was adjudicated to the Defendant. The sale was advertised by Notice appearing in the Government Gazette on the 20th June, 1947, wherein the 18th July, 1947 was fixed for the sale by licitation. However, by Decree

No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

dated 17th July, 1947, the sale was suspended and again appointed to take place on the 22nd January, 1948, following a fresh Notice which appeared in the Government Gazette on the 30th December, 1947, — which Notice, amongst the other particulars required by section 314 of the Code of Procedure, specified the day fixed for the sale by licitation. Several adjournments followed right up to the time the sale was effected, but no other Notice was published in the Government Gazette. The Plaintiffs Patricia and Helen Borg were then abroad.

Considering:

In terms of section 1520 of the Civil Code: “Where the sale was made by judicial auction, the right of pre-emption shall not be competent to the persons to whom notice of the proposed sale was given by service of a copy of the advertisement mentioned in section 314 of the Code of Organization and Civil Procedure. The provisions of this section shall also apply to absent persons if the said advertisement shall have been published in the Government Gazette at least one month before the day fixed for the sale”. Section 314 of the Code of Organization and Civil Procedure runs thus: “The advertisement shall be signed by the Registrar and shall state the date of the judgment or decree ordering the sale by auction, the nature of the thing to be sold, the place of the sale and the day and hour in which the auction is to begin and to end. Where a valuation has been made, the estimated value shall be stated in the advertisement.”

Considering:

Section 1520 prescribes forfeiture of the right of pre-emption. Therefore it admits of no extensive intrepertation, since this would be repugnant to the rule in hermeneutics. (Vide Judgment, H.M. Court of Appeal, 26th October, 1936 in re “Zerafa v. Dr. Caruana” — Collection XXIX, I, 729). For forfeiture to take place, therefore, it is an indispenable necessity that the provisions of the law be scrupulously observed — *ad unguem*. As a *sine qua non* condition for forfeiture to occur, the law requires the publication of the advertisement of the sale, specifying the day of the sale, at least one month before the day fixed for the sale. In default, no forfeiture takes place.

In actual fact, so far as the first advertisement is concerned, there was an interval of less than a month between the date of publication in the Government Gazette (20th June, 1947) and the day fixed for the sale (18th July, 1947); and therefore that advertisement lacked what was required to bring about forfeiture as envisaged in section 1520 of the law. Again, an interval of less than a month occurred between the date of publication of the fresh advertisement (30th December, 1947)

and the day therein fixed for the sale (22nd January, 1948); and therefore that fresh advertisement likewise failed to satisfy the condition required for forfeiture to take place. Afterwards, no other advertisement appeared in the Government Gazette respecting the sale of the property in question, although various adjournments followed, and service was made upon the interested parties who were present in the Island. The requirements of the law, therefore, failed to be satisfied, so that the condition *sine qua non* for forfeiture to be completed in respect of the persons who were absent, and who subsequently exercised the right of pre-emption, was lacking. And, actually, for forfeiture to occur, it was necessary for a fresh advertisement to appear in the Government Gazette at least one month before each new subsequent day fixed for the sale. No such fresh advertisement appeared.

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On these grounds, and on the grounds set out in the judgment appealed from, the Court dismisses the Appeal and, in so far as the grievance therein complained of, affirms the judgment appealed from.

The Costs shall be borne by the Appellant, bar the Costs in respect of the incident regarding the security for the Costs of the Appeal, which shall be borne by the Respondent nomine.

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

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**No. 69.**  
**Defendant's Petition for Leave to Appeal**  
**to H.M. Privy Council**

In H.M. Court of Appeal.

Writ-of-Summons,  
No. 112/1949.

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Colonel Stephen J. Borg, in his capacity as attorney for and on behalf of Patricia and Helen Borg, absent from these Islands, appointed by the instrument annexed to the Deed enrolled in the Records of Notary John Spiteri Maempel on the 2nd September, 1948, true copy whereof

No. 68.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

No. 69.  
Defendant's  
Petition for  
Leave to  
Appeal to  
H.M. Privy  
Council.



No. 69.  
 Defendant's  
 Petition for  
 Leave to  
 Appeal to  
 H.M. Privy  
 Council.  
 —continued.

is annexed hereto (Exhibit "A"); — and, by Minute filed on 3rd April, 1951, Patricia and Helen Borg, who, having returned to the Island, took up the proceedings; — and by Minute filed on the 28th May, 1951, Colonel Stephen J. Borg who, on the departure from the Island of Patricia and Helen Borg, again took up the proceedings on their behalf 10

v.

Gustavo Romeo Vincenti, A. & C.E.

The Petition of the Defendant, Gustavo Romeo Vincenti, A. & C.E.

Respectfully sheweth:—

The Plaintiff nomine, by Writ-of-Summons filed in H.M. Civil Court, First Hall, on the 11th Feb., 1949, premising:— That, at the judicial sale held on 1st April, 1948, the property at the corner between Kingsway and St. John Street, Valletta, formerly the block of buildings at Nos. 45, 46, and 47, Kingsway, and Nos. 46, 47, and 48, St. John Street, inclusive of the cellar underlying Nos. 45, 46, and 47, Kingsway, at present demolished through enemy action, free from and unencumbered by burthens and servitudes, and carrying with it the right to the amount of compensation payable by the War Damage Commission, was finally adjudicated to the Defendant for the sum of Thirty-two Thousand Two Hundred Pounds (£32,200); — that, by Schedule No. 163 dated 3rd September, 1948, the Plaintiff nomine, by virtue of the title of consanguinity, and any other whatsoever title appertaining to the said Patricia and Helen Borg, exercised the right of pre-emption in respect of the aforesaid property; — and that, notwithstanding the reiterated requests made to him by Judicial Letter, 20 and notwithstanding previous agreement on his part to effect the re-sale of certain portions of the property, the Defendant has now refused to surrender even those portions thereof; — prayed that; — every necessary declaration being prefaced and any expedient direction being given; — a judicial declaration be made to the effect that the right of pre-emption exercised by the Plaintiff nomine is valid and lawful; — that liquidation be made, if necessary, of any legitimate expenses incurred by the Defendant in connection with the purchase of the property, over and above those lodged by the aforesaid Schedule:— that the Defendant be condemned to effect the re-sale to the Plaintiff nomine, within a short and peremptory period of time, of 40

283/360th portions of the property above-mentioned, or other varying portion thereof, even larger — the re-sale, in default, being effected by judgment; — and that the Defendant be condemned to pay to the Plaintiff nomine all the damages sustained and that may be sustained by him in consequence of delay and default on his, Defendant's, part, such damages being assessed by Judicial Referees appointed for the purpose; — With interest according to law and with Costs.

No. 69.  
Defendant's  
Petition for  
Leave to  
Appeal to  
H.M. Privy  
Council.  
—continued.

The Defendant, in his Statement of Defence, pleaded that the Plaintiff nomine is not entitled to exercise the right of pre-emption on behalf of Patricia and Helen Borg, in that Patricia and Helen Borg had been duly notified of the sale according to law.

H.M.Civil Court, First Hall, by judgment given on the 28th May, 1951, dismissed the foregoing plea set up by the Defendant and ordered that the Costs in respect thereof be borne, 4/5ths by the Defendant, and 1/5th by the Plaintiff — the Defendant to pay all Registry fees.

This Court of Appeal, by Judgment given on the 4th February, 1952, affirmed the aforesaid judgment of the 28th May, 1951 — with Costs against the Defendant — and thus dismissed Defendant's plea.

The Defendant deems himself aggrieved by the judgment given by this Honourable Court on the 4th February, 1952 and, in terms of section 2(a) of the Order-in-Council of the 22nd November, 1909, as amended by the Order-in-Council of the 5th November, 1942 — or other Regulations thereanent — wishes to enter Appeal therefrom to Her Majesty in Her Privy Council.

Wherefore the Defendant humbly prays that this Honourable Court may be pleased to grant him leave to appeal from the aforesaid judgment to Her Majesty in Her Privy Council. — With Costs.

(Signed) ED. VASSALLO,  
Advocate.

„ E.G. CARUANA SCICLUNA.  
Legal Procurator.

30

This Twenty-third February, 1952.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

(Signed) U. BRUNO,  
Deputy Registrar.

No. 70.  
Decree on  
Defendant's  
Petition.

**No. 70.**  
**Decree on Defendant's Petition**

The Court,

Upon seeing the Petition:—

Orders that it be put on the case-list of the 10th March, 1952 and that service be made upon the Plaintiff.

This Twenty-fifth February, 1952.

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

10

No. 71.  
Plaintiff's  
Answer.

**No. 71.**  
**Plaintiff's Answer**

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine,  
v.

Gustavo Romeo Vincenti, A.&C.E.

The Answer of the Plaintiff nomine.

The Plaintiff nomine resists Defendant's Petition for leave to appeal to H.M. Privy Council in that the judgment given on the 4th February, 1952 is not a "final judgment" within the meaning of the law, as interpreted in jurisprudence (Collection of judgments, Vols. XXVI, Part I, sec. II, p. 144 and XXIX, I, 9). 20

(Signed) A. MAGRI,

Advocate.

„ GIUS. MANGION,

Legal Procurator.

This Twenty-sixth February, 1952.

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

(Signed) J. MICALLEF,

Deputy Registrar.

30

**No. 72.**  
**Decree on Defendant's Petition**

No. 72.  
Decree on  
Defendant's  
Petition.

HER MAJESTY'S COURT OF APPEAL  
(Civil Hall)

Judges:

His Honour L.A. Camilleri LL.D., Acting President,  
The Honourable Mr. Justice A.J. Montanaro Gauci LL.D.,  
The Honourable Mr. Justice T. Gouder LL.D.

Sitting held on Monday,  
The Tenth March, 1952.

10

No. 21.  
Writ-of-Summons No. 112/1949.

Colonel Stephen J. Borg nomine,  
v.  
Gustavo Romeo Vincenti, A. & C.E.

The Court,

Upon seeing Defendant's Petition, praying for leave to appeal to the Judicial Committee of Her Majesty in Her Privy Council from the judgment given by this Court in this case on the 4th February, 1952.

20

Upon seeing Plaintiff's Answer, resisting the Petition on the ground that the judgment given on the 4th February, 1952 is not a "final judgment" within the meaning of the law.

Having examined the acts filed in the Record.

Having heard Counsel on both sides.

Having considered:

The Petition — as therein stated — rests on section 2 (a) of the Order-in-Council of the 22nd November 1909, as amended by the Order-in-Council of the 5th November, 1942.

30 According to that section of the law "An appeal shall lie as of right from any final judgment of the Court where the matter in dispute on the appeal amounts to or is of the value of five hundred pounds sterling or upwards..."

It follows therefore that, in order that leave to appeal to the Judicial Committee may be granted as of right, it is necessary, amongst other things, that the judgment to be appealed from be a final and definitive judgment.

Having considered:

H.M. Civil Court, First Hall, by judgment given on the 28th May,

No. 72.  
Decree on  
Defendant's  
Petition.  
—continued.

1951, declared that Defendant's line of action did not amount to a waiver of the plea regarding the invalidity of the right of pre-emption exercised, such as to prelude and render inadmissible any such plea, and dismissed the second plea set up by the Defendant in his further Statement of Defence. The Defendant entered an appeal from the last part of that judgment, that is, that part of the judgment dismissing the second plea above-mentioned; and, on that appeal, this Court, by judgment given on the 4th February, 1952, affirmed the judgment given by the Court of First Instance. And the Defendant is now seeking leave to appeal to Her Majesty in Her Privy Council from the aforesaid 10 judgment of this Court of the 4th February, 1952.

Having considered :

It cannot be held that that judgment is definitive and final. It is no bar to the continuation of the proceedings on the merits and the merits have not so far been disposed of. This Court, by the judgment given on the 13th December, 1926 in re "Dr. Pullicino nomine v. Salvatore Grech nomine and Others" (Collection XXVI, Part I, sec. II, p. 144), held that the judgment dismissing the plea of Appellant's capacity was not a final judgment "in that the judgment permits the continuation of the case on the merits, and the Plaintiff, once judgment 20 on the merits has been given, shall always have the opportunity to appeal therefrom both on the merits and against the dismissal of the plea as to capacity. The case would have been different if this Court had allowed the plea above-mentioned, for, obviously, in that case, the pronouncement of the Court, precluding the Appellant from the prosecution of his appeal, would have been final." A quoted judgment given by the Court at Quebec, and two other judgments given by Her Majesty's Judicial Committee, express the same view. It is held in one of the latter judgments that "an order is not a final order unless it finally disposes 30 of the rights of the parties".

On these grounds

The Court

Dismisses Defendant's Petition for leave to appeal to the Judicial Committee of Her Majesty's Privy Council from the judgment given by this Court on the 4th February, 1952 — with Costs against the Defendant Vincenti.

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

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**IN H.M. CIVIL COURT, FIRST HALL.**

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**No. 73.**  
**Plaintiff's Application**

No. 73.  
Plaintiff's  
Application.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A.&C.E.

The Application of the Plaintiff nomine.

Respectfully sheweth:—

10 That Defendant's Petition for leave to appeal to H.M. Privy Council has been dismissed this day by H.M. Court of Appeal.

That, before this Court, the case stands adjourned *sine die*.

That the Plaintiff is sustaining heavy damages in consequence of delay and it is therefore fair that the case be put on the case-list for hearing and disposal on the merits.

The Plaintiff therefore respectfully prays that this Honourable Court may be pleased to order that the case be restored to the case-list so that it may be heard and determined according to law.

(Signed) A. MAGRI,

Advocate.

20

”

GIUS. MANGION,

Legal Procurator.

The Tenth March, 1952.

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

(Signed) S. BUGEJA,

Deputy Registrar.

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**No. 74.**

**Decree on preceding Application**

H.M. CIVIL COURT, FIRST HALL

No. 74.  
Decree on  
preceding  
Application.

30

Judge:

The Honourable Mr. Justice A.V. Camilleri B.Litt., LL.D.

The Court,

Upon seeing the Application:—

Orders that the case be put on the case-list for hearing on the 27th March, 1952.

Orders further that service hereof be made upon the parties.

This Eleventh March, 1952.

(Signed) S. BUGEJA,

Deputy Registrar.

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No. 75.  
Procés  
Verbal.

**No. 75.**  
**Procés Verbal**

Twenty-seventh March, 1952.

The Defendant has appeared personally.

The parties are agreed that the fourth claim need not be determined by this Court and they make the request that it be left for judgment in separate proceedings — without prejudice to their rights.

As regards the second claim, the parties are agreed that the period for the re-sale should run with effect from the date of liquidation.

The Court orders Dr. Magri to file a Minute showing the quotas 10 which have not gone out of the family and which are subject to the right of pre-emption — and, in particular, showing the quota exchanged with the property of Plaintiff's wife and stating why that quota is to be considered still within the family.

The Defendant shall have the right to file an Answer thereto.

The case stands adjourned to the 19th April, 1952.

(Signed) S. BUGEJA,  
Deputy Registrar.

No. 76.  
Plaintiff's  
Minute.

**No. 76.**  
**Plaintiff's Minute**

20

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A.&C.E.

The Minute of the Plaintiff nomine.

In compliance with the order given by this Honourable Court on the 27th March, 1952, the Plaintiff declares that the right of pre-emption has been exercised to the exclusion of the quotas belonging to the inheritance of Beatrice Apap (1/8th) and to Bice Demartino (459/4640ths), which apparently had already gone out of the family. As 30 regards the quota (1/30th) acquired by Plaintiff's wife, Grace Borg, the Plaintiff is hereby producing a copy of the Deed of Exchange of Property enrolled in the Records of Notary Giovanni Carmelo Chapelle

on the 12th October, 1944 (Exhibit "A").

(Signed) A. MAGRI,  
Advocate.

" GIUS. MANGION,  
Legal Procurator.

No. 76.  
Plaintiff's  
Minute.  
—continued.

This Third April, 1952.

Filed by G. Mangion with one Exhibit.

(Signed) U. BRUNO,  
Deputy Registrar.

10 [In H.M.Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A.&C.E.

Judge's Minute.

The undersigned judge abstains from taking cognisance of the case, in which, prior to his elevation to the Bench, he appeared as Counsel for the Plaintiff nomine.

(Signed) A. MAGRI,  
This Ninth May, 1952.

20 Filed by the Honourable Mr. Justice A. Magri B.Litt. LL.D.

(Signed) S. BUGEJA,  
Deputy Registrar.]

**No. 77.**

**Plaintiff's Application**

No. 77.  
Plaintiff's  
Application.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A.&C.E.

The Application of the Plaintiff nomine.

30 Respectfully sheweth:—

That the case stands adjourned to the 9th June, 1952.

That the dispute has reached the final stages and the only question left to be dealt with is that respecting the quotas — which after all were determined in the licitation proceedings.

No. 77.  
Plaintiff's  
Application.  
—continued.

That, if the case is adjourned to October next, the Plaintiff will sustain considerable damages, in that he is paying interest at the rate of approximately £5 a day.

The Plaintiff therefore respectfully prays that this Honourable Court may be pleased to recall the case to an earlier date, so that it may be heard and determined before the Law Vacations.

(Signed) E. MAGRI,

Advocate.

”

GIUS. MANGION,

Legal Procurator.

10

The Twelfth May, 1952.

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

(Signed) U. BRUNO,

Deputy Registrar.

No. 78.  
Decree on  
preceding  
Application.

No. 78.

**Decree on preceding Application**

H.M. CIVIL COURT, FIRST HALL

Judge:

The Honourable Mr. Justice J. Caruana Colombo B. Litt., LL.D.

The Court,

20

Upon seeing the Application:—

Whereas the reasons advanced do not afford sufficient justification for the urgency claimed by the Applicant.—

Disallows the Application.

This Thirteenth May, 1952.

(Signed) J. DEBONO,

Deputy Registrar.

**No. 79.**  
**Plaintiff's Minute**

No. 79.  
Plaintiff's  
Minute.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A.&C.E.

The Minute of the Plaintiff nomine.

The Plaintiff hereby produces the annexed Note of Submissions.

10

(Signed) E. MAGRI,

Advocate.

The Fourth November, 1952.

Filed by Dr. E. Magri at the Sitting.

(Signed) U. BRUNO,

Deputy Registrar.

**No. 80.**  
**Plaintiff's Note of Submissions**

No. 80.  
Plaintiff's  
Note of  
Submissions.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A.&C.E.

20

The Note of Submissions of the Plaintiff nomine.

Respectfully sheweth:—

The case now stands adjourned because of the two questions that are still outstanding, namely: (1) whether the quota of 1/30th acquired by Plaintiff's wife, Grace Borg, should form part of the quota by virtue of which the Plaintiff exercised the right of pre-emption; and (2) whether the exercise of the right of pre-emption has been but simulated as alleged by the Defendant.

30 1. Grace Borg acquired the quota of 1/30th in the course of her marriage with the Plaintiff. That quota therefore is to be considered as a quota that was and still is within the family, for Grace Borg acquired it from the possession of Plaintiff's mother, Virginia Borg, and it came to form part of the community of acquests, of which the Plaintiff is undoubtedly the head: The quota therefore belongs to the Plaintiff, just as if he himself had acquired it. (Section 1365 (d) (2) — (Collection of Judgments, XXIX, 11, 297 and 1246).

No. 80.  
Plaintiff's  
Note of  
Submissions.  
—continued.

Some considerations on the subject may be found in Pothier (*Re-tratto*, No. 196) and in the jurisprudence of these Courts (Collection of Judgments, VII, p. 481 and XXVI, 11, p. 422).

According to the jurisprudence above quoted, the sale made by Virginia Borg to her daughter-in-law “must be deemed to possess the character that, at law, confers the title of consanguinity for the lawful exercise of pre-emption in respect of the same property, in those cases where one of the blood relations, that is, one of the family, has alienated that property to an extraneous party. According to the spirit of Article 1175 of Ordinance VII of 1868, a sale made to a husband and wife, either of whom is the descendant of the person to whom the property originally belonged, must never be considered as made to a person other than a descendant.” 10

That the quota of Grace Borg has inured to her husband's patrimony — as head of the community of acquests — is emphasised by the fact that he is at liberty to dispose of it to third parties “even though bought with the wife's money or with money which the wife has borrowed.” (Collection, XXXI, 11, p. 87).

2. As to the question whether the right of pre-emption was exercised on behalf and for the benefit of Plaintiff's constituents, the fact that it was so exercised is established by all the evidence produced before this Honourable Court, especially the evidence given by Captain Zammit Cutajar (Fol. 123), Chev. Gollcher (Fol. 124) and Mr. Demaria (Fol. 127) who, as Representatives of the National Bank of Malta, showed clearly and categorically that the Bank has never had anything to do with the pre-emption exercised and that there has never been any verbal agreement or understanding in that respect. (Evidence Demaria Fol. 129). 20

Further, the parties concerned in the pre-emption exercised, who are Patricia and Helen Borg, gave “viva voce” evidence before this Court and the salient points of their depositions are recorded at foll. 188, 203; and 184, 185, overleaf, 186, 187 and 187 overleaf. 30

The impression that Helen Borg may have given as regards the pre-emption in question by what she stated in the letter filed at fol. 133 (? 113 — dated “28th Sept.”) was rectified by the clear and most genuine explanations given by her in her evidence before this Honourable Court.

The production of that letter by the Plaintiff nomine affords irrefutable evidence of the loyalty and straightforwardness with which he has conducted himself in these proceedings: his interest, as attorney *ad litem*, was to lay before the Court all the documents and all the 40

information he had at his disposal, for he has never at any time had any personal interest in the exercise of the right of pre-emption at issue.

No. 80.  
Plaintiff's  
Note of  
Submissions.  
—continued.

It has been consistently held by these Courts that simulation must be proved by the party that alleges resort thereto; and conjectures and assumptions are valueless at law "*unless they are of a grave nature, precise and concordant — and such as are not contradicted by other conjectures and other circumstantial evidence*". (Vide Appeal Judgment 20th May, 1932 in re "Schembri v. Schembri"; Appeal Judgment 13th October, 1933 in re "Bugeja v. Busuttill"; Appeal Judgment 29th January, 1932 in re "Galzia noe v. Cuschieri"; and Collection, Vol. XXXII, I, p. 138 and Appeal Judgment 27th October, 1932 in re "Micallef v. Cilia").

(Signed) E. MAGRI,  
Advocate.

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**No. 81.**  
**Plaintiff's Minute**

No. 81.  
Plaintiff's  
Minute.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.

20 Gustavo Romeo Vincenti A. & C.E.  
The Minute of the Plaintiff nomine.

The Plaintiff — in addition to the judgments quoted in the Note of Submissions filed on the 4th November 1952 — makes reference to the judgment given by this Court on the 31st October, 1947 in re "Giuseppe Saliba v. Francesco Spiteri", just published in Volume XXXIII, II, p. 129 of the Collection. The judgment concerns and settles the question regarding the quota of Grace Borg.

(Signed) E. MAGRI,  
Advocate.

30 " GIUS. MANGION,  
Legal Procurator.

This 7th November, 1952.

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

(Signed) J. DEBONO,  
Deputy Registrar.

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No. 82.  
Defendant's  
Minute.

**No. 82.**  
**Defendant's Minute**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

Defendant's Minute.

The Defendant hereby produces the annexed Note of Submissions.

(Signed) ALB. GANADO,  
Advocate.

" G.A. DEGIORGIO,  
Advocate.

10

The 16th December, 1952.

Filed at the Sitting by Dr. Alb. Ganado.

(Signed) J. DEBONO,  
Deputy Registrar.

No. 83.  
Defendant's  
Note of  
Submissions.

**No. 83.**  
**Defendant's Note of Submissions**

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine, 20  
v.  
Gustavo Romeo Vincenti A. & C.E.

Defendant's Note of Submissions.

Respectfully sheweth:—

It is laid down in section 1510 of the Civil Code (Chap. 23, Laws of Malta) that "the right of pre-emption is granted to persons related to the seller by consanguinity". And section 1511 of the law prescribes that "the right of pre-emption shall not be competent to the person related by consanguinity, except when the tenement sold had belonged to a common ancestor of such person and the seller, and had never, after having belonged to such ancestor and up to the sale giving rise to the pre-emption, been transferred to persons not descending from such ancestor". 30

Grace, the wife of Colonel Borg, is not related to the seller by consanguinity, but only by affinity — an in-law; and she is not a descendant of a common ancestor of the seller and the pre-emptor. The pre-emptors are not related by consanguinity to Grace Borg — but to

Grace Borg's husband. When, therefore, Grace Borg exchanged her paraphernal property with a portion of the property in question belonging to Virginia Borg, the mother of Colonel Borg, that exchanged portion or quota was expelled from the Borg family and went out of the blood relationship, became the property of an extraneous party and re-entered into the blood relationship through an extraneous party. There was thus a break in the continuity required by law and the quota is not recoverable by Patricia and Helen Borg. It is true that the quota acquired by Grace Borg came to form part of the community of acquests — but through someone who was extraneous to the blood relationship, that is, through someone who was not related by consanguinity. Pre-emption comes within the sphere of consanguinity, the community of acquests concerns property; diverse institutions and effects.

The quotation from Pothier and the judgment referred to by the Plaintiff in his Note of Submissions refer to "a sale made *to a husband and wife, either of whom is a descendant*", that is to say indivisibly, acquired in common — when the whole tenement, inclusive of every part and every stone of it, belongs equally to both, indivisibly; which is logical according to the principles governing joint possession.

The Defendant set up the plea that the *two Plaintiffs are not exercising the right of pre-emption in their own interests, but on behalf and for the benefit of third parties.*

Colonel Borg has always wanted that the property in question should fall into his hands. He stated in his evidence (15th February, 1950) that he had bought the quotas belonging to his aunts and that he had the idea of exploiting the property. These quotas however were pre-empted from his possession — excepting the quota which his mother had exchanged with a house of his wife's. He had been notified of the sale and could not therefore exercise that right of pre-emption. He then sought to recover the property through his children, as he himself stated in the letter dated 22nd April, 1948; but as his children were notified at the last minute, he had to have recourse to his nieces. Colonel Borg wrote in that letter: "I was instrumental in causing the sale in Court to be held, and *I had hoped to recuperate* (an Italian word) in my children's name. As they were officially notified at the last minute, though minors, I am precluded from exercising such privilege. Pat, Helen and Jean are the only people who are in a similar position to that of my children". It is clear therefore that Colonel Borg continued to cherish the idea of acquiring the property in order to exploit and develop it, and, having failed to exercise pre-emption



No. 88.  
Defendant's  
Note of  
Submissions.  
—continued.

through his infant children, he approached Kathleen Borg, sending her a power-of-attorney for her daughters to sign and promising her that he would compensate them for their help. He told her also that, after he succeeded in recovering the property, he would clear them of all hypothecs and — as a further inducement — he promised that he would guarantee all expenses, including judicial costs, and make them safe against any risk. As he intended securing a loan from the Bank, he informed them that he himself would pay the interest due; and he asked her also what expenses had been incurred in connection with the power-of-attorney so that he might refund the amount disbursed. 10  
Kathleen Borg replied that the amount was trifling and that it would be enough if he sent her a few cigarettes. Here are the extracts from the correspondence itself: “Your children had not been notified of the sale, and as they are the direct descendants of Ma, they are entitled to recuperate off the purchaser, the property at the same price as that at which it was sold on the 1st April, 1948... I am asking my lawyer, Dr. Alb. Magri LL.D., to draft out an appropriate form for your guidance, and I shall enclose it herewith. Such step would not entail your forking out any capital as I can arrange matters with the Bank locally ... I shall now wait for the other side, Mr. Vincenti, to release the property 20  
in favour of Pat and Helen. When this takes place I shall try and find a way of getting Pat and Helen clear of hypothecations, mortgage etc. *with some profit*. One question you put to me in your letter is whether all Ma's grandchildren *will benefit* by the transaction. The answer is No; only your children as they are the only ones, besides John Robert Briffa, that were eligible to exercise their right of pre-emption and *have volunteered to offer their help ... Whatever happens do not worry over the transaction*. I shall shoulder as much responsibility as I can ... There is one more thing I would like to know about the P. of A. and that is the cost of both. *I would like to settle these at once ...*” Kathleen Borg, 20  
by letter dated 27th October, 1948, replied: “I asked about the cost of the P. of A. and Mr. Towle said it was trifling, we go into it later. *Perhaps the cigarettes will counter-balance that*”. And Colonel Borg in his evidence (15th February, 1950), stated: “In order to effect the recovery of the property, I secured a loan from the Bank ... I stood joint surety. As joint surety, *I assumed responsibility for everything, including the case itself. In other words, if the case fails, I shall pay the costs*”. Which, briefly, means that Patricia and Helen Borg will be compensated, whatever happens, and, so far as Colonel Borg is concerned — if the thing succeeds, well and good, and, if it does not, he 40  
will take the consequences. He took all the risks on himself, not only guaranteeing those who “volunteered to help” against any possible loss,

but also undertaking to clear them of all hypothecs *with some profit*, even if he himself were to make no profit at all.

No. 83.  
Defendant's  
Note of  
Submissions.  
—continued.

There is further evidence that Colonel Borg sought to promote his own personal interests perhaps even against those of his constituents. However, once his constituents were but lending their name to the transaction, it was possible for him to do so. In fact, Jean Borg, together with her sisters, had "volunteered to help" and had signed the power-of-attorney. That notwithstanding, Colonel Borg, without any advise to her or to her mother, left her out of it, claiming  
 10 that, by so doing, he had acted to her advantage, in that the bond of hypothecation would not operate in her case. According to Colonel Borg, the advantages to be derived by his nieces consisted only in the profit and the compensation that he promised them — and not in recovering possession of the property. "Believe me and tell Jean that this is no slight on her. In any case, she is free of hypothecations etc. and she has no legal chains, which is to her advantage". A wonderful advantage.

Helen Borg, some two and a half months after she had been induced to sign the power-of-attorney, thought better of it and wrote  
 20 to her uncle to say that she was troubled in her conscience and did not wish to go on with the farce for the sake of earning some money. The letter dated 28th September is fully revealing of her state of mind. "Do not think I am awful now, asking you what I am going to do, but it all seems *so strange this transaction going on in Malta ...* If it is just being done to get *money*" (money, not property) "for Pat and me, *I'd much rather not have it*, because we are quite happily provided for, thanks to darling Dad. Please do not think I am awful saying all this; but *I hate getting involved in lawsuits*". Despite that letter of his constituents, revoking his instructions, Colonel Borg continued to press the  
 30 matter, and the reason was that it was he himself who had any interests at stake — and not Helen Borg who, by that countermanding letter, threatened to upset the whole scheme; and here, too, he did not only arbitrate in the matter, but actually carried on notwithstanding the order to the contrary expressed in writing by his constituent. The fact that he arbitrarily left out one of the sisters despite the terms of his appointment, and that he continued to press the matter on behalf of the other sister despite the countermanding of his instructions, is further proof — if further proof were needed — that the only person interested in the recovery of the property — the sole arbiter in the  
 40 matter in fact — is Colonel Borg, and that the constituents of Colonel Borg have had no interests at stake except the profit and compensation that they were promised for having "volunteered to help" —

No. 83.  
 Defendant's  
 Note of  
 Submissions.  
 —continued.

without risk or expense on their part, indeed under a guarantee against all risk and expense.

Finally, one may well ask: Who are the Plaintiffs Patricia and Helen Borg, and what do they know about the property in question? The answer is that both of them were born and bred in Australia and that they know so little about the property in Malta that Colonel Borg found it necessary to explain the proposal to them through their mother — feeling sure no doubt that they themselves would not understand. Colonel Borg stated in his evidence (15th February, 1950):  
 “They have been away from Malta for some considerable time — since 10  
 before the War. The eldest was still a child when she first came to Malta. I could not say how old they were the last time they were here, but they were under eighteen”. Their mother, too, had only gathered but some vague idea when her husband was still living. In fact, she wrote on the 27th October, 1948: “In June, 1945 a letter from Grandma Virginia mentions that Saverina’s building went down and she thought of changing her damaged share with a small house at Sliema. Would that be the property involved? That and a letter from Mary asking Tony for P. of A. for some transaction in December, 20  
 1944, is all we knew about any business transactions. Tony did not seem very interested, just mentioned it when we received the letters, but no more.” At that time, be it noted, the right of pre-emption had already been exercised. Helen Borg, too, after writing “I hate getting involved in law-suits”, etc. continued as follows: “I am sure I must have not understood properly, do please explain it all”. She wrote to say that two and a half months after signing the power-of-attorney. Patricia Borg, in the letter dated 7th January, 1949, ends by saying: “The only words I remember in Maltese are Yes and No: **Eva and Le**”. And we are given to understand that these people, without even 30  
 knowing where the place is to be found, and without having the slightest business knowledge or any knowledge of local conditions, instructed Colonel Borg to recover on their behalf a building site worth £32,000 — and that the whole transaction has not been carried out in the interests and for the benefit of Colonel Borg, who has been continually frustrated in his efforts to acquire the property, and who, in the last resort, offered compensation and profit to those who volunteered to help, guaranteeing the whole transaction, taking upon himself the responsibility for the risk and the judicial costs involved, and promising that, at the end, he would clear them of all hypothecs “with a profit”. 40

(Signed) ED. VASSALLO,  
 Advocate.

**No. 84.**  
**Judgment, H.M. Civil Court**  
 H.M. CIVIL COURT FIRST HALL

No. 84.  
 Judgment,  
 H.M. Civil  
 Court.

Judge:

The Honourable Mr. Justice J. Caruana Colombo B. Litt., LL.D.

Writ-of-Summons No. 112-1949.

Sitting held on Tuesday, the  
 24th February, 1953.

10

Colonel Stephen J. Borg, in his capacity as attorney for and on behalf of Patricia and Helen Borg, absent from these Islands, appointed by instrument annexed to Deed enrolled in the Records of Notary John Spiteri Maempel on the 2nd September, 1948, true copy whereof is annexed hereto, marked Exhibit "A"; — and, by Minute filed on 3rd April, 1951, Pat and Helen Borg who, having returned to the Island, took up the proceedings; — and, by Minute filed on 28th May, 1951 Colonel Stephen J. Borg who, on the departure from the Island of Patricia and Helen Borg, again took up the proceedings on their behalf

20

v.

Gustavo Romeo Vincenti,  
 Architect & Civil Engineer.

30

The Court,

Upon seeing the judgment given by this Court on the 4th May, 1949, recapitulating the claims of the Plaintiff in his aforesaid capacity, as well as the preliminary pleas of the Defendant — and dismissing the two preliminary pleas set up by the Defendant — that is to say, the plea as to want of clearness in the writ-of-summons and

No. 84.  
Judgment,  
H.M. Civil  
Court.  
—continued.

the plea as to lack of supporting documents — and ordering each party to bear its own costs.

Upon seeing the judgment given by H.M. Court of Appeal on the 14th November, 1949, affirming the aforesaid judgment of this Court, with costs against the Defendant Appellant.

Upon seeing the judgment given by this Court on the 28th May, 1951, making reference to the claims of the Plaintiff nomine and recapitulating the further pleas set up by the Defendant — and dismissing the second of the three pleas set up by the Defendant, and ordering that the Costs shall be borne, 4/5ths by the Defendant — 10 together with the Registry fees — and 1/5th by the Plaintiff nomine.

Upon seeing the judgment given by H.M. Court of Appeal on the 4th February, 1952, affirming the aforesaid judgment of this Court, with costs against the Defendant Appellant.

Upon seeing the judgment given by H.M. Court of Appeal on the 10th March, 1952, dismissing Defendant's Petition for leave to appeal to Her Maesty in Her Privy Council from the judgment given by that Court on the 4th February, 1952, with costs against the Defendant.

Upon seeing the procès verbal dated 27th March, 1952, to the effect, that is, that the parties, without prejudice to their rights, are 20 agreed that the fourth claim in the writ-of-summons need not be determined by this Court and shall be left for judgment in a seperate suit, and that, as regards the second claim, the period for the re-sale shall be deemed to run with effect from the day of liquidation.

Upon examining the evidence of the witnesses heard.

Upon seeing the acts filed in the Record.

Upon hearing Counsel on both sides.

Considering:—

The questions left to be decided are those coming under the first and third pleas set up by the Defendant — that is to say, the first 30 plea, as limited, as to whether the quota of 1/30th acquired by Grace Borg, Plaintiff's wife, should form part of the quota whereby the Plaintiff exercised pre-emption; and the third plea as to whether the pre-emption exercised has been but simulated.

Considering;

On the first plea above-mentioned.

The Plaintiff nomine, by Minute dated 3rd April, 1952, declared that the only portions of the property in respect of which the right of pre-emption has not been exercised are the 1/8th portion belonging

to the inheritance of Bice Apap and the portion of 459/4640ths belonging to Bice Demartino — and he claimed at the same time that he is entitled to the exercise of pre-emption in respect of the rest of the property, including the 1/30th portion which his wife, Grace Borg, had acquired from his mother, Virginia Borg.

No. 84.  
Judgment,  
H.M. Civil  
Court.  
—continued.

The Defendant, without prejudice to his other plea, maintains that the Plaintiff nomine is not entitled to the exercise of pre-emption in respect of the 1/30th portion above-mentioned.

Considering :

- 10 So far as that plea is concerned, therefore, the only question at issue is that regarding the 1/30th quota of Grace Borg. That quota belonged to Virginia Borg, Plaintiff's mother, who, by a deed enrolled in the Records of Notary Giovanni Carmelo Chapelle on the 12th October, 1944, assigned and conveyed it to Grace Borg, Plaintiff's wife, in exchange for other property which the latter had acquired from her father as a donation in the course of her marriage with the Plaintiff. It is Defendant's contention that, by reason of the exchange so made, the 1/30th quota in question was expelled from within the blood relationship of the Borg family and became the property
- 20 of Grace Borg, who is not a descendant of the common ancestor, i.e. who is not related to that ancestor by consanguinity, but only by affinity — as an in-law. Therefore, according to the Defendant, Patricia and Helen Borg cannot exercise the right of pre-emption in respect of that quota, a break having occurred in the continuity which, for the purposes of the exercise of gentilitious pre-emption, the law requires from the common ancestor downwards. The Plaintiff nomine does not dispute the fact that Grace Borg is only an in-law of the Borg family. Nevertheless, he contends that, once the quota was acquired by her during her marriage, that quota should be considered as a
- 30 quota that was and still is within the Borg family. In fact, according to Plaintiff's argument, the quota in question, on being acquired by his wife, came to form part of the community of acquests — of which he, the Plaintiff, is the head — and therefore it became his property and should be considered as having been acquired by him right from the beginning.

- It would appear that that claim of the Plaintiff nomine is untenable. Section 1510 (1) (b) of the Civil Code lays down that the right of pre-emption is granted to persons related to the seller by consanguinity; and, according to section 1511 (1) of the law, the right of pre-
- 40 emption shall not be competent to the person related by consanguinity, except when the tenement sold had belonged to a common

No. 84.  
Judgment,  
H.M. Civil  
Court.  
—continued.

ancestor of such person and the seller, and had never, after having belonged to such ancestor and up to the sale giving rise to the pre-emption, been transferred to persons not descending from such ancestor. It follows, according to those two provisions of the law, that the right of gentilitious pre-emption is not competent to the person related by consanguinity, except when the tenement sold had belonged to a common ancestor of such person and the seller, and had never, after having belonged to such ancestor and up to the sale giving rise to the pre-emption, been transferred to persons not descending from such ancestor. It is not enough, therefore, that the property has been transferred to a person who is not a person outside the family: It is necessary also that such person, although not an outsider, should be a descendant of that ancestor (Vol. XXXIII, II, 129). Now, the transfer of the quota, by way of exchange of property, was made to Grace Borg alone — that is to say, it was not made to Grace Borg jointly with her husband. Therefore, the quota, though transferred to her in the course of her marriage, and though it entered into the community of acquests, was a quota which had been acquired by Grace Borg only; and, by that transfer, the quota was expelled from the blood relationship and went out of the Borg family — for Grace Borg, though an in-law, and therefore other than an outsider, is not a descendant of the common ancestor to whom the quota once belonged. The fact that Grace Borg is not a descendant of the common ancestor — independently as to whether or not she is a person extraneous to the family — is not in dispute. If the transfer had been made to Grace Borg and to her husband jointly, it would have been possible to consider that such transfer had been made to a descendant, and that that quota had remained within the blood relationship and within the Borg family: Where a tenement has been sold to two spouses, either of whom is a descendant of the original owner of that tenement, the respective transfer should not be considered as made to other than a descendant (Vol. VII, 481; XXVI, II, 422).

Therefore the Plaintiff, in his aforesaid capacity, is not entitled to exercise the right of pre-emption in respect of that 1/30th portion of the property, and, therefore, the right of pre-emption on his part is limited to the whole of the pre-empted property, bar that 1/30th portion, and bar the portions which he himself has excluded, namely, the 1/8th portion of Beatrice Apap and the 459/4640th portion of Bice Demartino.

Considering :

On the second of the two pleas above-mentioned.

The Defendant alleges that the Plaintiff nomine has not exercised the right of pre-emption on behalf of his constituents, but in the interests of other parties — that is, that the pre-emption exercised has been but simulated — contrary to the provisions of sub-section (2) of section 1508 of the Civil Code.

The right of pre-emption may not be exercised for the benefit of other parties, as laid down in that section of the law, and it has been so held since ancient times, as shown by the judgment of the *Supremo Magistrato di Giustizia* of the 31st August, 1799. In the past,  
**10** the jurisprudence of the Courts in Malta was most rigorous and the exercise of pre-emption was denied to those who had it in mind subsequently to dispose of the property at a profit. In recent times, however, a less severe view has prevailed in local jurisprudence. It has in fact been held and affirmed that the person entitled to the exercise of gentilitious pre-emption is not bound to keep the pre-empted property for himself, not even for a moment; and that, after the re-sale made to him, the pre-emptor may dispose of the property at a profit, even if it were his intention so to do before exercising the right of pre-emption. Where, however, he has agreed beforehand with other parties  
**20** to transfer the property to such other parties, then the pre-emption exercised is null and void. (Vol. XXXIII, I, 432).

It is not necessary to have direct evidence in regard thereto, and it is enough if the interest above-mentioned is established by indications and other circumstances. At the same time, however, these indications and these circumstances must be such as to be morally convincing to the Judge that pre-emption has not been exercised in the interests of the pre-emptor, but in the interests of another person (Civil Appeal, 27th October, 1952 — “Lorenzo Micallef v. Filippo Cilia”).

In the light of those principles — which are settled principles in  
**30** the jurisprudence of the Maltese Courts — Defendant’s allegation is untenable. In fact, the circumstances referred to by the Defendant in support of the contention that the Plaintiff nomine exercised pre-emption in the interests of other parties, and not in the interests of his constituents, are rather indirect and do not lead to the moral conviction above-mentioned — the more so when both Patricia and Helen Borg, in their evidence, affirmed that they had been informed they were entitled to the exercise of pre-emption, that they had authorized the Plaintiff to exercise that right on their behalf, that there has been  
**40** no pre-concerted plan between them and any other person, the object of which was to recover the property in order that they might then transfer it to such person — that they are aware that, in the long run,



No. 84.  
Judgment,  
H.M. Civil  
Court.  
—continued.

they will have to pay the costs if they lose the case, and that they exercised the right of pre-emption in order to exploit the pre-empted property in their own interests, and not in the interests of any other person.

On these grounds.

The Court,

Adjudges:— (1) allowing the first claim of the Plaintiff nomine and declaring that he has validly and lawfully exercised the right of pre-emption in respect of the property specified in the writ-of-summons, bar the quotas or portions above-mentioned; — (2) reserv- 10  
ing pronouncement on the second claim respecting the liquidation of expenses, if and where necessary, until the present judgment becomes absolute; — (3) allowing the third claim and condemning the Defendant to resell the property to the Plaintiff nomine — bar the quotas above-mentioned — within fifteen days from the day on which liquidation is made of the lawful expenses that may have been incurred by the Defendant in connection with the purchase of the property, over and above those lodged by the Plaintiff nomine together with the schedule of pre-emption; — and declaring 20  
that, where the re-sale of the property fails to be effected within the aforesaid period, such re-sale shall be deemed effected in virtue of the present judgment; — and (4) holding over to a separate suit cognisance of and judgment on the fourth claim.

And, as to costs, orders that the costs so far incurred, including those reserved, but excepting those already ordered, shall, in view of the circumstances of the case, be paid as follows, namely, 1/4th by the Plaintiff nomine, and 3/4ths by the Defendant.

And, in view of the reserved pronouncement on the second claim, orders that the case shall stand adjourned sine die, subject to re-appointment at the verbal request of the parties. 30

(Signed) J. DEBONO,  
Deputy Registrar.

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**No. 85.**  
**Defendant's Note of Appeal**

No. 85.  
Defendant's  
Note of  
Appeal.

In H.M. Civil Court, First Hall.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

Defendant's Note of Appeal.

The Defendant, deeming himself aggrieved by the judgment given  
by this Honourable Court on the 24th February, 1953, hereby enters  
10 Appeal therefrom to H.M. Court of Appeal.

(Signed) ED. VASSALLO,  
Advocate.

" E.G. CARUANA SCICLUNA,  
Legal Procurator.

The 3rd March, 1953.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

(Signed) S. BUGEJA,  
Deputy Registrar.

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**IN H.M. COURT OF APPEAL**

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**No. 86.**  
**Defendant's Petition**

No. 86.  
Defendant's  
Petition.

In H.M. Court of Appeal.

Writ-of-Summons No. 112/1949.

10

Colonel Stephen Borg, in his capacity as attorney for and on behalf of Patricia and Helen Borg, absent from these Islands, appointed by instrument annexed to Deed enrolled in the Records of Notary John Spiteri Maempel on the 2nd September, 1948, true copy whereof is annexed hereto, marked Exhibit "A"; — and, by Minute filed on 3rd April 1951, Patricia and Helen Borg who, having returned to the Island, took up the proceedings; — and, by Minute filed on 28th May, 1951, Colonel Stephen J. Borg who, on the departure from the Island of Patricia and Helen Borg, again took up the proceedings on their behalf.

20

v.

Gustavo Romeo Vincenti, Architect  
and Civil Engineer.

The Petition of the Defendant, Romeo Gustavo Vincenti A. & C.E.

Respectfully sheweth:—

30

The Plaintiff, by Writ-of-Summons filed in H.M. Civil Court, First Hall, on the 11th February, 1949, premising:— That, at the Judicial Sale held on 1st April, 1948, the property at the corner between Kingsway and Saint John Street, Valletta, formerly the block of buildings at Nos. 45, 46 and 47, Kingsway, and Nos. 46, 47, and 48, Saint John Street, inclusive of the cellar underlying Nos. 45, 46 and 47, Kingsway, at present demolished as the result of enemy action, free from and unencumbered by burthens and servitudes, and carrying with it the right to the amount of compensation payable by the War Damage Commission, was finally adjudicated to the Defendant

No. 86.  
 Defendant's  
 Petition.  
 —continued.

for the sum of Thirty-two Thousand Two Hundred Pounds (£32,200); — that, by Schedule No. 163 dated 3rd September, 1948, the Plaintiff nomine, by virtue of the title of consanguinity, and any other whatsoever title appertaining to the said Patricia and Helen Borg, exercised the right of pre-emption in respect of the aforesaid property; — and that, notwithstanding the reiterated requests made to him by Judicial Letter, and notwithstanding previous agreement on his part to effect the re-sale of certain portions of the property, the Defendant has now refused to surrender even those portions thereof; — prayed that; — every necessary declaration being prefaced 10  
 and any expedient direction being given; — a judicial declaration be made to the effect that the right of pre-emption exercised by the Plaintiff nomine was validly and lawfully exercised; — that liquidation be made, if necessary, of any legitimate expenses incurred by the Defendant in connection with the purchase of the property, over and above those lodged by the aforesaid Schedule; — that the Defendant be condemned to effect the re-sale to the Plaintiff nomine, within a short and peremptory period of time, of 283/360th portions of the property above-mentioned, or other varying portion thereof, even larger — such re-sale, in default, being effected by judgment; — and 20  
 that the Defendant be condemned to pay to the Plaintiff nomine all the damages sustained and that may be sustained by him in consequence of delay and default on Defendant's part, such damages being assessed by Judicial Referees appointed for the purpose. — With interest according to law and with Costs.

The Defendant, in his Statement of Defence, pleaded that the two Plaintiffs, Patricia and Helen Borg, are not exercising the right of pre-emption in their own interests, but in the interests and for the benefit of third parties; and, later on, the Defendant specifically submitted that Patricia and Helen Borg were in fact exercising the right 30  
 of pre-emption in the interests of Colonel Borg, here appearing as their attorney.

H.M. Civil Court, First Hall, by judgment given on the 24th February, 1953, established that the quotas which had gone out of the blood relationship, and in respect of which, therefore, the Plaintiff was not entitled to exercise the right of pre-emption, were the following, namely, the 1/8th quota belonging to Beatrice Apap, the quota of 459/4640ths belonging to Bice Demartino and the 1/30th quota of Grace Borg.

And that Court adjudged and determined:— (1) allowing the first 40  
 claim of the Plaintiff nomine and declaring that he has validly and

lawfully exercised the right of pre-emption in respect of the property specified in the writ-of-summons, bar the quotas or portions above-mentioned; — (2) reserving pronouncement on the second claim respecting the liquidation of expenses, if and where necessary, until its own judgment becomes absolute; — (3) allowing the third claim and condemning the Defendant to re-sell the property to the Plaintiff nomine — bar the quotas above-mentioned — within fifteen days from the day on which liquidation is made of the lawful expenses that may have been incurred by the Defendant in  
 10 connection with the purchase of the property, over and above those lodged by the Plaintiff nomine together with the schedule of pre-emption; — and declaring that, where the re-sale of the property fails to be effected within the aforesaid period, such re-sale shall be deemed effected in virtue of the Court's judgment; — and (4) holding over to a separate suit cognisance of and judgment on the fourth claim.

And, as to Costs, the Court ordered that the costs incurred up till then, including those reserved, but excepting those already ordered, shall, in view of the circumstances of the case, be paid as  
 20 follows, namely, 1/4th by the Plaintiff nomine, and 3/4ths by the Defendant.

And, in view of the reserved pronouncement on the second claim, ordered that the case shall stand adjourned sine die, subject to re-appointment at the verbal request of the parties.

The Defendant, deeming himself aggrieved by that judgment, entered appeal therefrom to this Honourable Court by Minute filed on the 3rd March, 1953.

The grievance is manifest. The Court below relied only on the evidence of the Plaintiffs, Patricia and Helen Borg, given by them  
 30 at a time when they had before them the Questions that it had been proposed to put to them months before, and after they had discussed those Questions with the only person interested in the pre-emption exercised as well as with the latter's Legal Adviser. At the same time, the Court completely ignored the correspondence that, prior to the exercise of the right of pre-emption, had been exchanged between Patricia and Helen Borg and their uncle, Colonel Borg, who had prepared for them the whole plan whereby they were to serve as mere instruments in connection with the recovery of the property. Further,  
 40 the Court completely ignored the circumstances obtaining prior to the exercise of the right of pre-emption, when matters could be seen in their true light — and ignored also the possibility and the probability



No. 86.  
 Defendant's  
 Petition.  
 —continued.

that Patricia and Helen Borg, far from being the real and genuine pre-emptors, are but instruments in the hands of the Plaintiff nominee, to be rewarded in due course.

Patricia and Helen Borg did not answer the Letters of Request in Australia and New Zealand, but here in Malta, at a time, that is, when the Letters of Request, open and unsealed, had been on file in the Record for months on end. Now, apart from the fact that they were the last witnesses to give their evidence, and that they gave their evidence with prior knowledge of the Questions that had to be put to them; — and apart from the fact that they gave that evidence when, 10 with the written Questions before them, they had just been the guests of Colonel Borg, the only person interested in the recovery of the property, and after they had consulted his Legal Adviser; — apart from all that, there is the fact, referred to in detail in Defendant's last Note of Submissions, that Colonel Borg, according to his own evidence, had for years been trying to acquire the property for himself personally. He first bought the shares belonging to his aunts, which were then recovered from his possession. Afterwards, in order to debar the exercise of the right of pre-emption, he succeeded in having his mother's share exchanged with some property of his wife's. Then, 20 when the property came to be sold by auction, he sought to exercise the right of pre-emption on behalf of his infant children — for he himself had been served with the advertisement of the sale and could not therefore act on his own behalf. It so happened however that his children were notified of the sale at the last moment and, therefore — as he wrote in one of his letters — that effort on his part to recover the property also failed. Thereupon, appreciating no doubt that Patricia and Helen Borg would not understand matters, he wrote to their mother, Kathleen Borg. In that letter, he explained to Kathleen Borg that her children, being direct descendants, were entitled to the 30 exercise of the right of pre-emption. So he sent them a power-of-attorney for their signature, assured them that there was no necessity for any of them to put up any capital, that he himself had in fact borrowed the required sum from the Bank, and that, as soon as Vincenti had effected the re-sale, he would proceed to disentail the property for them "with some profit", thus compensating them for having "volunteered to offer their help". And, later, when the 40 Defendant would not effect the re-sale, he assured them that he himself would pay the costs of the case — as he stated in his evidence before the Court below. Further, the right of pre-emption had to be exercised also on behalf of Jean Borg, who had signed the power-of-

attorney together with her sisters; and Helen Borg, in the letter dated 28th September, revoked that power-of-attorney. In both the one and the other case, Colonel Borg acted in disregard of his own constituents. In fact, he left Jean Borg out of the transaction, without any advise to her before filing the schedule of pre-emption — and he continued to press the matter in the Courts on behalf of Helen Borg. All this goes to show quite clearly on whose behalf and for whose benefit the right of pre-emption has been exercised — whether on behalf and for the benefit of Colonel Borg or whether on behalf and for the benefit of his

No. 86.  
Defendant's  
Petition.  
—continued.

10 constituents, to whom he promised compensation.

The Court, having based itself on the most recent jurisprudence, proceeded to add that it is not necessary to have direct evidence thereanent, but that it is enough if the interest above-mentioned is established by indications and other circumstances — provided however that these indications and these circumstances are such as to be morally convincing to the Judge that pre-emption has not been exercised in the interests of the pre-emptor, but in the interests of another person.

Now is it possible for the Judge to be morally convinced that the

20 right of pre-emption has been exercised in the interests of Helen and Patricia Borg when, despite the fact that the power-of-attorney was signed by Jean, Helen and Patricia Borg, the Schedule of Pre-emption was entered only on behalf of Helen and Patricia Borg — without imparting any information to Jean Borg that she had in fact been left out? — When Helen Borg, in the letter dated 28th September, revoked her instructions to Colonel Borg, and when, that notwithstanding, Colonel Borg, having his own interests to look after, continued to act on her behalf? — When Helen and Patricia Borg, who were still very young and still under age when they came to Malta,

30 have no idea where the property is to be found? — When, lacking the necessary funds, the sum required for the recovery of the property was not advanced to them but to Colonel Borg? — When they have no business knowledge or any knowledge as to local conditions — so much so that much of the correspondence was exchanged with their mother, Kathleen Borg, who is supposed to know more and who wrote: "... a letter from Mary asking Tony for a power-of-attorney for some transaction in December, 1944, is all *we* knew about any business transactions. Tony did not seem very interested, just mentioned it when we received the letters, but no more". — When they

40 have never had any idea of establishing themselves here in Malta, and are much less likely to do so now — their father being dead, their mother a stranger to Malta and both having their own occupa-

No. 86.  
Defendant's  
Petition.  
—continued.

tions in the country in which they were born and bred, one working at the Embassy and the other practising Medicine? — And, to cap all, when the price to be paid for the recovery of the property stands at £32,000, a sum large enough to scare, not only two young ladies whose knowledge of Maltese is limited to “Yes” and “No”, but even the wealthiest, most experienced and most venturesome man of business who buys a building site subject to Rent Regulation laws that are frequently modified?

The principles enunciated in the judgment appealed from, as such, are fair and just and should certainly be upheld: It is their application in the case at issue that is deserving of revision by this Honourable Court. 10

It is clear therefore that the Defendant Appellant is rightly aggrieved by the judgment given by the Court below — declaring that the Plaintiff nomine has validly and lawfully exercised the right of pre-emption in respect of the property specified in the writ-of-summons, bar the quotas or portions above-mentioned; — allowing the second claim of the Plaintiff nomine; — condemning the Defendant Appellant to re-sell the property to the Plaintiff nomine, bar the quotas or portions above-mentioned; — and ordering the Defendant Appellant to bear three-fourths of the Costs, besides those already ordered. 20

The Defendant Appellant therefore humbly prays that this Honourable Court may be pleased to vary the judgment given by H.M. Civil Court, First Hall, on the 24th February, 1953 — that is to say, affirming that judgment in so far as it is therein declared that the 1/8th quota belonging to the inheritance of Bice Apap, the 459/4640ths quota belonging to Bice Demartino and the 1/30th quota of Grace Borg have gone out of the blood relationship, and that, consequently, the Plaintiff nomine is not entitled to exercise the right of pre-emption in respect thereof; — affirming the judgment in so far as the Plaintiff nomine is therein ordered to bear one-fourth of the costs; — dismissing the claims of the Plaintiff nomine and declaring that the Plaintiff nomine has not lawfully and validly exercised the right of pre-emption and, therefore, reversing that judgment in so far as the Defendant is therein condemned to re-sell the property to the Plaintiff nomine, bar the quotas above-mentioned; — and reversing the judgment in so far as the Defendant is therein ordered to bear the Costs below — thus allowing Defendant's plea that Colonel Stephen J. Borg is exercising the right of pre-emption personally in his own interests and for his own benefit, and not as the attorney of his nieces, Patricia and Helen Borg. — With the Costs both of the First and of this Second Instance against the Plaintiff Respondent nomine. 30 40

The Defendant Appellant, making reference to the evidence adduced, and reserving the right to produce all further evidence admissible at law, hereby produces the undermentioned surety for the costs of the action — over and above his own personal guarantee — and prays that justice be administered according to law.

No. 86.  
Defendant's  
Petition.  
—continued.

(Signed) ED. VASSALLO,  
Advocate.

" ALB. GANADO,  
Advocate.

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" E.G. CARUANA SCICLUNA,  
Legal Procurator.

This 16th March, 1953.

Filed by E.G. Caruana Scicluna L.P. without Exhibits. —

(Signed) U. BRUNO,  
Deputy Registrar.

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**No. 87.**  
**Surety Bond**

No. 87.  
Surety  
Bond.

20 Ettore Caruana Scicluna, Legal Procurator, son of the late Dr. Giuseppe Caruana Scicluna and the late Maria Carmela neé Vella, born at Cospicua, residing in Floriana, appears and stands joint surety with the Appellant, Gustavo Romeo Vincenti A. & C.E., for the costs of this Appeal, hypothecating the whole of his present and future property, and renouncing every benefit accorded by law.

(Signed) E.G. CARUANA SCICLUNA.

The said Ettore Caruana Scicluna L.P. has affixed his signature hereto in my presence, this Sixteenth March, 1953.

(Signed) J. CAMILLERI CACOPARDO,  
Deputy Registrar.

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No. 88.  
Plaintiff's  
Answer.

**No. 88.**  
**Plaintiff's Answer**

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Answer of the Plaintiff nomine.

Respectfully sheweth:—

The judgment appealed from is fair and just and should be affirmed  
by this Honourable Court. 10

The surety produced, being unsuitable, is declined for all the ends  
and purposes of the law.

Therefore, the Plaintiff nomine prays that the Appeal be declared  
abandoned and — where a suitable surety is produced — that his claims  
be allowed with all the costs of the First and Second Instance against  
the Defendant Appellant.

(Signed) E. MAGRI,  
Advocate.  
" GIUS. MANGION,  
Legal Procurator. 20

This Thirty-first March, 1953.

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

(Signed) J. MICALLEF,  
Deputy Registrar.

No. 89.  
Defendant's  
Minute.

**No. 89.**  
**Defendant's Minute**

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E. 30

The Minute of the Defendant Appellant.

Whereby the Defendant Appellant pleads that the judgment given  
by H.M. Civil Court, First Hall, on the 24th February, 1953 is null  
and void in that the transcription of the shorthand notes of the evidence

given by Mr. Victor Grech A.&C.E. has not been read out to the witness and is not signed either by the witness or the Deputy Registrar.

No. 89.  
Defendant's  
Minute.  
—continued.

(Signed) ALB. GANADO,  
Advocate.

This Fourth May, 1953.

Filed by Dr. Alb. Ganado without Exhibits.

(Signed) J. MICALLEF,  
Deputy Registrar.

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**No. 90.**

**Judgment, H.M. Court of Appeal**

No. 90.  
Judgment,  
H.M. Court  
of Appeal.

10

H. M. COURT OF APPEAL

(Civil Hall)

Judges:

His Honour L.A. Camilleri LL.D., President.

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

The Honourable Mr. Justice W. Harding B.Litt., LL.D.

Sitting held on Monday, the  
4th May, 1953.

No. 4

20 Writ-of-Summons No. 112/1949

Colonel Stephen J. Borg, in his capacity as attorney for and on behalf of Helen and Patricia Borg, absent from these Islands, appointed by instrument annexed to the Deed enrolled in the Records of Notary John Spiteri Maempel on the 2nd September, 1948, true copy whereof is annexed hereto, marked Exhibit "A"; — and, by Minute filed on 3rd April, 1951, Patricia and Helen Borg who, having returned to the Island, took up the proceedings; — and, by Minute filed on 28th May,

30

1951, Colonel Stephen J. Borg who,  
 on the departure from the Island of  
 Patricia and Helen Borg, again took  
 up the proceedings on their behalf

v.

Gustavo Romeo Vincenti A. & C.E.

The Court,

Upon seeing the judgment given by this Court on the 14th November, 1949, recapitulating the respective claims and pleas of the parties, affirming the judgment given by the First Hall of the Civil Court on the 4th May, 1949 and ordering each party to bear its own costs. 10

Upon seeing the other judgment given by this Court on the 4th February, 1952.

Upon seeing the judgment given by the First Hall of the Civil Court on the 24th February, 1953 — (1) allowing the first claim of the Plaintiff nomine and declaring that he has validly and lawfully exercised the right of pre-emption in respect of the property specified in the writ-of-summons, bar the quotas or portions afore-mentioned; — (2) reserving pronouncement on the second claim respecting the liquidation of expenses, if and where necessary, until the judgment of the Court becomes absolute; — (3) 20 allowing the third claim and condemning the Defendant to re-sell the property to the Plaintiff nomine — bar the quotas above-mentioned — within fifteen days from the day on which liquidation is made of the lawful expenses that may have been incurred by the Defendant in connection with the purchase of the property, over and above those lodged by the Plaintiff nomine together with the schedule of pre-emption; — and declaring that, where the re-sale of the property fails to be effected within the aforesaid period, such re-sale shall be deemed effected in virtue of the judgment of the Court; — and (4) holding over to a separate 30 suit cognisance of and judgment on the fourth claim. — And, as to costs, ordering that the costs so far incurred, including those reserved, but excepting those already ordered, shall, in view of the circumstances of the case, be paid as follows, namely, 1/4th by the Plaintiff nomine, and 3/4ths by the Defendant. — And, in view of the reserved pronouncement on the second claim, ordering that the case shall stand adjourned sine die, subject to re-appointment at the verbal request of the parties.

That Court having considered:—

The questions left to be decided are those coming under the first 40 and third pleas set up by the Defendant — that is to say, the first plea,

as limited, as to whether the quota of  $\frac{1}{30}$ th acquired by Grace Borg, Plaintiff's wife, should form part of the quota whereby the Plaintiff exercised pre-emption; and the third plea as to whether the pre-emption exercised has been but simulated.

No. 90.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

On the first of the two pleas above-mentioned.

The Plaintiff nomine, by Minute dated 3rd April 1952, declared that the only portions of the property in respect of which the right of pre-emption has not been exercised are the  $\frac{1}{8}$ th portion belonging to the inheritance of Beatrice Apap and the portion of  $\frac{459}{4640}$ ths  
10 belonging to Bice Demartino — and he claimed at the same time that he is entitled to the exercise of pre-emption in respect of the rest of the property, including the  $\frac{1}{30}$ th portion which his wife, Grace Borg, had acquired from his mother, Virginia Borg.

The Defendant, without prejudice to his other plea, maintains that the Plaintiff nomine is not entitled to the exercise of pre-emption in respect of the  $\frac{1}{30}$ th portion above-mentioned.

So far as that plea is concerned, therefore, the only question at issue is that regarding the  $\frac{1}{30}$ th quota of Grace Borg. That quota belonged to Virginia Borg, Plaintiff's mother, who, by a deed enrolled  
20 in the Records of Notary Giovanni Carmelo Chapelle on the 12th October, 1944, assigned and conveyed it to Grace Borg, Plaintiff's wife, in exchange for other property which the latter had acquired from her father as a donation in the course of her marriage with the Plaintiff. It is Defendant's contention that, by reason of the exchange so made, the  $\frac{1}{30}$ th quota in question was expelled from within the blood relationship of the Borg family and became the property of Grace Borg, who is not a descendant of the common ancestor, i.e. who is not related to that ancestor by consanguinity, but only by affinity — as an in-law. Therefore, according to the Defendant, Patricia and Helen Borg cannot  
30 exercise the right of pre-emption in respect of that quota, a break having occurred in the continuity which, for the purposes of the exercise of gentilitious pre-emption, the law requires from the common ancestor downwards. The Plaintiff nomine does not dispute the fact that Grace Borg is only an in-law of the Borg family. Nevertheless, he contends that, once the quota was acquired by her during her marriage, that quota should be considered as a quota that was and still is within the Borg family. In fact, according to Plaintiff's argument, the quota in question, on being acquired by his wife, came to form part of the community of acquests — of which he, the Plaintiff, is the  
40 head — and therefore it became his property and should be considered as having been acquired by him right from the beginning.



No. 90.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

It would appear that that claim of the Plaintiff nomine is untenable. Section 1510 (1) (b) of the Civil Code lays down that the right of pre-emption is granted to persons related to the seller by consanguinity; and, according to section 1511 (1) of the law, the right of pre-emption shall not be competent to the person related by consanguinity, except when the tenement sold had belonged to a common ancestor of such person and the seller, and had never, after having belonged to such ancestor and up to the sale giving rise to the pre-emption, been transferred to persons not descending from such ancestor. It follows, according to those two provisions of the law, that the right of gentilitious pre-emption is not competent to the person related by consanguinity, except when the tenement sold had belonged to a common ancestor of such person and the seller, and had never, after having belonged to such ancestor and up to the sale giving rise to the pre-emption, been transferred to persons not descending from such ancestor. It is not enough, therefore, that the property has been transferred to a person who is not a person outside the family: It is necessary also that such person, although not an outsider, should be a descendant of that ancestor (Vol. XXXIII, II, 129). Now, the transfer of the quota, by way of exchange of property, was made to Grace Borg alone — that is to say, it was not made to Grace Borg jointly with her husband. Therefore, the quota, though transferred to her in the course of her marriage, and though it entered into the community of acquests, was a quota which had been acquired by Grace Borg only; and, by that transfer, the quota was expelled from the blood relationship and went out of the Borg family — for Grace Borg, though an in-law, and therefore other than an outsider, is not a descendant of the common ancestor to whom the quota once belonged. The fact that Grace Borg is not a descendant of the common ancestor — independently as to whether or not she is a person extraneous to the family — is not in dispute. If the transfer had been made to Grace Borg and to her husband jointly, it would have been possible to consider that such transfer had been made to a descendant and that the quota had remained within the blood relationship and within the Borg family: Where a tenement has been sold to two spouses, either of whom is a descendant of the original owner of that tenement, the respective transfer should not be considered as made to other than a descendant (Vol. VII, 481; XXVI, II, 422).

Therefore, the Plaintiff, in his aforesaid capacity, is not entitled to exercise the right of pre-emption in respect of that 1/30th portion of the property, and, therefore, the right of pre-emption on his part is limited to the whole of the pre-empted property, bar that 1/30th

portion, and bar the portions which he himself has excluded, namely, the 1/8th portion of Beatrice Apap and the 459/4640th portion of Bice Demartino.

No. 90.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

On the second of the two pleas above-mentioned.

The Defendant alleges that the Plaintiff nomine has not exercised the right of pre-emption on behalf of his constituents, but in the interests of other parties — that is, that the pre-emption exercised has been but simulated — contrary to the provisions of sub-section (2) of section 1508 of the Civil Code.

The right of pre-emption may not be exercised for the benefit of other parties, as laid down in that section of the law, and it has been so held since ancient times, as shown by the judgment of the *Supremo* 10 *Magistrato di Giustizia* of the 31st August, 1799. In the past, the jurisprudence of the Courts in Malta was most rigorous and the exercise of pre-emption was denied to those who had it in mind subsequently to dispose of the property at a profit. In recent times, however, a less severe view has prevailed in local jurisprudence. It has in fact been held and affirmed that the person entitled to the exercise of gentilitious pre-emption is not bound to keep the pre-empted property for himself, not even for a moment; and that, after the re-sale made to him, the pre-emptor may dispose of the property at a profit, even if it were his intention so to do before exercising the right 20 of pre-emption. Where, however, he has agreed beforehand with other parties to transfer the property to such other parties, then the pre-emption exercised is null and void. (Vol. XXXIII, I, 432).

It is not necessary to have direct evidence in regard thereto, and it is enough if the interest above-mentioned is established by indications and other circumstances. At the same time, however, these indications and these circumstances must be such as to be morally convincing to the Judge that pre-emption has not been exercised in the interests of the pre-emptor, but in the interests of another person (Civil Appeal, 27th October, 1952 — “Lorenzo Micallef v. Filippo Cilia”).

30 In the light of those principles — which are settled principles in the jurisprudence of the Maltese Courts — Defendant’s allegation is untenable. In fact, the circumstances referred to by the Defendant in support of the contention that the Plaintiff nomine exercised pre-emption in the interests of other parties, and not in the interests of his constituents, are rather indirect and do not lead to the moral conviction above-mentioned — the more so when both Patricia and Helen Borg, in their evidence, affirmed that they had been informed they were entitled to the exercise of pre-emption, that they had authorized

No. 90.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

the Plaintiff to exercise that right on their behalf, that there has been no pre-concerted plan between them and any other person, the object of which was to recover the property in order that they might then transfer it to such person — that they are aware that, in the long run, they will have to pay the costs if they lose the case, and that they exercised the right of pre-emption in order to exploit the pre-empted property in their own interests, and not in the interests of any other person.

Upon seeing Defendant's Note of Appeal, and his Petition, praying that this Court may vary the aforesaid judgment, given by H.M. 10  
Civil Court, First Hall, on the 24th February, 1953, as follows:—  
affirming that judgment in so far as it is therein declared that the 1/8th  
quota belonging to the inheritance of Bice Apap, the 459/4640ths  
quota belonging to Bice Demartino and the 1/30th quota of Grace  
Borg have gone out of the blood relationship, and that, consequently,  
the Plaintiff nomine is not entitled to exercise the right of pre-emption  
in respect thereof; — affirming the judgment in so far as the Plain-  
tiff nomine is therein ordered to bear one-fourth of the costs; — dis-  
missing the claims of the Plaintiff nomine and declaring that the  
Plaintiff nomine has not lawfully and validly exercised the right of 20  
pre-emption and, therefore, reversing that judgment in so far as the  
Defendant is therein condemned to re-sell the property to the Plaintiff  
nomine, bar the quotas above-mentioned; — and reversing that judg-  
ment in so far as the Defendant is therein ordered to bear the costs  
below — thus allowing Defendant's plea that Colonel Stephen J. Borg  
is exercising the right of pre-emption personally in his own interests  
and for his own benefit, and not as the attorney of his nieces, Patricia  
and Helen Borg. — With the Costs both of the First and of this Second  
Instance against the Respondent nomine.

Upon seeing the Answer of the Respondent, praying that the 30  
judgment appealed from be affirmed.

Upon seeing the Minute filed this day by the Defendant Appel-  
lant, pleading that the aforesaid judgment, given on the 24th February,  
1953, is null and void in that the transcription of the shorthand notes of  
the evidence given by Mr. Victor Grech A. & C.E. has not been read  
out to the witness and is not signed either by the witness or by the  
Deputy Registrar.

Upon examining the acts filed in the Record.

Upon hearing Counsel on both sides.

Considering:

The fact referred to in the Minute filed by the Defendant Appel-  
lant means, *if at all*, that the Court below took into con- 40

sideration a probatory factor which that Court should have discarded. That apart, the plea of nullity may be raised only in the cases envisaged in section 792 of the Code of Civil Procedure (Chap. 15) — none of which is to be found in this instance.

No. 90.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

As to sub-section (1) (c), the violation therein-mentioned may be remedied by recalling the witness.

On these grounds.

Dismisses the plea of nullity, with costs against the Appellant.

(Signed) J. MICALLEF,

Deputy Registrar.

10

**No. 91.**  
**Judgment, H.M. Court of Appeal**

H.M. COURT OF APPEAL

(Civil Hall)

No. 91.  
Judgment,  
H.M. Court  
of Appeal.

Judges:

His Honour L.A. Camilleri LL.D., President.

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

The Honourable Mr. Justice W. Harding B.Litt., LL.D.

Sitting held on Monday, the  
15th June, 1953.

20 No. 2

Writ-of-Summons No. 112/1949.

Colonel Stephen J. Borg, in his capacity as attorney for and on behalf of Patricia and Helen Borg, absent from these Islands, appointed by instrument annexed to the Deed enrolled in the Records of Notary John Spiteri Maempel on the 2nd September, 1948, true copy whereof is annexed hereto, marked Exhibit "A"; — and, by Minute filed on 3rd April, 1951, Patricia and Helen Borg who, having returned to the Island, took up the proceedings; — and, by Minute filed on 28th May, 1951, Colonel Stephen J. Borg who,

on the departure from the Island of Patricia and Helen Borg, again took up the proceedings on their behalf

v.

Gustavo Romeo Vincenti,  
 Architect & Civil Engineer.

The Court,

Upon seeing the judgment given by H.M. Civil Court, First Hall, on the 4th May, 1949, recapitulating the claims of the Plaintiff nomine 10 and the preliminary pleas set up by the Defendant — and dismissing, preliminarily, Defendant's two pleas as to want of clearness in the writ-of-summons and as to lack of supporting documents; and ordering each party to bear its own Costs.

Upon seeing the judgment given by this Court on the 14th November, 1949, affirming the aforesaid judgment, with Costs against the Defendant Appellant.

Upon seeing the judgment given by H.M. Civil Court, First Hall, on the 28th May, 1951, making reference to Plaintiff's claims and recapitulating Defendant's further pleas, dismissing the second of the 20 three pleas set up by the Defendant and ordering the Defendant to pay the Registry fees and  $\frac{4}{5}$ ths of the Costs and the Plaintiff nomine  $\frac{1}{5}$ th of the Costs.

Upon seeing the judgment given by this Court on the 4th February, 1952, affirming the aforesaid judgment, with costs against the Defendant Appellant.

Upon seeing the judgment given by this Court on the 10th March, 1952, dismissing Defendant's Petition for leave to appeal to the Judicial Committee of Her Majesty's Privy Council from the judgment given by this Court on the 4th February, 1952, with costs against the 30 Defendant.

Upon seeing the judgment given by H.M. Civil Court, First Hall, on the 24th February, 1952:— (1) allowing the first claim of the Plaintiff nomine and declaring that he has validly and lawfully exercised the right of pre-emption in respect of the property specified in the writ-of-summons, bar the quotas mentioned in the judgment; — (2) reserving pronouncement on the second claim respecting the liquidation of expenses, if and where necessary, until the judgment becomes absolute; — (3) allowing the third claim and condemning the Defendant to re-sell the property to the Plaintiff 40 nomine — bar the quotas above-mentioned — within fifteen days from

the day on which liquidation is made of the lawful expenses that may have been incurred by the Defendant in connection with the purchase of the property, over and above those lodged by the Plaintiff nomine together with the schedule of pre-emption; — and declaring that, where the re-sale of the property fails to be effected within the aforesaid period, such re-sale shall be deemed effected in virtue of that judgment; — and (4) holding over to a separate suit cognisance of and judgment on the fourth claim. — And, as to Costs, ordering that the costs so far incurred, including those reserved, but excepting those  
10 already ordered, shall, in view of the circumstances of the case, be paid as follows, namely,  $\frac{1}{4}$ th by the Plaintiff nomine, and  $\frac{3}{4}$ ths by the Defendant. And, in view of the reserved pronouncement on the second claim, ordering that the case shall stand adjourned sine die, subject to re-appointment at the verbal request of the parties.

That Court having considered :

The questions left to be decided are those coming under the first and third pleas set up by the Defendant — that is to say, the first plea, as limited, as to whether the quota of  $\frac{1}{30}$ th acquired by Grace Borg, Plaintiff's wife, should form part of the quota whereby  
20 the Plaintiff exercised pre-emption; and the third plea as to whether the pre-emption exercised has been but simulated.

On the first plea above-mentioned.

The Plaintiff nomine, by Minute dated 3rd April, 1952, declared that the only portions of the property in respect of which the right of pre-emption has not been exercised are the  $\frac{1}{8}$ th portion belonging to the inheritance of Bice Apap and the portion of  $\frac{459}{4640}$ ths belonging to Bice Demartino — and he claimed at the same time that he is entitled to the exercise of pre-emption in respect of the rest of the property, including the  $\frac{1}{30}$ th portion which his wife, Grace Borg, had  
30 acquired from his mother, Virginia Borg.

The Defendant, without prejudice to his other plea, maintains that the Plaintiff nomine is not entitled to the exercise of pre-emption in respect of the  $\frac{1}{30}$ th portion above-mentioned.

So far as that plea is concerned, therefore, the only question at issue is that regarding the  $\frac{1}{30}$ th quota of Grace Borg. That quota belonged to Virginia Borg, Plaintiff's mother, who, by a deed enrolled in the Records of Notary Giovanni Carmelo Chapelle on the 12th October, 1944, assigned and conveyed it to Grace Borg, Plaintiff's wife, in exchange for other property which the latter had acquired from her  
40 father as a donation in the course of her marriage with the Plaintiff.

No. 91.  
 Judgment,  
 H.M. Court  
 of Appeal.  
 —continued.

It is Defendant's contention that, by reason of the exchange so made, the 1/30th quota in question was expelled from within the blood relationship of the Borg family and became the property of Grace Borg, who is not a descendant of the common ancestor, i.e., who is not related to that ancestor by consanguinity, but only by affinity — as an in-law. Therefore, according to the Defendant, Patricia and Helen Borg cannot exercise the right of pre-emption in respect of that quota, a break having occurred in the continuity which, for the purposes of the exercise of gentilitious pre-emption, the law requires from the common ancestor downwards. The Plaintiff nomine does not dispute the fact that Grace Borg is only an in-law of the Borg family. Nevertheless, he contends that, once the quota was acquired by her during her marriage, that quota should be considered as a quota that was and still is within the Borg family. In fact, according to Plaintiff's argument, the quota in question, on being acquired by his wife, came to form part of the community of acquests — of which he, the Plaintiff, is the head — and therefore it became his property and should be considered as having been acquired by him right from the beginning. 10

It would appear that that claim of the Plaintiff nomine is untenable. Section 1510 (1) (b) of the Civil Code lays down that the right of pre-emption is granted to persons related to the seller by consanguinity; and, according to section 1511 (1) of the law, the right of pre-emption shall not be competent to the person related by consanguinity, except when the tenement sold had belonged to a common ancestor of such person and the seller, and had never, after having belonged to such ancestor and up to the sale giving rise to the pre-emption, been transferred to persons not descending from such ancestor. It follows, according to those two provisions of the law, that the right of gentilitious pre-emption is not competent to the person related by consanguinity, except when the tenement sold had belonged to a common ancestor of such person and the seller, and had never, after having belonged to such ancestor and up to the sale giving rise to the pre-emption, been transferred to persons not descending from such ancestor. It is not enough, therefore, that the property has been transferred to a person who is not a person outside the family. It is necessary also that such person, although not an outsider, should be the descendant of that ancestor (Vol. XXXIII, II, 129). Now, the transfer of the quota, by way of exchange of property, was made to Grace Borg alone — that is to say, it was not made to Grace Borg jointly with her husband. Therefore, the quota, though transferred to her in the course of her marriage, and though it entered into the community of acquests, was a quota which had been acquired by Grace 20 30 40

Borg only; and, by that transfer, the quota was expelled from the blood relationship and went out of the Borg family — for Grace Borg, though an in-law, and therefore other than an outsider, is not a descendant of the common ancestor to whom the quota once belonged. The fact that Grace Borg is not a descendant of the common ancestor — independently as to whether or not she is a person extraneous to the family — is not in dispute. It the transfer had been made to Grace Borg and to her husband jointly, it would have been possible to consider that such transfer had been made to a descendant and that the  
 10 quota had remained within the blood relationship and within the Borg family: Where a tenement has been sold to two spouses, either of whom is a descendant of the original owner of that tenement, the respective transfer should not be considered as made to other than a descendant (Vol. VII, 481; XXVI, II, 422).

Therefore, the Plaintiff, in his aforesaid capacity, is not entitled to exercise the right of pre-emption in respect of that 1/30th portion of the property, and, therefore, the right of pre-emption on his part is limited to the whole of the pre-empted property, bar that 1/30th portion, and bar the portions which he himself has excluded, namely,  
 20 the 1/8th portion of Beatrice Apap and the 439/4640th portion of Bice Demartino.

On the second plea above-mentioned.

The Defendant alleges that the Plaintiff nomine has not exercised the right of pre-emption on behalf of his constituents, but in the interests of other parties — that is, that the pre-emption exercised has been but simulated — contrary to the provisions of sub-section (2) of section 1508 of the Civil Code.

The right of pre-emption may not be exercised for the benefit of other parties, as laid down in that section of the law, and it has been  
 30 so held since ancient times, as shown by the judgment of the *Supremo Magistrato di Giustizia* of the 31st August, 1799. In the past, the jurisprudence of the Courts in Malta was most rigorous and the exercise of pre-emption was denied to those who had it in mind subsequently to dispose of the property at a profit. In recent times, however, a less severe view has prevailed in local jurisprudence. It has in fact been held and affirmed that the person entitled to the exercise of gentilitious pre-emption is not bound to keep the pre-empted property for himself, not even for a moment; and that, after the re-sale made to him, the pre-emptor may dispose of the property at a profit, even if it  
 40 were his intention so to do before exercising the right of pre-emption. Where, however, he has agreed beforehand with other parties to trans-



No. 91.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

fer the property to such other parties, then the pre-emption exercised is null and void. (Vol. XXXIII, I, 432).

It is not necessary to have direct evidence in regard thereto, and it is enough if the interest above-mentioned is established by indications and other circumstances. At the same time, however, these indications and these circumstances must be such as to be morally convincing to the Judge that pre-emption has not been exercised in the interests of the pre-emptor, but in the interests of another person (Civil Appeal, 27th October, 1952 — “Lorenzo Micallef v. Filippo Cilia”).

In the light of those principles — which are settled principles in the jurisprudence of the Maltese Courts — Defendant’s allegation is untenable. In fact, the circumstances referred to by the Defendant in support of the contention that the Plaintiff nomine exercised pre-emption in the interests of other parties, and not in the interests of his **constituents**, are rather indirect and do not lead to the moral conviction above-mentioned — the more so when both Patricia and Helen Borg, in their evidence, affirmed that they had been informed they were entitled to the exercise of pre-emption, that they had authorized the Plaintiff to exercise that right on their behalf, that there has been no pre-concerted plan between them and any other person, the object of which was to recover the property in order that they might then transfer it to such person — that they are aware that, in the long run, they will have to pay the costs if they lose the case, and that they exercised the right of pre-emption in order to exploit the pre-empted property in their own interests, and not in the interests of any other person. 10 20

Upon seeing Defendant’s Note of Appeal, and his Petition, praying that this Court may vary the aforesaid judgment given by the Court below on the 24th February, 1953 — that is to say, affirming that judgment in so far as the quotas therein mentioned were excluded from the exercise of the right of pre-emption and in so far as the Plaintiff nomine is therein ordered to bear one-fourth of the costs; — dismissing the claims of the Plaintiff nomine and declaring that the Plaintiff nomine **has not lawfully and validly** exercised the right of pre-emption and, therefore, reversing that judgment in so far as the Defendant is therein ordered to effect the re-sale of the un-excluded quotas and to pay three-fourths of the costs — thus allowing Defendant’s plea that pre-emption has been exercised in the interests and for the benefit of other parties. — With the Costs both of the First and of the Second Instance against the Plaintiff Respondent nomine. 30 40

Upon seeing the Answer of the Plaintiff nomine, submitting that the

judgment appealed from is fair and just and should be affirmed by this Court.

Upon seeing the judgment given by this Court on the 4th May, 1953, on a preliminary point.

Upon hearing the appeal on the **merits**.

Considering:

The question now before this Court is whether the Plaintiff nomine has exercised the right of pre-emption personally in his own interests and for his own benefit.

10 It is laid down in section 1508 (2) of the Civil Code that a person entitled to exercise the right of pre-emption may not transfer that right to any other person.

It is now a settled principle in the jurisprudence of the Maltese Courts that a person who is entitled to exercise the right of gentilitious pre-emption is not bound to retain the pre-empted property for himself, and that, after the property has been re-sold to him, he may dispose of it at a profit, even if, before exercising the right of pre-emption, it were his intention so to do. What is prohibited and renders the pre-emption exercised simulated and therefore null and void is that  
 20 the consanguineous pre-emptor should agree beforehand with another person to transfer the property, on recovery, to such person, in that a pre-existing agreement of that kind amounts to a transfer of the right of pre-emption, contrary to the provisions of the section of the law quoted above. (Vide "Magro v. Buttigieg", Appeal Court, 14th March, 1949 — Vol. XXXIII, I, p. 432; — and also "Micallef v. Said", Civil Court, First Hall, 27th February, 1907 — Vol. XX, II, p. 329; "Bruno Olivier v. Pace", Civil Court, First Hall, 17th February, 1922 — Vol. XXV, II, p. 39; and "Cachia v. Mangion", 8th November, 1922 — Vol. XXV, II, 201). For pre-emption to be lawfully exercised, therefore,  
 30 is not at all necessary that the person exercising the right should have it in mind to retain the pre-empted property within his own estate, but he may recover the property even when it is his intention eventually to realise a profit by selling it again, or to secure for himself some other advantage by means of transfer or speculation. What is prohibited is that no prior agreement shall have been made with another person to transfer the pre-empted property to that person. (Vide "Marsala v. Zammit", Civil Court, First Hall, 9th August, 1901 — Vol. XVIII, II, p. 56; "Micallef v. Cilia", Appeal Court, 27th October, 1952).

40 Evidence as to simulation, that is to say, evidence to prove that the right of pre-emption has been exercised in the interests of another person following an agreement previously entered into with such person,

No. 91.  
 Judgment,  
 H.M. Court  
 of Appeal.  
 —continued.

may be direct (as was the case in re “Saliba v. Dr. Trevisan”, determined by the First Hall of the Civil Court, presided over by Judge Dr. Xuereb, on the 4th November, 1872, wherein it was established that, in fact, an instrument had been drawn up before the exercise of pre-emption whereby the parties made exactly just such a prior agreement); or it may be circumstantial, in which case the indications or conjectures must be precise, concordant and of grave nature — so precise, concordant and of such grave nature “as to permit to the human intellect no conviction to the contrary”, as Judge Dr. Gasan put it in re “Gaffiero v. Canon Despott” (Civil Court, First 10 Hall, 14th December, 1880).

In the case at issue, the circumstantial evidence and conjectures on which the Appellant relies may be summed up as follows: The Plaintiff Colonel Borg has always had the intention of acquiring the property for himself personally; — when he and his children were notified of the sale, and therefore debarred the recovery of the property, he proposed that the right of pre-emption should be exercised by his nieces *ex fratre* Helen and Patricia Borg (on whose behalf he appears in this case); — he sent his nieces a power-of-attorney for their signature, assured them there was no necessity for them to put 20 up any capital, borrowed money from the Bank on their behalf under his own personal guarantee, wrote to them that, on the re-sale taking place, he would — according to the correspondence produced — “try and find a way of getting Pat and Helen clear of hypothecations, mortgage, etc. with some profit”, spoke of them as having “volunteered to offer their help” and told them: “Whatever happens, do not worry over the transaction. I shall shoulder as much responsibility as I can...”

The Appellant, continuing his account of the circumstantial evidence in question, adds that Colonel Borg had arbitrarily left out his niece Jean (who had signed the power-of-attorney) and that he 30 continued to press the issue before the Courts notwithstanding that his other niece, Helen, had countermanded and revoked his instructions in the letter which is included in the correspondence produced; that, up to the time they visited the island, as they did in the course of the present proceedings, Helen and Patricia Borg had no idea even as to where the property was to be found; — that they have no knowledge of the local market, no capital of their own and no idea of establishing themselves in Malta; — and that the price to be paid for the property — £32,000 — is so considerable as to scare even the shrewdest dealer, let alone two young ladies whose knowledge of 40 Maltese and of local conditions is practically nil.

This Court has carefully weighed the circumstantial evidence set out by the Appellant, as well as the facts established in the course of the proceedings, and has taken the following considerations into account.

No. 91.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

As rightly observed by Judge Dr. Gasan in the judgment above-mentioned, circumstantial evidence fails “to gain the conviction of the Judge and his assent to deprive anyone of a right which a provident law confers upon him” when the facts brought forward “offer what seems a probability which is however weakened by a probability in the opposite sense”. *Now, in the present case, there is one consideration of the utmost importance that must predominate in appreciating the circumstances on which the Appellant relies.* Colonel Borg — in whose interests, according to the Appellant, the right of pre-emption has been exercised — is not an extraneous party. On the contrary, he is one of those who, but for the procedural obstacle consequent upon service of the sale notices, has the interest and the right to exercise the right of gentilitious pre-emption, seeing that the property belongs to his family. Therefore, it is no evidence pointing to simulation that Colonel Borg, having been debarred the right to the exercise of pre-emption, personally as well as through his children, sought to keep the property at least within the family through the exercise of pre-emption by other persons related to him by consanguinity. Whilst so much concern, in the case of an extraneous party, would have amounted to a “probability” that that extraneous party was seeking to acquire the property for himself, in the case of Colonel Borg, the concern shown affords a “probability in the opposite sense” — that is to say, that he wanted to keep the property within the family, even if the right of pre-emption were exercised, if not by himself or his children, at least by other consanguineous relations. Therefore, taken as circumstantial evidence, the fact that Colonel Borg put it to his nieces that they should exercise the right of pre-emption — that he corresponded with them, gave them information, sent them a power-of-attorney and so on — is bereft of all importance and carries no conviction; and, once it was his wish that, through them, the property should remain within the family (even with a view to speculation), it was but natural that he should help them as much as possible to effect the recovery thereof, whether because his nieces happen to be bereaved of their father (his brother) or whether because, thanks to their age and their residence abroad, they are ignorant of business conditions and legal procedure here in Malta. And therefore it is no indication of simulation that he procured the loan and afforded them other facilities. In these circumstances, the words “volunteered to offer their help”, “whatever happens

No. 91.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

do not worry over the transaction” and “I shall shoulder as much responsibility as I can” — which would have been of some significance in the case of an extraneous party — lose their probatory value when it is considered that these nieces of Colonel Borg were helping to keep the property within the family, and that, for his part, Colonel Borg was doing all he could to smooth the way for them so that he might realise his own wish and succeed in keeping the property within the Borg family — and, as their uncle, to give them every assistance. All this is far removed from any possibility of a previous agreement for the transfer of the pre-empted property. Nor does it amount to circum- 10  
stantial evidence of a convincing nature that which the Appellant seeks to draw from the fact that Patricia and Helen Borg are ignorant of local conditions, in that, encouraged by the information and the explanations which Colonel Borg was putting before their mother, and trusting their uncle, it is natural that they should have been enticed by the idea — also urged perhaps by their own mother — not to lose the opportunity of acquiring landed property, no matter whether with the thought of speculation in their mind, and also if through their uncle’s help. Similarly, no importance is to be attached to Appellant’s submission that Colonel Borg continued to press the issue before the Courts not- 20  
withstanding that one of his constituents, Helen Borg, had revoked his mandate by the letter dated 28th September (fol. 113): Helen Borg, in that letter, did not revoke her uncle’s mandate, but merely asked for explanations. In fact, giving her evidence on the subject of that letter, Helen Borg stated: “I was satisfied with the explanations which my uncle gave me when I wrote the letter at fol. 113, and *for which I requested an explanation* in the last paragraph of that letter. This explanation I got from my mother”. (fol. 188 — 3rd April, 1951). It is still less of an indication to go by that, later on, Colonel Borg left 30  
out his other niece, Jean, from the proceedings for the recovery of the property. In his evidence (fol. 97 overleaf — 15th February, 1950), Colonel Borg explained that he had kept her out of it because of some differences as regards the legal age in the law of the country of their domicile; and if he stated in his letter “believe me and tell Jean that this is no slight on her”, the words (which the Appellant, in his Note of Submissions at fol. 326, quoted *out of context*), should be read *in the whole context* of that letter (fol. 104), wherein Colonel Borg wrote: “The children’s P. of A., which had reached me in good time, was made use of only as far as Patricia and Helen are concerned. 40  
Jean had to be left out for safety reasons because of her age; though 18 is the legal minimum in Malta: as the P. of A. was drawn out in New Zealand where the legal minimum is 21 years, the opposite party

might have tried to find some flaw in the proceedings. Believe me and tell Jean this is no slight on her. In any case, she is free of hypothecations etc., and has no legal chains, which is to her advantage". In point of fact, the last words are rather an explanation which Colonel Borg felt he should make to his niece, Jean, by way of consoling her for the fact that she was not taking a share in the recovery of the property jointly with her sisters; and those words certainly cannot lead the Judge to take the view that they go to prove that the Plaintiff, in leaving out Jean, had acted in an arbitrary manner, and that, consequently, the right of pre-emption had been exercised for his own personal benefit.

It should be added that both Helen and Patricia Borg, as well as their mother, Kathleen Borg, stated in evidence that no prior agreement had been entered into. (Evidence, 3rd April, 1951 — fol. 187 — 191 overleaf; and 27th April, 1951 — foll. 202 and 202 overleaf).

This Court therefore agrees with the Court below that the Appellant has not succeeded in proving the existence of a prior agreement, such as could have invalidated the pre-emption exercised.

It may be added that, in Maltese jurisprudence, in a case determined by the First Hall of the Civil Court on the 15th January, 1884 (Vella v. Gauci — Vol. X, p. 369), it was similarly maintained that the pre-emptor had recovered the property on behalf and for the benefit of another person, that is, her brother. It was observed by the presiding Judge that the pre-emptor's brother was likewise entitled to the exercise of the right of pre-emption, and that, if he had not availed himself of the privilege for some reason or other, it did not mean that he should remain indifferent as to whether or not the property should go to persons outside the family; and the circumstances of the case (the concern shown, the proposal that his sister should exercise the right) were evaluated against the background of the understandable concern of a blood relation that the property should remain within the family through the exercise of pre-emption by another blood relation. Indeed, it was also observed in that judgment that but for the clearly established fact that the right of pre-emption at issue had been validly exercised, it would have been necessary to go into the question as to whether pre-emption is rendered null and void where one blood relation, even if for his own benefit, makes use of the right of another blood relation for the purpose of recovering the property, seeing that, in any case, the property remains within the family — whilst the aim of the law is that the right of gentilitious pre-emption shall not serve the ends and purposes of an extraneous party, as distinct from a person related

No. 91.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

by consanguinity; a question which authoritative text-book writers of old settled in the sense that the transfer of the right of pre-emption from one blood relation to another is valid and lawful — including among them Tiraquelli (*“de utroque retractu, para: XXVI Glossa II, No. I, with the words: nam alteri consanguineo cedi potest, nimirum cessante ratione prohibitionis”*).

On these grounds

The Court,

Dismisses the appeal on the issue submitted to this Court, and, so far as that issue is concerned, affirms the judgment appealed from, 10 with costs against the Appellant.

And orders that the Record be remitted to the Court of First Instance.

(Signed) J. Micallef,  
Deputy Registrar.

No. 92.  
Defendant's  
Petition for  
Leave to  
Appeal to  
H.M. Privy  
Council.

**No. 92.**  
**Defendant's Petition for Leave to Appeal**  
**to H.M. Privy Council**

In H.M. Court of Appeal.

Writ-of-Summons No. 112/1949.

Colonel Stephen J. Borg, in his 20 capacity as attorney for and on behalf of Patricia and Helen Borg, absent from these Islands, appointed by the instrument annexed to the Deed enrolled in the Records of Notary John Spiteri Maempel on the 2nd September, 1948, true copy whereof is annexed hereto (Exhibit “A”); — and by Minute filed on 3rd April, 1951, Patricia and Helen 30 Borg, who, having returned to the Island, took up the proceedings; — and, by Minute filed on the 28th May, 1951, Colonel Stephen Borg who, on the departure from the

Island of Patricia and Helen Borg,  
again took up the proceedings on  
their behalf.

v.

Gustavo Romeo Vincenti,  
Architect and Civil Engineer.

No. 92.  
Defendant's  
Petition for  
Leave to  
Appeal to  
H.M. Privy  
Council.  
—continued.

The Petition of the Defendant, Gustavo Romeo Vincenti A. & C.E.

Respectfully sheweth:—

The Plaintiff, by Writ-of-Summons filed in H.M. Civil Court,  
10 First Hall, on the 11th February, 1949, premising: — That, at the  
judicial sale held on 1st April, 1948, the property at the corner between  
Kingsway and St. John Street, Valletta, formerly the block of buildings  
at Nos. 45, 46 and 47, Kingsway, and Nos. 46, 47 and 48, St. John  
Street, inclusive of the cellar underlying Nos. 45, 46 and 47, Kingsway,  
at present demolished through enemy action, free from and unencum-  
bered by burthens and servitudes, and carrying with it the right to the  
amount of compensation payable by the War Damage Commission,  
was finally adjudicated to the Defendant for the sum of Thirty-two  
Thousand Two Hundred Pounds (£32,200); — that, by Schedule No.  
20 163 dated 3rd September, 1948, the Plaintiff nomine, by virtue  
of the title of consanguinity, and any other whatsoever title apper-  
taining to the said Patricia and Helen Borg, exercised the right of pre-  
emption in respect of the aforesaid property; — and that, notwith-  
standing the reiterated requests made to him by Judicial Letter, and  
notwithstanding previous agreement on his part to effect the re-sale of  
certain portions of the property, the Defendant has now refused  
to surrender even those portions thereof; — every necessary declara-  
tion being prefaced and any expedient direction being given; — a  
judicial declaration be made to the effect that the right of pre-emption  
30 exercised by the Plaintiff nomine is valid and lawful — that liquida-  
tion be made, if necessary, of any legitimate expenses incurred by the  
Defendant in connection with the purchase of the property, over and  
above those lodged by the aforesaid Schedule; — that the Defendant  
be condemned to effect the re-sale to the Plaintiff nomine, within a  
short and peremptory period of time, of 283/360th portions of the pro-  
perty above-mentioned, or other varying portion thereof, even larger  
— the re-sale, in default, being effected by judgment; — and that the  
Defendant be condemned to pay to the Plaintiff nomine all the damages  
sustained and that may be sustained by him in consequence of delay  
40 and default on Defendant's part, such damages being assessed by



No. 92.  
 Defendant's  
 Petition for  
 Leave to  
 Appeal to  
 H.M. Privy  
 Council.  
 —continued.

Judicial Referees appointed for the purpose. — With interest according to law and with Costs.

The Defendant, on the 22nd February, 1949, set up preliminary pleas to the effect that the writ-of-summons was wanting in clearness and that the Plaintiff nomine had failed to produce the necessary supporting documents as required by law. H.M. Civil Court, First Hall, by Judgment given on the 4th May, 1949, dismissed the aforesaid two pleas and ordered that the documents produced by the Plaintiff in the course of the proceedings be retained in the Record — each party to bear its own Costs. 10

The Defendant, by Note of Appeal entered on the 10th May, and Petition filed on the 25th May, 1949, appealed against the aforesaid judgment, praying that the plea as to the nullity of the writ-of-summons be allowed; and this Honourable Court, by judgment given on the 14th November, 1949, dismissed the appeal and affirmed the judgment appealed from, with Costs against the Defendant Appellant.

Subsequently, on the merits, the Defendant, in a further Statement of Defence, filed on the 16th November, 1949, raised the plea (amongst others) that the two Plaintiffs here represented by Colonel Borg had been duly notified of the sale according to law, and that, therefore, 20 they were not entitled to exercise the right of pre-emption in respect of the property in question.

H.M. Civil Court, First Hall, by judgment given on the 28th May, 1951 — declaring that Defendant's line of action did not amount to a waiver of the plea of invalidity respecting the right of pre-emption exercised, such as to preclude and render inadmissible any such plea — dismissed the second plea set up by the Defendant (referred to in the preceding paragraph) and ordered the Costs to be borne, 4/5ths by the Defendant, together with the Registry fees, and 1/5th by the Plaintiff nomine. 30

The Defendant, by Note of Appeal entered on the 2nd June, and Petition filed on the 9th June, 1951, appealed against the aforesaid judgment, praying that the judgment be varied, in the sense, that is, that it be affirmed in so far as the Defendant succeeded thereunder and reversed in so far as it dismissed the aforesaid plea — a judicial declaration being made that the two Plaintiffs had been lawfully notified of the advertisement of the sale and that they are not therefore entitled to exercise the right of pre-emption; and reversed also in so far as the Defendant was ordered to bear the costs.

This Honourable Court, by judgment given on the 4th February, 40

1952, dismissed the appeal, affirmed the judgment on the points referred to it and ordered the Appellant to bear the Costs.

In the Statement of Defence filed on the 16th November, 1949, the Defendant pleaded also that the Plaintiff nomine had not established the bond, and the degree, of consanguinity between the pre-emptors and the vendors, and that the Plaintiffs were not exercising the right of pre-emption in their own interests, but on behalf and for the benefit of third parties.

No. 92.  
Defendant's  
Petition for  
Leave to  
Appeal to  
H.M. Privy  
Council.  
—continued.

H.M. Civil Court, First Hall, on the 24th February, 1953, gave  
10 judgment on the aforesaid two pleas and on the claims brought forward  
in the writ-of-summons:— (1) allowing the first claim of the Plaintiff  
nomine and declaring that he has validly and lawfully exercised  
the right of pre-emption in respect of the property specified in  
the writ-of-summons, bar the 1/8th quota of Beatrice Apap,  
the 459/4640ths quota of Bice Demartino and the 1/30th quota of  
Grace Borg; — (2) reserving pronouncement on the second claim  
respecting the liquidation of expenses, if and where necessary,  
until its own judgment becomes absolute; — (3) allowing the third claim  
and condemning the Defendant to re-sell the property to the Plaintiff  
20 nomine — bar the quotas above-mentioned — within fifteen days from  
the day on which liquidation is made of the lawful expenses that may  
have been incurred by the Defendant in connection with the purchase  
of the property, over and above those lodged by the Plaintiff nomine  
together with the schedule of pre-emption; — and declaring that,  
where the re-sale of the property fails to be effected within the afore-  
said period, such re-sale shall be deemed effected in virtue of the  
Court's judgment; — and (4) holding over to a separate suit cognisance  
of and judgment on the fourth claim. — And, as to Costs, ordering  
that the costs incurred up till then, including those reserved, but except-  
30 ing those already ordered, shall, in view of the circumstances of the  
case, be paid as follows, namely, 1/4th by the Plaintiff nomine, and  
3/4ths by the Defendant. — And, in view of the reserved pronounce-  
ment on the second claim, ordering that the case shall stand adjourned  
*sine die*, subject to re-appointment at the verbal request of the parties.

The Defendant, by Note of Appeal entered on the 3rd March, and  
Petition filed on the 6th March, 1953, appealed against that judgment,  
given by the Court below on the 24th February, 1953, and prayed that it  
be varied, in the sense, that is, that it be affirmed in so far as it is therein  
declared that the aforementioned quotas had gone out of the blood  
40 relationship, and that, consequently, the Plaintiff nomine is not entitled  
to exercise the right of pre-emption in respect thereof; — and in so far  
as the Plaintiff nomine is therein ordered to bear one-fourth of the

No. 92.  
 Defendant's  
 Petition for  
 Leave to  
 Appeal to  
 H.M. Privy  
 Council.  
 —continued.

costs; — and in the sense that the claims of the Plaintiff nomine be dismissed and that a judicial declaration be made to the effect that the Plaintiff nomine has not lawfully and validly exercised the right of pre-emption; — and therefore reversing that judgment in so far as the Defendant is therein condemned to re-sell the property to the Plaintiff nomine, bar the quotas above-mentioned, and in so far as the Defendant is therein ordered to bear the costs below; — thus allowing Defendant's plea that the Plaintiff nomine is exercising the right of pre-emption in the interests and for the benefit of other parties. — With the costs both of the First and Second Instance against the Plaintiff 10  
 Respondent.

This Honourable Court, by judgment given on the 15th June, 1953, dismissed the appeal on the grievance referred to it and affirmed the judgment appealed from so far as that grievance was concerned — with Costs against the Appellant.

The Petitioner deems himself aggrieved by the aforesaid judgments given by this Honourable Court on the 14th November, 1949, 4th February, 1952 and 15th June, 1953 and wishes to enter appeal therefrom to Her Majesty in Her Privy Council in terms of section 2 (a) of the Order-in-Council of the 22nd November, 1909, as amended 20  
 by the Order-in-Council of the 5th November, 1942, or any other Regulations applicable to this Appeal.

Therefore the Petitioner humbly prays that this Honourable Court may be pleased to grant him leave to appeal to Her Majesty in Her Privy Council from the aforesaid judgments given by this Honourable Court on the 14th November, 1949, 4th February, 1952 and 15th June, 1953, in that the matter in dispute involved therein exceeds the sum of Five Hundred Pounds.

(Signed) ALB. GANADO,  
 Advocate.

" E. G. CARUANA SCICLUNA,  
 Legal Procurator.

30

This 6th July, 1953.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

(Signed) U. BRUNO,  
 Deputy Registrar.

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**No. 93.**  
**Decree on Defendant's Petition**

No. 93.  
Decree on  
Defendant's  
Petition.

H.M. COURT OF APPEAL

The Court,

Upon seeing the Petition. —

10 Orders that it be put on the case-list for hearing at the Sitting to be held on the 9th October, 1953; and that service hereof be made upon the opposite party according to law.  
This 7th July, 1953.

(Signed) S. BUGEJA,  
Deputy Registrar.

**No. 94.**  
**Plaintiff's Answer**

No. 94.  
Plaintiff's  
Answer.

20

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Answer of the Plaintiff nomine.

Respectfully sheweth: —

30 The Plaintiff resists Defendant's Petition for leave to appeal to Her Majesty in Her Privy Council: The judgment given by this Honourable Court on the 15th June, 1953 is not a final judgment within the meaning of the law, so much so that the Court ordered that the case be remitted to the Court below for further hearing in connection with other questions that are still outstanding. (Vide section 2 (a) of the Order-in-Council of the 22nd November, 1909, as amended by the Order-in-Council of the 5th November, 1942; and Collection of Judgments, XXVI, I, s. II, p. 144; XXIX, I, 9; XXXIII, I, 756; and Civil Appeal, 16. 3. 1953 "Coleiro v. The Hon. Dr. Giorgio Borg Olivier nomine").

The Plaintiff therefore respectfully prays that this Honourable Court may be pleased to dismiss Defendant's Petition for leave to

No. 94.  
Plaintiff's  
Answer.  
—continued.

appeal to Her Majesty in Her Privy Council. — With Costs.

(Signed) E. MAGRI,  
Advocate.

" G. MANGION,  
Legal Procurator.

This 24th July, 1953.

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

(Signed) U. BRUNO,  
Deputy Registrar.

No. 95.  
Decree  
granting  
Conditional  
Leave.

**No. 95.**  
**Decree granting Conditional Leave**

10

H.M. COURT OF APPEAL

(Civil Hall)

Judges:

His Honour L.A. Camilleri LL.D., President.

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

The Honourable Mr. Justice W. Harding B. Litt., LL.D.

Sitting held on Tuesday, the  
23rd November, 1953.

No. 16

Writ-of-Summons No. 112/1949.

20

Colonel Stephen J. Borg nomine  
v.

Gustavo Romeo Vincenti A. & C.E.

The Court,

Upon seeing the Petition filed by the Defendant on the 6th July, 1953, praying for leave to appeal to Her Majesty in Her Privy Council from the judgments given by this Court on the 14th November, 1949, 4th February, 1952, and 15th June, 1953.

Upon seeing the Answer of the Plaintiff nomine, resisting 30  
Defendant's Petition on the ground that the judgment given by this Court on the 15th June, 1953 is not a final judgment within the meaning of the law — so much so that an order was made for the case to be remitted to the Court below for hearing in connection with other

questions that are still outstanding. (Vide section 2 (a) of the Order-in-Council of the 22nd November, 1909, as amended by the Order-in-Council of the 5th November, 1942; and Collection of Judgments, XXVI, I s. II, p. 144; XXIX, I, 9; XXXIII, I, 756; and Civil Appeal, 16. 3. 1953 in re "Coleiro v. The Hon Dr. Giorgio Borg Olivier nomine").

No. 95.  
Decree  
granting  
Conditional  
Leave.  
—continued.

Having examined the acts filed in the Record.

Having heard Counsel on both sides.

Having considered.

10 The Petition of the Defendant Vincenti rests on section 2 (a) of the Order-in-Council of the 22nd November, 1909, as amended by the Order-in-Council of the 5th November, 1942, wherein it is laid down that "An appeal shall lie as of right *from any final judgment* of the Court where ....." One of the conditions required, therefore, is that the judgment to be appealed from shall be a definitive and final judgment.

Having considered:

20 The judgment given by this Court on the 14th November, 1949 affirmed that given by the Court of First Instance, dismissing Defendant's plea as to want of clearness in the writ-of-summons and lack of supporting documents — and ordering each party to bear its own costs. Then, by the judgment given on the 4th February, 1952, this Court affirmed the judgment given by the Court below on the 28th May, 1951, declaring that Defendant's line of action did not amount to a waiver of the plea of invalidity respecting the right of pre-emption exercised, such as to preclude and render inadmissible any such plea, and dismissing the second plea set up by the Defendant in his subsequent Statement of Defence, to the effect, that is, that the two Plaintiffs represented by Colonel Borg, having been duly notified of the sale, were not entitled to exercise the right of pre-emption in question.

30 The Defendant then filed a Petition praying for leave to appeal to Her Majesty in Her Privy Council from the aforesaid judgment given by this Court on the 4th February, 1952, and this Court, by judgment given on the 10th March, 1952, dismissed the Petition on the ground that the judgment it was sought to appeal from was not a definitive and final judgment in terms of section 2 (a) of the Order-in-Council above-quoted.

40 The Court of First Instance, by the judgment given on the 24th February, 1953, adjudged and determined:— (1) allowing the first claim of the Plaintiff nomine and declaring that he has validly and lawfully exercised the right of pre-emption in respect of the property

No. 95.  
Decree  
granting  
Conditional  
Leave.  
—continued.

specified in the writ-of-summons, bar the quotas or portions afore-mentioned (the 1/8th quota of Beatrice Apap, the 439/4640ths quota of Bice Demartino and the 1/30th quota of Grace Borg); — (2) reserving pronouncement on the second claim respecting the liquidation of expenses, if and where necessary, until the judgment becomes absolute; — (3) allowing the third claim and condemning the Defendant to re-sell the property to the Plaintiff nomine — bar the quotas above-mentioned — within fifteen days from the day on which liquidation is made of the lawful expenses that may have been incurred by the Defendant in connection with the purchase of the property, over and above those 10 lodged by the Plaintiff nomine together with the schedule of pre-emption; — declaring that, where the re-sale of the property fails to be effected within the aforesaid period, such re-sale shall be deemed effected in virtue of that judgment; — and (4) holding over to a separate suit cognisance of and judgment on the fourth claim. — And, as to Costs, ordering that the costs incurred up till then, including those reserved, but excepting those already ordered, shall, in view of the circumstances of the case, be paid as follows, namely, 1/4th by the Plaintiff nomine, and 3/4ths by the Defendant. And, in view of the reserved pronouncement on the second claim, ordering that the case 20 shall stand adjourned sine die, subject to re-appointment at the verbal request of the parties.

The Defendant appealed from that judgment, given by the Court below on the 24th February, 1953, and, in his Petition, prayed that this Court may vary the judgment as follows, namely, affirming it in so far as the quotas therein mentioned were excluded from the right of pre-emption and in so far as the Plaintiff nomine was ordered to bear one-fourth of the costs; — dismissing the claims of the Plaintiff nomine and declaring that the Plaintiff nomine has not lawfully and validly exercised the right of pre-emption, and, therefore, reversing that judgment 30 in so far as the Defendant is therein condemned to re-sell the property to the Plaintiff nomine, bar the quotas above-mentioned, and in so far as the Defendant is ordered to bear three-fourths of the costs — thus allowing Defendant's plea that the right of pre-emption has been exercised in the interests and for the benefit of other parties. — With the Costs of the First and Second Instance against the Plaintiff Respondent.

This Court, by the judgment given on the 15th June, 1953, dismissed that appeal, and, as regards the grievance referred to it, affirmed the judgment appealed from, with costs against the Appellant — and ordered that the Record be remitted to the Court of First 40 Instance.

Having considered:

No. 95.  
Decree  
granting  
Conditional  
Leave.  
—continued.

Therefore, the judgment given on the 24th February, 1953 — affirmed by this Court, in so far as the grievance put forward, by the judgment given on the 15th June, 1953 — definitely disposed of the first and third claims in the writ-of-summons, remitted to a separate action cognisance of and judgment on the fourth claim, and reserved pronouncement on the second claim, *if and where necessary*, until the judgment should become *res judicata*. That means that the only thing left is the liquidation of such expenses as may have been incurred by

10 the Defendant in connection with the purchase of the property, over and above those lodged together with the schedule of pre-emption — provided the necessity for the liquidation thereof should arise. The fact that the judgment given by the Court below reserved pronouncement on the matter of the liquidation of the expenses in question, if and where necessary, cannot be construed to mean that that judgment is other than final and definitive — and that the merits of the case have not yet been determined and disposed of. The further proceedings as above envisaged do not concern the principal merits of the case, but only a secondary question, to be dealt with only if and where

20 necessary — as proposed by the Plaintiff in the writ-of-summons. Bentwich (*The Practice of the Privy Council in Judicial Matters*, 1937 Ed., p. 105) states that it was held in the judgment in re “Standard Discount Co. v. La Grange”, 1877, 3 C.P.D., p. 71, per Butt L.J. that “No order, judgment, or other proceeding can be final, which does not at once affect the status of the parties for whichever side the decision may be given, so that if it is given for the Plaintiff it is conclusive against the Defendant, and if it is given for the Defendant it is conclusive against the Plaintiff”. In view of what has been stated above, it is obvious that the judgment given on the 24th February, 1953,

30 affirmed by this Court, as regards the grievance complained of, by the judgment given on the 15th June, 1953, finally and definitively disposed of the first and the third claims in the writ-of-summons — which are “conclusive against the Defendant” and “at once affect the status of the parties”, and the reservation made in regard to the second claim which, as stated, is secondary and incidental, and such as to be dealt with only if and where necessary, is no bar to that conclusion.

Another condition for this Court to grant leave to appeal to Her Majesty’s Privy Council, laid down in section 2 (a) above, is “that the matter in dispute on the appeal amounts to or is of the value of five

40 hundred pounds sterling or upwards”; and it is not at issue between the parties that the matter in dispute in this case far exceeds the value of five hundred pounds sterling.



No. 95.  
Decree  
granting  
Conditional  
Leave.  
—continued.

On these grounds:

The Court,

Allows the Petition and grants the Appellant, Gustavo Romeo Vincenti A. & C.E., conditional leave to appeal from the judgments given by this Court on the 14th November, 1949, 4th February, 1952 and 15th June, 1953, and gives the Appellant one month within which to enter security in terms of section 4 of the aforesaid Order-in-Council of 1909, fixing the sum of five hundred pounds (£500) in respect thereof — and gives the Appellant three months within which to procure the preparation and transmission of the Record to the Judicial Committee, according to that section. 10

Costs reserved to the final Order.

(Signed) J. MICALLEF,  
Deputy Registrar.

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**No. 96.**  
**Surety Bond**

No. 96  
Surety  
Bond.

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti, A. & C.E.

The Schedule of Deposit of Gustavo Romeo Vincenti A. & C.E.  
Respectfully shewith:—

10 This Honourable Court, by Decree given on the 23rd November,  
1953, granted the Defendant Appellant conditional leave to appeal to  
Her Majesty's Privy Council from the judgments given in this case on  
the 14th November 1949, 4th February, 1952 and 15th June, 1953,  
ordering the Appellant to enter security, within one month, in terms of  
section 4 of the aforesaid Order-in-Council, and fixing the sum of five  
hundred Pounds (£500) in respect thereof.

Therefore, in compliance with the aforesaid Decree, the Defendant  
hereby deposits the sum of Five Hundred Pounds (£500) for all the ends  
and purposes of the law.

20 (Signed) ED. VASSALLO,  
Advocate.  
,, E. G. CARUANA SCICLUNA,  
Legal Procurator.

This Twelfth December, 1953.

Filed by E. G. Caruana Scicluna, L.P. without Exhibits and together  
with the sum of Five Hundred Pounds.

(Signed) EDW. CAUCHI,  
Deputy Registrar.

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No. 97  
Minute  
approving  
Translation.

**No. 97.**  
**Minute approving Translation**

In H.M. Court of Appeal.

Writ-of-Summons No. 112/49.

Colonel Stephen J. Borg, in his capacity as attorney for and on behalf of Patricia and Helen Borg, absent from these Islands — appointed by instrument annexed to the Deed enrolled in the Records of Notary John Spiteri Maempel on the 2nd September, 1948. 10

v.

Gustavo Romeo Vincenti,  
Architect & Civil Engineer.

The Minute of the contending parties.

Whereby, to meet the ends and purposes of the law, the contending parties declare that the translation of the Record of the case above-mentioned, produced by the Appellant, is correct and has been 20 approved by them.

(Signed) E. MAGRI,  
Advocate.  
for the Plaintiff.

(Signed) ED. VASSALLO,  
Advocate.  
for the Defendant Appellant.

(Signed) E.G. CARUANA SCICLUNA,  
Legal Procurator. 30

The 27th July, 1954.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

(Signed EDW. CAUCHI,  
Deputy Registrar.

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**No. 98.**  
**Application for Final Leave**

No. 98  
Application  
for Final  
Leave.

In H.M. Court of Appeal.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Application of Gustavo Romeo Vincenti A. & C.E.  
Respectfully shewith:—

10 That, by Decree given on the 23rd November, 1953, this Honourable Court granted the Defendant Appellant conditional leave to appeal to the Judicial Committee of Her Majesty's Privy Council from the judgments given in this case on the 14th November, 1949, 4th February, 1952 and 15th June, 1953 — subsequently extending the period laid down for the purpose up to the 23rd August, 1954.

That the Appellant has duly tendered the security ordered by this Honourable Court, prepared the translation of the Record, which has been agreed to by the Plaintiff Respondent, lodged a copy of the translation in the Registry of this Court and also completed the printing of forty copies of the Record according to law.

20 The Appellant therefore respectfully prays that this Honourable Court may be pleased to grant him final leave to appeal to the Judicial Committee of Her Majesty's Privy Council.

(Signed) ED. VASSALLO,  
Advocate.  
„ E. G. CARUANA SCICLUNA,  
Legal Procurator.

This Fourth August, 1954.

Filed by E. G. Caruana Scicluna, L.P., without Exhibits.

(Signed) J. CAMILLERI CACOPARDO,  
Deputy Registrar.

No. 99  
Decree  
granting  
Final Leave.

No. 99.  
**Decree granting Final Leave**

HER MAJESTY'S COURT OF APPEAL  
(Civil Hall)

Judges :

His Honour Sir Luigi A. Camilleri Kt., LL.D., President.  
The Honourable Mr. Justice W. Harding, B.Litt., LL.D.  
The Honourable Mr. Justice T. Gouder, LL.D.

Sitting held on Monday, the  
4th October, 1954.

10

No. 9.  
Writ-of-Summons No. 112/1949.

Colonel Stephen J. Borg nomine  
v.  
Gustavo Romeo Vincenti A. & C.E.

The Court,

Upon seeing the Application of the Defendant Appellant, submitting that the translation and the printing of the Record have been completed and praying for final leave to appeal to Her Majesty in Her Privy Council.

20

Upon seeing the Decree given by this Court on the 23rd November, 1953, whereby the Defendant Appellant was granted conditional leave to appeal to Her Majesty in Her Privy Council from the judgments given in this case on the 14th November, 1949, 4th February, 1952 and 15th June, 1953 — the Order as to Costs being reserved to the Decree granting final leave.

Allows the Application and grants the Defendant Appellant final leave to appeal from the aforesaid judgments to the Judicial Committee of Her Majesty's Privy Council.

The Costs of the present Decree, and of the Decree granting conditional leave, to be borne by the Defendant Appellant, saving recovery thereof, or part thereof, from the Plaintiff nomine, if and as may be ordered by the Judicial Committee of Her Majesty's Privy Council.

30

(Signed) J. MICALLEF,  
Deputy Registrar.

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# **EXHIBITS**

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**Plaintiff's.**





**Exhibits produced together with the Writ-of-Summons**

“A”

**POWER OF ATTORNEY**

Exhibits  
produced  
together  
with the  
Writ-of-  
Summons.

This is the Power of Attorney marked with the letter “A” referred to in the annexed Declaration of Nancy Clare Bates made on the seventh day of July, 1948. Before me.

(sd) CYRIL W. DAVIES,  
Notary Public.

10 This is the Power of Attorney marked “A” mentioned and referred to in the annexed Declaration of John Edwin Towle made at Auckland this 14th day of July, 1948.

(sd) R.P. TOWLE,  
Notary Public.

KNOW ALL MEN BY THESE PRESENTS: That *WE* the undersigned *PATRICIA, HELEN* and *JEAN*, sisters *Borg*, daughters of the late Dr. Anthony *BORG*, all of us residing at *EPSOM, AUCKLAND, NEW ZEALAND* but I the said Patricia Borg being temporarily resident in Canberra Australian Commonwealth Territory Australia do hereby appoint and constitute our lawful *ATTORNEY* Lieutenant  
20 Colonel Stephen Joseph *BORG* of “*THE PALMS*”, *MALTA*, to act on our behalf in connection with the proposed exercise of the rights of pre-emption and/or redemption, and if necessary of the right of preference concerning the block of buildings (actually destroyed by enemy action), in Kingsway, *VALLETTA* Numbers 45, 46 and 47 corner with Saint John’s Street, *VALLETTA*, Numbers 46, 47 and 48, which block was sold by Judicial Auction under the Authority of His Majesty’s Civil Court, First Hall, *MALTA*, to Mr. Gustavus *VINCENTI, A. & C.E.*, on the 1st April, 1948; and therefore *WE* the undersigned do hereby empower the said our *ATTORNEY*:

- 30 1. TO acquire the said immovable property under such terms and conditions as he may deem fit and proper, and re-sell or re-transfer same as he considers convenient and advantageous;
2. TO stand in judgment, either as plaintiff or defendant, in our name, with all powers according to Law;
3. TO transact and compromise any lawsuit or dispute in which We may be a party, upon such terms as he may deem fit;
4. TO borrow money in our name at such terms as he may deem proper, and hypothecate our property in general;

Exhibits  
produced  
together  
with the  
Writ-of-  
Summons.  
—continued.

5. TO perform on our behalf any act which the said our *Attorney* may consider necessary for the fulfilment of the present Power of Attorney according to the Laws and custom obtaining in *MALTA*;
6. TO appoint any person or persons, or any constituted body to act on his behalf with all or any of the above powers hereby vested in him.

*WHEREUPON WE* do hereby promise to ratify and confirm whatever the said our Attorney shall have performed in compliance with these presents.

*IN WITNESS WHEREOF* we have hereunto subscribed our 10 hands and set our seals this seventh day of July one thousand nine hundred and forty-eight (1948).

*SIGNED SEALED AND DELIVERED* by the said  
(sd) PATRICIA BORG.

*PATRICIA BORG* in the presence of:—  
(sd) J.F. MEURISSE HAYDON                      N.C. BATES  
University Lecturer                              Clerk  
Canberra    Canberra

*SIGNED SEALED AND DELIVERED* by the said  
(sd) HELEN K. BORG.                              20

*HELEN BORG* in the presence of:  
(sd) J.E. TOWLE                                      G.E. EDMONDS  
Solicitor    Law Clerk  
Auckland, N.Z.,                                      Auckland, N.Z.

*SIGNED SEALED AND DELIVERED* by the said  
(sd) JEAN BORG.

*JEAN BORG* in the presence of:—  
(sd) G. KEITH    J.E. TOWLE  
Solicitor    Solicitor  
Auckland.    Auckland.    30

A True Copy.  
(Signed) A. GHIRLANDO,  
Deputy Registrar.

TO ALL TO WHOM THESE PRESENTS SHALL COME

I CYRIL WALTER DAVIES of Canberra in the Australian Capital NOTARY PUBLIC by Royal Authority duly admitted and sworn and practising (and by the Statute 5th and 6th William the 4th Chapter 62 and also in pursuance of the Act No. XX., 1900, of the Parliament of New South Wales especially empowered in this behalf) DO HEREBY CERTIFY that on the day of the date hereof personally 40

came and appeared before me Nancy Clare Bates named and described in the Declaration hereunto annexed, and by solemn Declaration which said Nancy Clare Bates then made before me she did solemnly and sincerely declare to be true the several matters and things mentioned and contained in the said annexed Declaration.

Exhibits  
produced  
together  
with the  
Writ-of-  
Summons.  
—continued.

IN FAITH AND TESTIMONY WHEREOF I have hereunto set my hand and Notarial Seal of Office and have caused the Power of Attorney mentioned and referred to in and by the said Declaration to be hereunto also annexed.

10 Dated in Canberra aforesaid the seventh day of July in the year of our Lord one thousand nine hundred and forty-eight.

(sd) CYRIL W. DAVIES,  
Notary Public,  
Canberra.

I, Nancy Clare Bates of Canberra in the Australian Capital Territory Clerk, do solemnly and sincerely declare THAT I was present on the seventh day of July one thousand nine hundred and forty-eight together with Jeffery Frederick Meurisse Haydon and did see Patricia BORG, the person named and described in the Power of Attorney  
20 hereunto annexed and produced, and shown to me, and marked with the letter "A" duly sign seal and as and for her act and deed execute and deliver the said Power of Attorney AND THAT the signature Patricia BORG thereto set and described is of the proper handwriting of the said Patricia Borg, AND THAT the signatures "J.F. Meurisse Haydon" and "N.C. Bates" thereto set and subscribed as the witnesses thereto are of the respective proper handwritings of the said Jeffery Frederick Meurisse Haydon and of me this Declarant the subscribing witnesses hereto.

30 AND I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the "Statutory Declarations Act, 1835", and also under and by virtue of the provisions of an Act of the Parliament of New South Wales intituled the "Oaths Act, 1900".

DECLARED at Canberra aforesaid (sd) N.C. BATES.  
this seventh day of July one  
thousand nine hundred and  
forty-eight.

(sd) CYRIL W. DAVIES,  
Notary Public,  
Canberra.

A True Copy.  
(Signed) A. GHIRLANDO,  
Deputy Registrar.

Exhibits  
produced  
together  
with the  
Writ-of-  
Summons.  
—continued.

**TO ALL TO WHOM THESE PRESENTS SHALL COME**

I, ROLAND PERCIVAL TOWLE of AUCKLAND Notary Public by lawful authority duly admitted and sworn residing and practising in the city of Auckland NEW ZEALAND do HEREBY CERTIFY that on the day of the date hereof before me at High Street in the City of Auckland personally came and appeared JOHN EDWIN TOWLE named and described in the following Declaration being a person well known and worthy of full credit and by solemn Declaration which the said John Edwin TOWLE then made before me he did solemnly and sincerely declare to be true the several matters 10 and things mentioned and contained in the said Declaration. IN TESTIMONY WHEREOF I have hereunto set my hand and notarial seal and have caused the Power of Attorney marked "A" mentioned and referred to in the said Declaration to be hereunto annexed.

Dated at the city of Auckland the 14th day of July one thousand nine hundred and forty-eight.

(sd) R.P. TOWLE, Notary Public  
Auckland, New Zealand.

I, JOHN EDWIN TOWLE of Auckland in the Dominion of New Zealand, Solicitor, DO SOLEMNLY AND SINCERELY DECLARE 20 as follows: First, that I was present at the Offices of Messieurs Towle and Cooper Solicitors, Safe Deposit Building, High Street, Auckland, and did see HELEN BORG and JEAN BORG named and described in the annexed Power of Attorney marked "A" bearing the date the seventh day of July 1948 duly sign seal and as their act and deed deliver the said Power of Attorney. Secondly, that the names "Helen K. Borg" and "Jean Borg" set opposite it the seals affixed at the foot of the said Power of Attorney as the signatures of them the parties executing the same and the names "J. E. Towle", "G. E. Edmonds", and "G. Keith" subscribed to the docquet of attestation thereon as wit- 30 nesses to such execution are veritably the signatures and proper handwriting of the said Helen Borg, Jean Borg, Graham Edward Edmonds of Auckland aforesaid Law Clerk, George Francis Ronaldson Keith of Auckland aforesaid Solicitor, and of me the Declarant respectively. And I make this Solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of The Imperial

Parliament now known by the short title of "The Statutory Declaration Act 1835".

(sd) J.E. TOWLE.

Exhibits  
produced  
together  
with the  
Writ-of-  
Summons.  
—continued.

Declared at my Office in the City  
of Auckland this 14th Day of  
July one thousand nine hundred  
and forty-eight.

BEFORE ME

(sd) R.P. TOWLE,

10

Notary Public,  
Auckland, New Zealand.

A True Copy.

Deputy Registrar.

(Signed) A. GHIRLANDO,

"B"

#### SCHEDULE OF PRE-EMPTION

In H.M. Civil Court, First Hall.

20

Colonel Stephen J. Borg, in his  
capacity as attorney for Patricia  
and Helen Borg, absent from these  
Islands, children of Dr. Anthony  
Borg, deceased and Kathleen née  
Harnet, born in the Fiji Islands, and  
residing at Epsom, Auckland, New  
Zealand — appointed by instru-  
ment annexed to the Deed enrolled  
in the Records of Notary Joseph  
Spiteri Maempel on the 2nd Septem-  
ber, 1948, a true copy of which  
instrument is annexed hereto. (Exh.  
A).

30

v.

Gustavo Romeo Vincenti A. & C.E.,  
son of the late Luigi and the late  
Concetta née Cutajar, born in  
Valletta, residing at St. Julian's.

Schedule of Pre-emption of Colonel Stephen J. Borg in his afore-  
said capacity — and of the respective deposit made by Colonel Borg

Exhibits  
produced  
together  
with the  
Writ-of-  
Summons.  
—continued.

nomine and Paul Ferrante in his capacity as Cashier, National Bank of Malta.

Respectfully sheweth:—

On the 1st April, 1948, in the sale by licitation held under the authority of this Honourable Court, the property at the corner between Kingsway and St. John Street, Valletta, formerly the block of buildings at Nos. 45, 46 and 47, Kingsway, and Nos. 46, 47 and 48, St. John Street, inclusive of the cellar underlying Nos. 45, 46 and 47, Kingsway, at present demolished as the result of enemy action, measuring sixty-four square canes, bounded on the south-east, by property belonging 10 to Major Edgar Amato Gauci, on the north-west, by Kingsway, and, on the north-east, by St. John Street, free from and unencumbered by burthens and servitudes and carrying with it the right to the amount of compensation payable by the War Damage Commission — as more fully described in the Report filed by Albert Vassallo A. & C.E. on the 19th April, 1947, and sworn to on the 30th May, 1947 — was finally adjudicated to Gustavo Romeo Vincenti, Architect & Civil Engineer, for the sum of Thirty-two Thousand Two Hundred Pounds (£32,200).

The said Patricia and Helen Borg are entitled, by reason of consanguinity, to exercise the right of pre-emption in respect of the aforesaid property, as shown by the genealogical table hereto annexed (Exhibit B). 20

Wherefore the said Colonel Stephen J. Borg nomine hereby recovers from the possession of the said Gustavo Romeo Vincenti A. & C.E., by reason of consanguinity and any other lawful title whatsoever, the property above described, and, at the same time, the said Colonel Stephen J. Borg in his aforesaid capacity, and the said Paul Ferrante, in his capacity as Cashier, National Bank of Malta, for all the ends and purposes of the law and especially for the purpose of maintaining all the rights held by the Bank in terms of the loan agreement dated 2nd September, 1948, and, more particularly, the privilege 30 in respect of the aforesaid property, hereby deposit, under the authority of this Honourable Court, the sum of Thirty-three Thousand Two Hundred and Thirteen Pounds Four Shillings One Penny (£33,213. 4. 1) — being, £32,200 purchase price, £335. 15. 0., costs incurred by the buyer and £677. 9. 1. interest thereon according to law up to the present day — in order that this sum may be freely paid to the said Gustavo Romeo Vincenti A. & C.E. as soon as he effects the re-sale of the property to Colonel Stephen J. Borg nomine according to law, a period of four (4) days being given to him for 40 the purpose.

Finally, the said Colonel Stephen J. Borg nomine hereby declares on oath that he has no knowledge of any other lawful expenses incurred by the buyer in connection with the purchase of the property, in view of which he reserves the right to increase the present deposit by the appropriate amount as soon as the amount of such lawful expenses is made known to him by service of a Judicial Letter according to law.

Exhibits  
produced  
together  
with the  
Writ-of-  
Summons.  
—continued.

10

(Signed) A. MAGRI,  
Advocate.  
" G. MANGION,  
Legal Procurator.  
for the Plaintiff Colonel Borg nomine.  
(Signed) J. CARUANA GALIZIA,  
Advocate.  
" G. GALDES,  
Legal Procurator.  
for Paul Ferrante nomine.

This 3rd September, 1948.

Filed by G. Galdes L.P. together with two Exhibits and the sum  
20 of £33,213. 4. 1. and sworn to in my presence by the Appearer.

(Signed) A. GHIRLANDO,  
Deputy Registrar.

I hereby certify that, on the 3rd September, 1948, I effected service of the present Schedule of Pre-emption, through Usher Henry L. Calleja, upon Gustavo Romeo Vincenti, A. & C.E. a true copy of the document, together with an extract from section 22 of the Code of Civil Procedure, having been left with his son, Hilaire, at No. 35, Grenfell  
30 Road, St. Julian's.

This 3rd September, 1948.

(Signed) G. BELLIZZI,  
Court Marshal.

"C"

LETTER DATED 22. 1. 1949. — PROF. CARUANA TO  
Dr. MAGRI

22nd January, 1949.

Re: Col. J. Borg and  
Gustavo R. Vincenti A. & C.E.

40 Dear Dr. Magri,

In reply to your last letter, I am to inform you that Mr. Vincenti



Exhibits  
produced  
together  
with the  
Writ-of-  
Summons.  
—continued.

has decided to release the property in Kingsway, excepting the quotas of the Apap family, Bice Demartino and Grace Cassar Torregiani, the wife of Colonel Borg, which are to be considered as having gone out of the family.

Yours etc.

(Signed) V. CARUANA.

**EXHIBITS 'A' and Nos. 1 to 21 produced by Plaintiff's Minute 1st April, 1949**

"A"

Dr. Pasquale Debono c Marianna Galea

Carmela (25. 2.51)	Saverio (17. 2.54)	Giovanna (18.11.56)	Antonio (10. 1.61)	Margherita( 6. 7.58)
c	c	c	c	c
Dr. Daniele Chetcuti (Exh.8)	Teresa Ciantar (Exh.15)	Amabile Demarco	Francesca Mifsud	Lorenzo Demartino (Exh.17)
Marianna Chetcuti (Exh.9)	Mgr. Girolamo Chetcuti (Exh.14)	Marianna Debono (Exh.16)	Virginia	Carmelo Demartino (13.2.86)
c	c	Vendor	c	c
Fortunato Pellegrini (17.8.86)	(16. 1.63)	Vendor	John Borg	Teresa Sciortino
Stefania 29. . 8. 96 (Exh. 10)	Daniele 22. 1. 95 (Exh. 11)	Stephen	Anthony	(Exh.18)
Francesca 26. 11. 90 (Exh. 12)	Carmela 19. 5. 92 (Exh. 13)	c	c	
Vendors	Vendors	Grace Cassar Torreggiani Vendor	Kathleen Harnet	Lorenzo (11. 7.88) (Exh. 21)
			Patricia - Helen	Giovanni (22. 4.91) - Anna (Exh. 20) Maria
				Alberto (7. 4.93) Demartino (Exh.19)
				Vendors

(See procès verbal licitation proceedings page 35 for proof relationship of daughter of John Demartino



(Signed) A. Magri, Advocate.

Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1949.  
—continued.

Official copy of Application and Decree to be served upon:—  
Colonel Stephen J. Borg

In H.M. Civil Court, First Hall.

In the matter of Schedule of Deposit No. 8/1948:—

Gustavo Romeo Vincenti A. & C.E.

v.

Colonel Stephen J. Borg R.M.A.  
nomine & Others.

The Application of Marianna Debono de Conti Ciantar.

10

Respectfully sheweth:—

The sum of £32,030.11.0. has been lodged in the Registry of this Honourable Court by the Schedule above-mentioned, and the Applicant is entitled to withdraw therefrom the sum of £3964. 15. 2., 4/10ths.

The Applicant therefore respectfully prays that this Honourable Court may be pleased to authorize her to withdraw, from the deposit above-mentioned, the sum of £3964. 15. 2., guaranteeing any eventual re-deposit thereof against the hypothecation of her present and future property and, jointly, the hypothecation of the present and future property of William Vincenti, trader, son of the late Luigi, born and residing in Valletta. 20

(Signed) ED. VASSALLO,  
Advocate.

" G. ZAMMIT,  
Legal Procurator.

This 9th September, 1948.

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

(Signed) J. DINGLI,  
Deputy Registrar.

30

## H.M. CIVIL COURT, FIRST HALL

Judge:

The Honourable Mr. Justice A.V. Camilleri B.Litt., LL.D.

The Court,

Upon seeing the Application.

Orders that service thereof be made upon all the parties concerned, who are given four days within which to file an Answer.

This 10th September, 1948.

Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1949.  
—continued.

10

(Signed) J. DINGLI,  
Deputy Registrar.

True Copy.

(Signed) J. MICALLEF,  
Deputy Registrar.

(2)

Official Copy of Application and Decree to be served upon:—

Colonel Stephen J. Borg

In H.M. Civil Court, First Hall.

In the matter of Schedule of Deposit No. 8/1948:—

20

Gustavo Romeo Vincenti A. &amp; C.E.

v.

Colonel Stephen J. Borg R.M.A.  
nomine & Others.

The Application of Albert Joseph Demartino, in his capacity as attorney for Anna Maria Demartino, absent from these Islands.

Respectfully sheweth:—

The sum of £32,030. 11. 0. has been lodged in the Registry of this Honourable Court by the Schedule above-mentioned, and the

Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1949.  
—continued.

Applicant, in his aforesaid capacity, is entitled to withdraw therefrom the sum of £1310. 3. 10., 908/1160ths.

The Applicant therefore respectfully prays that this Honourable Court may be pleased to authorize him, in his aforesaid capacity, to withdraw, from the deposit above-mentioned, the sum of £1310. 3. 10., guaranteeing any eventual re-deposit thereof against the hypothecation of the present and future property of his constituent, Anna Maria Demartino, and, jointly, the hypothecation of the present and future property of William Vincenti, son of the late Luigi, born and residing in Valletta.

(Signed) ED. VASSALLO, 10  
Advocate.  
" G. ZAMMIT,  
Legal Procurator.

This 9th September, 1948.

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

(Signed) J. DINGLI,  
Deputy Registrar.

---

H.M. CIVIL COURT, FIRST HALL

Judge:

The Honourable Mr. Justice A.V. Camilleri B.Litt., LL.D. 20

The Court,

Upon seeing the Application.

Orders that service thereof be made upon all the parties concerned, who are given four days within which to file an Answer.

This 10th September, 1948.

(Signed) J. DINGLI,  
Deputy Registrar.

True Copy.

(Signed) J. MICALLEF, 30  
Deputy Registrar.

Official Copy of Application and Decree to be served upon:—

Colonel Stephen J. Borg

Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1949.  
—continued.

In H.M. Civil Court, First Hall.

In the matter of Schedule of Deposit No. 8/1948:—

Gustavo Romeo Vincenti A. & C.E.

v.

Colonel Stephen J. Borg R.M.A.  
nomine & Others.

10 The Application of Albert Joseph Demartino.

Respectfully sheweth:—

The sum of £32,030. 11. 0. has been lodged in the Registry of this Court by the Schedule above-mentioned, and the Applicant, as one of the co-owners of the property sold at the Judicial Sale held on the 1st April 1948, is entitled to withdraw therefrom, according to the Statement annexed to the Schedule, the sum of £8520. 0. 2., 948/1160ths.

20 The Applicant therefore respectfully prays that this Honourable Court may be pleased to authorize him to withdraw, from the deposit above-mentioned, the sum of £8520. 0. 2., and, to meet the conditions imposed by the depositor in the aforesaid Schedule, and for the purposes of any eventual re-deposit thereof, the Applicant offers the general hypothecation of his present and future property, together with the joint guarantee of the hypothecation of the property of William Vincenti, trader, son of Luigi, deceased, and Concetta née Cutajar, born and residing in Valletta.

(Signed) ED. VASSALLO,  
Advocate.

" G. ZAMMIT,  
Legal Procurator.

30 This 9th September, 1948.

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

(Signed) J. DINGLI,  
Deputy Registrar.

## H.M. CIVIL COURT, FIRST HALL

Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1948.  
—continued.

Judge:

The Honourable Mr. Justice A.V. Camilleri B.Litt., LL.D.

The Court,

Upon seeing the Application.

Orders that service thereof be made upon all the parties concerned, who are given four days within which to file an Answer.  
This 10th September, 1948.

(Signed) J. DINGLI,  
Deputy Registrar.

10

True Copy.

(Signed) J. MICALLEF,  
Deputy Registrar.

(4)

Official Copy of a Minute to be served upon:—

Colonel Stephen J. Borg R.M.A.

In H.M. Civil Court, First Hall.

In the matter of Schedule of Deposit No. 8/1948:—

Gustavo Romeo Vincenti A. &amp; C.E.

v.

Colonel Stephen J. Borg R.M.A.  
nomine & Others.

20

The Minute of Albert Joseph Demartino, in his capacity as attorney for Anna Maria Demartino, absent from these Islands.

Whereas Colonel Stephen J. Borg nomine has declared, in the Answer filed on the 2nd October, 1948, that the surety offered by Anna Maria Demartino is unknown, the Applicant nomine offers instead, as surety, Gustavo Romeo Vincenti, Architect & Civil Engineer,

son of the late Luigi, born in Valletta, residing at St. Julian's.

(Signed) ED. VASSALLO,  
Advocate.

" ALB. GANADO,  
Advocate.

" E.G. CARUANA SCICLUNA,  
Legal Procurator.

Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1949.  
—continued.

This 22nd October, 1948.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

10 (Signed) A. GHIRLANDO,  
Deputy Registrar.

True Copy.

(Signed) S. BUGEJA,  
Deputy Registrar.

(5)

Official copy of a Minute to be served upon:—  
Colonel Stephen J. Borg R.M.A.

In H.M. Civil Court, First Hall.

In the matter of Schedule of Deposit No. 8/1948:—

20 Gustavo Romeo Vincenti A. & C.E.

v.

Colonel Stephen J. Borg R.M.A.  
nomine & Others.

The Minute of Marianna Debono de Conti Ciantar.

Whereas Colonel Stephen J. Borg nomine has declared, in the Answer filed on the 2nd October, 1948, that the surety offered by the Applicant is unknown, and that, consequently, he cannot agree to the payment-out asked for in the Application dated 9th September, 1948, the Applicant offers instead, as surety, Gustavo Romeo Vincenti,

30 Architect & Civil Engineer, son of the late Luigi, born in Valletta, residing at St. Julian's.

(Signed) ED. VASSALLO,  
Advocate.

" ALB. GANADO,  
Advocate.

" E.G. CARUANA SCICLUNA,  
Legal Procurator.

This 22nd October, 1948.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

40 (Signed) A. GHIRLANDO,  
Deputy Registrar.

True Copy.

(Signed) S. BUGEJA,  
Deputy Registrar.



Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1949.  
—continued.

Official Copy of a Minute to be served upon:—

Colonel Stephen J. Borg R.M.A.

In H.M. Civil Court, First Hall.

In the matter of Schedule of Deposit No. 8/1948:—

Gustavo Romeo Vincenti A. & C.E.

v.

Colonel Stephen J. Borg R.M.A.  
nomine & Others.

The Minute of Albert Joseph Demartino.

10

Whereas Colonel Stephen J. Borg nomine has declared, in the Answer filed on the 2nd October, 1948, that the surety offered is unknown, the Applicant offers instead, as surety, Gustavo Romeo Vincenti, Architect & Civil Engineer, son of the late Luigi, born in Valletta, residing at St. Julian's.

(Signed) ED. VASSALLO,  
Advocate.

" ALB. GANADO,  
Advocate.

" E.G. CARUANA SCICLUNA, 20  
Legal Procurator.

This 22nd October, 1948.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

(Signed) A. GHIRLANDO,  
Deputy Registrar.

True Copy.

(Signed) S. BUGEJA,  
Deputy Registrar.

(7)

## JUDICIAL LETTER

10th November, 1948.

In H.M. Civil Court, First Hall.

TO: Colonel Stephen J. Borg, in his capacity as attorney for Patricia and Helen Borg.

Albert J. Demartino, personally and in his capacity as attorney for Anna Maria Demartino, and Marianna Debono de Conti Ciantar, have lodged in the Registry of this Court the Certificates of Hypothecs and Conveyances registered in the name of Gustavo Romeo Vincenti  
 10 A. & C.E., thus to prove the suitability of the surety offered by them, in the respective Minutes filed on the 22nd October, 1948, in connection with the payment-out under Schedule of Deposit No. 8 of 1948.

After the lapse of fifteen days from date of service hereof, the Certificates will be withdrawn and steps taken to secure judicial confirmation of the surety offered.

(Signed) ED. VASSALLO,  
 Advocate.

" E.G. CARUANA SCICLUNA,  
 Legal Procurator.

Exhibits  
 "A" and  
 Nos. 1 to 21  
 produced by  
 Minute  
 1st April,  
 1949.  
 —continued.

20

(8)

UFFICIO CURIALE  
 MUSTA.

10th March, 1949.

I, the undersigned, declare that according to the records which are to be found in the Archivium of Musta Parish Church, Book IV, Carmela Debono was married to Dr. Daniel Chetcuti on the 25th February, 1851.

The parents of the bride were: Paschalis Debono and Marianna Galea. The witnesses were: Marquis Salvatore Mallia Tabone and Rev.  
 30 Peter Paul Borg.

The parents of the bridegroom were: Francesco and Anna née Camilleri.

(Signed) REV. CARMELO DINGLI,  
 Vice P. Priest,  
 for Archpriest.

Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1949.  
—continued.

EGO INFRASCRIPITUS ARCHIP. PAROCHUS S. Archipresbyteralis Paroecialis Ecclesiae ASSUMPTIONIS B. MARIAE VIRG. TERRA MUSTAE MELIVETANAE DIOECESEOS.

Universis praesente litteras lecturis notum facio ac testor in Lib. Matrimon. Vol. VI hujus Paroeciae, quae sequuntur, inter caetera scripta reperiri; videlicet:

Anno Domini millesimo octingentesimo octogesimo sexto (1886), die vero decima septima (17) mensis Augusti.

Praemissis denuntiationibus tribus diebus festivis interpolati 10 quarum 1a. fuit die 25 Julii, 2da. fuit die 1 Augusti, 3a. vero fuit die 8 eiusdem mensis nulloque impedimento cameo. detecto Adm. Rev. Don Pasquali Chetcuti presbyter huj. Paroeciae Don. Mariannam Chetcuti fil. virg. leg. et nat. D. Danieli Chetcuti et Don. Carmelae Debono ing. et Dom. Fortunatum Pellegrini fil. e Paroecia Vilhena, interrogavit Franciscae Giacomotto sponsum leg. et nat. Dni. Stephani et Donae. eorumque mutuo consensu solemniter habito per verba de praesenti matrimonio coniuxit praesentibus testibus Carmelo Falzon, fil. Michael-angeli et Paulo Farrugia fil. qd. Antoni postea Rev. Dom Jeronjmus Chetcuti in Sacrificio Missae ritum S.R.E. benedixit. 20

In quorum fidem has praesentes litteras propria manu subscipsi, sigilloque munivi,

Datum Mustae, die 19 mensis Martii anni 1949.

(Frimatus) REV. PAULINUS GALEA,  
Archipresbyter et Parochus.

Series A.

No. 10

No. 22285

PUBLIC REGISTRY

I, the undersigned, do hereby certify that the following is a true copy of an Act of Birth registered in the Public Registry Office of Valletta - Malta.

ACT OF BIRTH. Date of Act - Valletta 29th August, 1896.

Particulars respecting	Birth		Sex	Names given		Name or names by which the child is to be called
	Place	Hour, day, month and year		Hour, day, month and year	Place of Birth	
the child	Floriana	10 p.m. 17th August, 1896	Female	Stefana Maria Elena	Stefana	Stefana
Particulars respecting	Name & Surname	Profession, trade, or other status	Age	Place of Birth	Residence	Name and Surname of the father, and whether living or dead
The father of the child	Fortunato Pellegrini	Merchant	31	Senglea	Floriana	Stefano Pellegrini
The mother	Maria Anna wife of the said Fortunato Pellegrini	Housewife	36	Mosta	Floriana	Daniele Chetcuti, M.D., dead
The person making the declaration	The father					
The witnesses	Carmelo Debono Giacomo Borg	Messenger Police Sergeant	46 24	Valletta Birkirkara	Hamrun Senglea	Giovanni Debono, dead Salvatore Borg
Date of the reception of the Act -	4th September, 1896	SIGNATURES of the person making the declaration				
Progressive number of the Inscription	No. 3370	(Signed) Fort. Pellegrini				
Signature of Director or other Officer to act in his stead	(Signed) P. Mompalao DePiro, Director	(Signed) Carmelo Debono " G. Borg (Signed) L. Chapelletti Officer in Charge				

PUBLIC REGISTRY - VALLETTA 17 March, 1949

(Signed) V. Formosa, Asst. Director.

Series A.

No. 22286

No 11

PUBLIC REGISTRY

I, the undersigned, do hereby certify that the following is a true copy of an Act of Birth Registered in the Public Registry Office of Valletta - Malta.

ACT OF BIRTH. Date of Act - Valletta 22nd January, 1895.

Particulars respecting	Birth		Sex	Names given	Name and names by which the child is to be called
	Place	Hour, day, month and year			
The child	Floriana	11.30 a.m. 15th January, 1895	Male	Daniele Stefano Fortunato	Daniele
Particulars respecting	Name & Surname	Profession, trade, or other status	Age	Place of Birth	Name and Surname of the father and whether living or dead
The father of the child	Fortunato Pelleggrini	Merchant	30	Senglea	Stefano
The mother	Maria Anna wife of the said Fortunato	Housewife	32	Mosta	Daniele Chetcuti, M.D.
The person making the declaration	The father				
The witnesses	Achille Farrugia Giacomo Borg	Copyist Police Sergeant	39 23	Valletta Birkirkara	Paolo Salvatore
Date of the reception of the Act -	24th January, 1895				
Progressive number of the Inscription	No. 446				
Signature of the Director or other officer appointed to act in his stead	(Signed) P. Mompalao DePiro Director. SIGNATURES of the person making the declaration (Signed) Fort, Pellegrini " A. Farrugia " G. Borg " L. Chapelletti Officer in Charge				

PUBLIC REGISTRY OFFICE - VALLETTA - 17 March, 1949

(Signed) V. Formosa, Asst. Director.

Series A.  
No. 22287

No. 12

**PUBLIC REGISTRY**

I, the undersigned, do hereby certify that the following is a true copy of an Act of Birth registered in the Public Registry Office of Valletta - Malta,

**ACT OF BIRTH.** Date of Act - Valletta 26th November, 1890.

Particulars respecting	Birth		Sex	Names given	Name or names by which the child is to be called
	Place	Hour, day, month and year			
The child	Floriana	4½ a.m. 16th November, 1890	Female	Francesca Maria Adelaide Elisa	Francesca
Particulars respecting	Name and Surname	Profession, trade or other status	Age	Place of Birth	Name and Surname of the father, and whether living or dead
The father of the child	Fortunato Pelleggrini	Merchant	26	Senglea	Stefano
The mother	Maria Anna wife of the said Fortunato		33	Mosta	do.
The person making the declaration	The father				Daniele Chetcuti, M.D.
The witnesses	Carmelo Debono Francesco Zammit	Messenger Copyist	40 34	Valletta Floriana	Giovanni, dead Francesco, dead

Date of the reception of the Act 27th November, 1890

Progressive number of the Inscription No. 4998

Signature of the Director or other officer appointed to act in his stead

(Signed) Not. F. S. Camilleri  
Director

SIGNATURES of the person making the declaration

(Signed) Fort. Pellegrini

of the witnesses

(Signed) Carmelo Debono  
" Tommaso Zammit  
" L. Charelle  
" Officer in Charge

**PUBLIC REGISTRY OFFICE - VALLETTA - 17 March, 1949.**

(Signed) V. Formosa, Asst. Director.

Series A.  
No. 42291

No. 13

**PUBLIC REGISTRY**

I, the undersigned, do hereby certify that the following is a true copy of an Act of Birth registered in the Public Registry Office of Valletta - Malta.

ACT OF BIRTH. Date of Act - Valletta 19th May, 1892.

Particulars respecting	Birth		Sex	Names given	Name or names by which the child is to be called
	Place	Hour, day, month and year			
the child	Floriana	4.45 a.m. 15th May, 1892	Female	Maria Carmela Fortunata Adelaide Stefania Marianna Publia	Maria Carmela
Particulars respecting	Name and Surname	Profession, trade or other status	Age	Place of Birth	Name and Surname of the father, and whether living or dead
the father of child	Fortunato Pellegrini	Merchant	28	Senglea	Stefano
the mother	Marianna wife of the said Fortunato		33	Mosta	Daniele Chetcuti, M.D.
the person making the declaration	The father				
The witnesses	Carmelo De. bono Tommaso Zammit	Messenger Copyist	42 35	Valletta Floriana	Giovanni, dead Francesco, dead

Date of the reception of the Act - 20th May, 1892  
Progressive number of the Inscription No2380.

Signature of the Director or other Officer appointed to act in his stead

SIGNATURES of the person making the declaration

(Signed) Fort. Pellegrini  
" Carmelo Debono  
" Tommaso Zammit  
" L. Chapelle  
" Officer in charge

of the witness

(Signed) Not. G. Gera  
Asst. Director

PUBLIC REGISTRY OFFICE - VALLETTA - 17th March, 1949. (Signed) V. Formosa, Asst. Director.

(14)

THIS IS TO CERTIFY THAT *Girolamo Chetcuti* SON OF *Daniel* AND *Carmela Debono* daughter of *Pasquale Debono* WAS BORN AT MUSTA (MALTA) ON THE 16th DAY OF *January, 1863.* MUSTA 8th March, 1949.

Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1949.  
—continued.

(Signed) REV. PAUL GALEA,  
ARCHPRIEST.

(15)

10 INFRASCRIPITUS PAROCHUS In. Basil. Matr. Princ. et Paroec.  
ECCLESIAE S. MARIA PORTUS SALUTIS

Urbis Vallettae Melitensis Dioeceseos

has literas perlegentibus testor, in libris Matrimoniorum prae laudatae Paroeciae, inter caeteras, sequentem extare notam, videlicet:

Anno Domini millesimo octingentesimo quinquagesimo septimo (1857) Die Vero decima septima (17) Mensis Februarii.

20 Denun. praemissis tribus statutis diebus sc. 8, 11 et 13 Feb. 1857, nemine impediante, Rev. Dom. Sac. Dr. Felix Grech de speciali mea delègne. in Eccla filiale S. Mariae, vulgo dicta "Ta' Doni Terrae, Lia, Matri. conjunxit in faciem Ecclae. per verba de praesenti, Perill. Dnam. Theresiam ex Comt. Ciantar, Paleologo fil. virg. leg. et nat qdm. Illm. Dni. Salvatoris et Illm. Donae Vincentiae ex Comit. Preziosi alium conj. de nra. Par. et Dom. Xaverium Debono fil. leg. et nat. qdam. Perill. Dom. Ut. Drs. Paschalis et Perill. Donae Mariae Anna Galea olim conj. de Par. Ecclae. terrae Musta, praesentibus testibus notis, Dom. Paolo Vella et Josepho Falzon. Postea Rev. Dom. sac. Salvator Adeodatus Camilleri ex mea. comme. in Cel. Messae eis benedixit. In quorum fidem has propria manu subscripsi, as Paroecali sigillo munivi.

Datum, Vallettae die vigesima prima (21) Martii 1949.

(Frimatus) P. COSTANTINUS FSADNI  
O.P.  
Vice Parochus.



Exhibits  
"A" and  
Nos. 1 to 21  
produced by  
Minute  
1st April,  
1949.  
—continued.

(16)

THIS IS TO CERTIFY THAT *Marianna Debono* DAUGHTER  
OF *Xaverio* AND *Theresia Ciantar* WAS BORN AT MUSTA  
(MALTA) ON THE 31st DAY OF December, 1858.  
MUSTA 8th March, 1949.

(Signed) RER. PAUL GALEA,  
ARCHPRIEST.

(17)

PATER ET PATRONUS PRINCIPALIS

---

EGO INFRASCRIPUS CANONICUS VICARIUS CURATUS PERPETUUS 10  
S. INS. COLLEG. MATR. ET PRINCIP. ECCLESIAE PARROCHIALIS  
S. PAULI AP. NAUFRAGI  
CIVITATIS VALLETTAE MELIVETANAE DIOECESIOS

Omnibus et singulis has literas lecturis, fidem facio ac testor in  
Archivo Praeaudatae Paroeciae VOL. XV quae sequitur, notam in-  
veniri, videlicet: (fol. 572)

An. Dni. Millesimo Octingentesimo quinquagesimo octavo (1858)  
Die vero sexta, sive 6, Mensis Julii.

Denuntiationibus praemissis et nullo legitimo impedimento detecto,  
praevia mea licentia Perillis et Adm. Revdus. Dnus. Can Dr. Don 20  
Rosarius Muscat.

Dnam. Margheritam Debono fil. virg. legit. et nat. qdm. Peril. Dni.  
LL.D. Pschalis et Dnae. Mariannae Galea, olim conjug. ac Dnum.  
Laurentium Demartino fil. legit et nat. Dni. Josephi et qdm.  
Catharinae Borg, olim. Conjug. ambo hujus Paroeciae interrogavit  
corumque mutuo consensu habito solemniter per verba de praesenti  
matrimonio conjunxit, praesentibus testibus notis Cajetano et Amabile  
Demarco, fratibus et filiis Xaverii Civit. Vallettae postea eis ex ritu S.  
Mat. Eccles. in Missae Celebratione benedixit.  
Datum Vallettae, 18 Mensis Martii an. 1949. 30

(Firmatus) CAN. E. BARTOLI,  
Vicarius Curatus Perpetuus.

Series C.  
No. 8511

No. 18

**PUBLIC REGISTRY**

I, the undersigned, do hereby certify that the following is a true copy of an Act of Marriage registered in the Public Registry Office of Valletta - Malta.

ACT OF MARRIAGE. Date of Act - Valletta 13th February 1886.

Particulars respecting	Name and Surname	Profession, trade or other status	Age Years	Place of		Parents of Spouses	
				Birth	Residence	Name and Surname whether living or dead	Profession, trade or other status
The husband	Carmelo Demartino	Chemist	25	Floriana	Sliema	Lorenzo, dead and Margherita nee Debono	Broker
The wife	Teresa Sciortino		18	Valletta	Sliema	Giovanni and Angelica nee Cauchi	Advocate
Particulars respecting	Name and Surname	Profession, trade, or other status	Age Years	Birth	Place of Residence	Name and Surname of the father, and whether living or dead	
The witnesses at the solemnization of the marriage	Alessandro Chapelle	Doctor of laws	45	Valletta	Valletta	Judge Dr. Francesco, dead	
	Antonio Debono		45	Valletta	Valletta	Dr. Pasquale, dead	

Declaration of the Spouses, or of the Parish Priest or other Ecclesiastic or of the Notary — I, the undersigned, hereby declare that Carmelo De Martino and Teresa Sciortino were united in marriage at the "Delle Grazie" Church, Sliema, on the 26th January, 1886, in the presence of the Very Reverend Carmelo Gerada and the witnesses above-mentioned.

(Signed) Francesco Schembri Zarb,  
Notary Public, Malta

Date of the reception of the Act - 13th February, 1886  
Progressive number of the Inscription No. 114  
Signature of Director or other Officer authorized to act in his stead  
(Signed) Notary F. S. Camilleri, Director.

PUBLIC REGISTRY OFFICE - VALLETTA - 17 March, 1949.

(Signed) V. Formosa, Asst. Director.

Series A.  
No. 22284

No 19

PUBLIC REGISTRY

I, the undersigned, do hereby certify that the following is a true copy of an Act of Birth registered in the Public Registry Office of Valletta - Malta.

ACT OF BIRTH. Date of Act - Valletta 7th April, 1893

Particulars respecting	Birth		Sex	Names given		Name and names by which the child is to be called
	Place	Hour, day, month and year		Place of	Residence	
The child	Sliema	6.45 a.m. 5th April, 1893	Male	Alberto Giuseppe Quodvult Deus		Alberto Giuseppe
Particulars respecting	Name & Surname	Profession, trade, or other status	Age	Place of		Name and Surname of the father and whether living or dead
The father of the child	Carmelo De-martino	Chemist	32	Floriana		Lorenzo, dead
The mother	Teresa wife of the said Carmelo		26	Valletta		Dr. Giovanni Sciortino
The person making the declaration	The father					
The witnesses	Carmelo Debono Tommaso Zammit	Messenger Copyist	43 36	Valletta Floriana	Hamrun Floriana	Giovanni, dead Francesco, dead
Date of the reception of the Act - 8th April, 1893	SIGNATURES of the person making the declaration					
Progressive number of the Inscription No. 1500	(Signed) Carm. Demartino					
Signature of the Director or other officer appointed to act in his stead	" Carmelo Debono					
	" Tommaso Zammit					
	" L. Chapellet, Officer in Charge					

PUBLIC REGISTRY OFFICE - VALLETTA - 17 March, 1949

(Signed) V. Formosa, Asst. Director.

Series A.  
No. 22288

No. 20

PUBLIC REGISTRY

I, the undersigned, do hereby certify that the following is a true copy of an Act of Birth registered in the Public Registry Office of Valletta - Malta.

ACT OF BIRTH. Date of Act - Valletta 22nd April, 1891

Particulars respecting	Birth		Sex	Names given	Name or names by which the child is to be called
	Place	Hour, day, month and year			
The child	Sliema	9 a.m. 14th April, 1891	Male	Giovanni Violantino Roberto	Giovanni
Particulars respecting	Name and Surname	Profession, trade or other status	Age	Place of Birth	Name and Surname of the father, and whether living or dead
The father of the child	Carmelo Demartino	Chemist	30	Floriana	Lorenzo, dead
The mother	Teresa wife of the said Carmelo		24	Valletta	Dr. Giovanni Sciortino
The person making the declaration	The father				
The witnesses	Carmelo Debono Tommaso Zammit	Messenger Copyist	40 34	Valletta Floriana	Giovanni, dead Francesco, dead

Date of the reception of the Act - 24th April, 1891

Progressive number of the Inscription No. 2058

Signature of the Director or other officer appointed to act in his stead

(Signed) Not. F. S. Camilleri,  
Director

SIGNATURES of the person making the declaration

(Signed) Carm. Demartino

Carmelo Debono

Tommaso Zammit

" L. Chapelle,

" Officer in Charge

PUBLIC REGISTRY OFFICE - VALLETTA - 17 March, 1949.

(Signed) V. Formosa, Asst. Director.

Series A.  
No. 22289

No. 21

PUBLIC REGISTRY

I, the undersigned, do hereby certify that the following is a true copy of an Act of Birth registered in the Public Registry Office of Valletta - Malta.

ACT OF BIRTH. Date of Act - Valletta 11th July, 1888.

Particulars respecting	Birth		Sex	Names given	Name or names by which the child is to be called
	Place	Hour, day, month and year			
the child	Sliema	4. a.m. 5th July, 1888	Male	Lorenzo, Giovanni, Fortunato, Rafaele	Lorenzo
Particulars respecting	Name and Surname	Profession, trade or other status	Age	Place of	Name and Surname of the father, and whether living or dead
the father of child	Carmelo Demartino	Chemist	29	Floriana	Lorenzo, dead
the mother	Teresa wife of the said Carmelo		19	Valletta	Dr. Giovanni Sciortino
the person making the declaration	The father				
The witnesses	Rafaele Bonello Carmelo Debono	Clerk Messenger	28 38	Zurrieq Valletta	Giuseppe Giovanni, dead

Date of the reception of the Act - 14th July 1888

Progressive number of the Inscription No. 2852

Signature of the Director or other Officer appointed to act in his stead

SIGNATURES of the person making the declaration

(Signed) Carmelo Demartino

of the witness

(Signed) Raff. Bonello

(Signed) Carmelo Debono

(Signed) Not. F. S. Camilleri, Director

(Signed) V. Formosa, Asst. Director.

PUBLIC REGISTRY OFFICE - VALLETTA - 17th March, 1949.

## EXHIBIT "A" PRODUCED BY PLAINTIFF'S MINUTE

11th JANUARY, 1950

Exhibit  
"A"  
produced by  
Minute  
11th Jan.,  
1950.

## AVE MARIS STELLA

Ego Infrascriptus Parochus Sanctae Parochialis et Matricis  
Ecclesiae.

## B.M.V. STELLAE MARIS

Terrae Sliema  
Melivetanae Dioeceseos

10 Universis praesentes litteras lecturis notum facio ac testor, in Bapt. III  
f.361 hujus Paroeciae Libris, quae sequuntur, inter coetera scripta  
reperiri videlicet:

A.D. millesimo nongentesimo (1900) mensis Julii die vero XVIII (18).

Ego Franc. Vincentius Manchè, Parochus, baptizavi infantem die  
decimaquinta (15) hujus mensis, natum ex Joanne Borg, fil. Josephi  
LL.D. et ex Virginia Debono, fil. Antonii conjugibus: Cui imposita  
sunt nomina: Stephanus Joseph, Pius. Patrini fuere Napoleon Taglia-  
ferro fil. Stephani uxorque ejus Maria e paroecia N.D. Portus Salutis,  
Civ. Vallettae.

20 Ipse matrimonium contraxit cum Maria Gratia Cassar Torreggiani,  
fil. Antonii die 20 Januarii 1931, in paroecia N.D. Portus Salutis,  
Vallettae.

(Firmatus) R. PAR. CAPURRO.

In quorum fidem has praesentes litteras propria manu subscripsi,  
sigilloque munivi.

Datum Sliemae, die 7 Jan. 1950.

(Firmatus) JOS. M. INGUANEZ,  
Parochus.

Exhibits  
 "A" to "M"  
 produced by  
 Minute  
 28th Feb.,  
 1950.  
 —continued.

EXHIBITS "A" TO "M" PRODUCED BY THE PLAINTIFF BY  
 MINUTE FILED ON 28th FEBRUARY, 1950.

"A"

55 Victoria Avenue, Sliema,  
 22nd April, 1948.

My dear Kath,

Yours of the 3rd. April to hand with one from Patricia and another from Helen, which I have already answered.

Mr. Towle's Letter re Mary and Bice was very welcome, and far from being interference on your part, I consider it was very thoughtful. A sum on account has already been paid on Ma's succession duty, and the balance, a matter of £10 or so, will be finally settled when the exact assessment is computed by the Collector of Imposts. Mother left all her property in usufruct to Mary and Bice during their spinster lifetime, and thereafter equally between her six children or their descendants. I gave Mary a copy of her will to send to you; she will probably do so in due course. Father died intestate as you know, and so far we have left all arrangements as they were during Ma's lifetime. When all details are settled, Mary will see that you come in line with the rest. I hope I am interpreting your wishes correctly. So far, the tendency is, according to the wishes of both Mary and Bice, that Dad's property be divided up between the six chips. I would not like to pronounce my views on the subject before I am satisfied on the type of arrangements Mary and Bice will eventually make. If Mary is too lazy to keep you informed, I shall try and post you up to date. In any case let me know if there is anything I can do.

Whilst on the business angle I shall make a business letter of this and put up a suggestion to you that I consider will be profitable.

On the 1st April 1948, a block in Kingsway, Valletta, was sold in Court for £32,500 or thereabouts. This block, totally demolished, was owned or co-owned by Ma and all her relations. In fact it was a family affair. When it was blitzed, Ma's share, 1/30th., was exchanged for a small house in Sliema. All Ma's relations in Malta had been notified of the date and time of the sale in Court, including my three children. According to Local Laws the property, as in this case, can be "recuperated" by either someone owning adjacent property with some form of "servitude" which does not exist in this case, or else, as in our case, by a member of the family when the property sold had always belonged to that family. I

Exhibits  
 "A" to "M"  
 produced by  
 Minute  
 28th Feb.,  
 1950.  
 —continued.

was instrumental in causing the sale in Court to be held, and I had hoped to "recuperate" (an Italian word) in my children's name. As they were officially notified at the last minute, though minors, I am precluded from exercising such privilege. Pat, Helen, and Jean are the only people who are in a similar position to that of my children. Your children had not been notified of the sale, and as they are the direct descendants of Ma, they are entitled to "recuperate" off the purchaser, the property at the same price as that at which it was sold on the 1st April 1948. I consider there will be some profit in the transaction as the  
 10 site, dead in the centre of Valetta, is worth more than £33,000; so, if you agree, you could cause a Power of Attorney to be drawn out by Patricia, Helen, and Jean, nominating me to act on their behalf in this connection only. The P. of A. has to be legal and valid in Malta, and for this purpose it has to be drawn out before a Commissioner of Oaths. I am asking my Lawyer, Dr. Alb. Magri, LL.D. to draft out an appropriate form for your guidance, and I shall enclose it herewith.

Such step would not entail your forking out any capital as I can arrange matters with my Bank locally, offering the privilege of the site itself in security for the advance of the requisite sum, and this will be  
 20 acceptable to the Bank I know.

The period during which this transaction can be carried out is four months calculated from the 22nd April 1948, so that P. of A. and all other details will have to be got ready by the 22nd August 1948.

I trust I have explained the situation clearly enough, in any case the draft P. of A. which I am enclosing should clarify the matter more.

We have not moved into the new house yet as I am waiting for some War Damage to be assessed before I can carry out some alterations which I consider necessary. The house is at St. Julians on the Birkirkara Road, it is called THE PALMS, and was owned and  
 30 occupied by the late Mr. H.R. LEE of the British American Tobacco Company. I do not know whether you had come across him. The gardens are the best part of the house, about three acres of land in all, completely surrounded by a 10ft. wall. I trust you shall see it some day.

No more for to-day; I shall post and try and gain time. I am giving your letter of the 3rd April to Mary hoping she will be persuaded to sit down and drop you some locals.

Much love to you and the children. I hope that 1948 will bring us all the best of luck which we all need.

40

Ever yours,  
 (Signed) ETTIE.



Exhibits  
"A" to "M"  
produced by  
Minute  
28th Feb.,  
1950.  
—continued.

"B"

609, Manukin Road,  
20th July, 1948.

My dear Ettie,

Your last air letter came very quickly — 10 days from Malta to Auckland. — I wish they would always travel so fast. I appreciate your interest in suggesting the business proposition and have just put it into Towle & Cooper's hands, so any queries they made are simply their own ideas. They have sent the girls' signatures for P. of A. They should be there in Malta in good time. They wrote to a public Notary in Canberra and got Pat's very promptly, then Helen and Jean went in from here. I am sorry you had a bit of bother about the succession returns. Mr. Towle had told me the authorities were not satisfied and he was annoyed with them as it meant delay in completing his work. Things are not quite wound up yet — it doesn't make any real difference to me, though I shudder to think what their account will be. I think Pat will write to you as she was not here when your letters came but if you like I could send them all to her and perhaps save more explanations. Do all the Grandchildren benefit by it or only P.H. & Jean? 10

Tell Lil to write please, and of course Mary and Bice. 20

The slab of Tony's grave is finished. It is plain but I think looks a good piece of work and they found a beautiful piece of granite for the head stone. I managed to get the grounds round cleared and it is looking tidy and clean.

Thank you for the prayers for Helen. She says she will need them! She is a grand worker and deserves success — and the grand part is she loves every minute of the work; I marvel at her perseverance. Jean usually fit and bright has a bad cold and spent the day in bed — most sorry for herself. 30

With love to Grace and the children and to you Ettie from  
KATH.

"C"

THE PALMS  
5th September, 1948.

My dear Kath,

Your letter of the 20th. July reached me in mid-August when I was very busy trying to get my original proposition through. I did not want to reply before I had definite news to give you, and to-day I can let you have some concrete information. 40

The children's P. of A. which had reached me in good time, was made use of only as far as Patricia and Helen are concerned. Jean had to be left out for safety reasons because of her age; though 18 is the legal minimum in Malta, as the P. of A. was drawn out in New Zealand where the legal minimum is 21 years, the opposite party might have tried to find some flaw in the proceedings. Believe me and tell Jean this is no slight on her. In any case she is free of hypothecations etc., and has no legal chains, which is to her advantage.

Exhibits  
"A" to "M"  
produced by  
Minute  
28th Feb.,  
1950.  
--continued.

I had great difficulty in raising the cash needed, £36,000 at 3½% interest, as my Bank would not advance the Capital to my nieces who are the real pre-emptors and had to show themselves as such. Legally Pat and Helen are the only pre-emptors whilst I am only a medium. After a lot of discussions I entered surety and this was accepted by the Bank. The pre-emption money plus expenses was deposited in Court on the 3rd. September, and I shall now wait for the other side, Mr. Vincenti, to release the property in favour of Pat and Helen. When this takes place I shall try and find a way of getting Pat and Helen clear of hypothecations, mortgage etc., with some profit. Such a step may entail another P. of A. and if so, when the time comes I shall ask Dr. Magri to draft out an appropriate one for you to vet. The form will have to depend on future developments.

One question you put to me in your letter is whether all Ma's grandchildren will benefit by the transaction. The answer is No; only your children as they are the only ones besides John Robert Briffa, that were eligible to exercise their right of pre-emption and have volunteered to offer their help to try and bring property that has been in Ma's family for over three hundred years back into the family. Whatever happens do not worry over the transaction. I shall shoulder as much responsibility as I can.

I like the date you chose for the signing of the P. of A. The first anniversary of dear Tony. I am sure he will pray for the complete success of the operation.

I passed your message to Mary, Bice and Lily. Mary says she writes often and tells me she is writing again soon.

There is one more thing I would like to know about the P. of A. and that is the cost of both. I would like to settle these at once and include the cost in the loan account which will thus contain all details.

We have been in our new house for over two months now and we all love it. Should you ever decide on coming over you can rest assured you will have another home with us.

Exhibits  
 "A" to "M"  
 produced by  
 Minute  
 28th Feb.,  
 1950.  
 —continued.

I shall wind up and post not to lose time. Congrats. on Tony's tombstone. I like your idea. Love to you and the children and a special encouraging cheer to Helen who is getting nearer her Degree.

Ever yours.

(Signed) ETTIE.

"D"

Mesrs. Towle & Cooper,  
 New Zealand.

THE PALMS,  
 Malta, 4th October, 1948.

10

Dear Sir,s

At once in answer to your of the 22nd September, 1948.

As regards the pre-emption of block in Kingsway, Valletta, this was carried out on the 3rd September, 1948, and Mr. Vincenti has not released the property yet. To-day he was officially notified to release, and he is being held responsible for damages should he fail to release by the end of the current week. Meanwhile I understand he has written abroad, I do not know where, for some information. I have just written to Mrs. K. Borg to keep her posted to date, and told her to beware of any trap that Mr. Vincenti might lay to try and keep the property in question. No doubt Mrs. Borg and her children will consult you or Dr. Magri before replying to any questions that might be put to them. I shall always pass on any information that I consider might be useful to you. 20

As regards Dr. Borg's estate I beg to be forgiven for not having made myself clear enough. Perhaps if I gave you the whole situation to read in conjunction with the notice of succession, the affair might become clearer.

On my father's death, Dr. Borg became ipso facto entitled to 1/6th of my father's property including furniture, silver etc. — By his will all that goes to his widow Mrs. K. Borg. 30

On my mother's death, 1/6th. of *her* property including *her* furniture, silver, etc., passes on to Patricia, Helen and Jean in equal shares. Dr. Borg's succession duty was reckoned on 1/6th of my father's estate.

May I be permitted, in view of the foregoing, to suggest that perhaps my mother's succession notice was misread. In it property owned in common by my father and mother was included, and as succession duty on my father's share had already been paid in 1925, it was deducted before arriving at a correct assessment of duty on my late mother's estate. As a matter of fact the latter duty has not finally been 40

assessed, and the Collector of Imposts has promised me a final assessment during the current month. Perhaps a copy of this final assessment might help you too.

Cash, furniture and conferments are all dutiable in Malta, and duty has been paid in the case of both Dr. Borg and my late mother Mrs. Virginia Borg. In the former the duty was included in the £2. 10. 0. as the comprehensive amount did not exceed £500 of estate; in the latter case they are shown separately.

10 If you find that you still require further elucidation on this subject, I shall only be too glad to try and clarify whatever point you might wish to raise.

Yours faithfully,  
(Sd.) S.J. BORG.

“E”

TOWLE & COOPER  
Barristers, Solicitors and Notary  
Public.

SAFE DEPOSIT BUILDING  
Auckland, C.I., N.Z.  
17th November, 1948

Colonel S.J. Borg,  
THE PALMS,

20 MALTA.

Dear Sir,

Thank you for your letter of the 4th ultimo. We do not think we have seen the succession notice of Mrs. Virginia Borg and that our difficulties arose from that. We do not need her Notice as it does not concern Dr. Borg's estate. However, your letter under reply now clears the matter up quite satisfactorily and we feel sure we will be able to settle the matter with our Revenue Authorities here.

30 Neither Mrs. Borg, nor her children, nor we ourselves have heard from Mr. Vincenti but if we do we will not reply direct to him but refer the matter to you or Dr. Magri. We hope by now Mr. Vincenti has released the property.

As requested by Mrs. Borg we enclose Birth Certificates of Patricia and Kathleen Helen certified under the respective hands and seals of the Registrars General at Fiji and New South Wales which we hope will be sufficient for your purpose.

Yours faithfully  
TOWLE & COOPER  
per:  
(Sd.) J.E. TOWLE.

Exhibits  
“A” to “M”  
produced by  
Minute  
28th Feb.,  
1950.  
—continued.

"F"

Exhibits  
"A" to "M"  
produced by  
Minute  
28th Feb.,  
1950.  
—continued.

30. II. 48.

Messrs. Towle & Cooper,  
*New Zealand.*

Dear Sirs,

I thank you for your letter of the 17th November which reached me yesterday.

It is a relief to hear that at last I managed to convey to you some form of description of my late brother's estate which can help you in the settlement of his estate in New Zealand. If there is any further information that you require I shall only be too glad to forward. 10

I thank you for the two birth certificates of Patricia and Helen Borg which have already been handed to Dr. Magri for presentation to Mr. Vincenti. Dr. Magri told me that Mr. Vincenti should now release the property. Later on I shall probably have to bother you again for another adjunct to the original P. of A's to enable me to withdraw any residue of cash left over in Court after Vincenti's payment of his due. To make sure that the full amount plus interest was deposited in Court, we erred on the right side purposely by adding a little bit to the actual amount due for safety reasons, and this balance will be left to the credit of Patricia and Helen Borg, but I have not yet 20 got powers to withdraw such sums, as this was not included in the original P. of A. I shall keep you informed of progress.

Only two days ago I wrote to Mrs. K. Borg and told her that the Birth Certificates had not reached me yet. Would you be kind enough to inform her that these have now arrived.

Yours faithfully,  
(Sd.) S.J. BORG.

"G"

22nd November, 1948.

My dear Kath.,

Yours of the 27th October reached me on the 10th of this month, which is better than normal. I delayed in answering as I had hoped of receiving the two birth certificates. As these have not arrived yet, I shall not wait any longer.

I am glad my warnings have reached you all. This was only a precaution on my part. I owe a letter to Jean and Helen. I shall answer

them in due course, but I do not want to worry Helen just now and shall delay that a bit until after her exam.

It appears that the Sydney people are slow in issuing a simple birth certificate. These two are necessary to justify the family tree in the ascendant. Any delay will naturally mean extra expense in Bank interest, but do not let this worry you.

My Geography is shocking, and were it not for a smart P. O. Official, the parcel would have gone to ICELAND. Why must we have places that spell almost alike?

Exhibits  
"A" to "M"  
produced by  
Minute  
28th Feb.,  
1950.  
—continued.

- 10 Mr. Vincenti does not feel he is being robbed, but he certainly feels disappointed. He thought he had it in the bag. He told me himself he would have done the same thing. The course is only natural. The property is exactly the same as that mentioned by Grandma in 1949. She had changed her share (1/30th) with a small house (EDITH) in Sliema in 1945, and as her share was taken over by me and therefore remained in the family, her grandchildren, once not notified of the sale in Court, have a right of pre-emption over all those portions which did not leave the family, in this case almost the whole lot. The P. of A. mentioned by Mary was in connection with a different thing,
- 20 the then projected sale of some property in Hamrun at a very good price, and poor Tony misinterpreted that to be that Grandma was in need. It was only an opportunity of a good deal with a view to increasing Grandma's income. Luckily it did not materialise as the same property is daily appreciating.

As regards Saverina you can rest assured that there is no feeling as you put it, on the contrary Vincenti and I are friends and talk over the matter whenever we meet. You can assure Helen on this score, I am trying to do what I know Tony would have done had he still been living.

- 30 I am interested to know of Helen's doings in her profession. If ever her trip to England materialises she might visit us here. I shall certainly go over to U.K. to see her. I do not want to influence her in any way as I know you can guide her very well and she seems to be a very sensible girl. Would a Pharmacy and a Clinic combined interest her? Just pump her a little. I cannot picture life in New Zealand; maybe if you have time you will send me some form of literature that tells one of rates, taxes, etc. At present we have a tyrannic Labour Government who have just introduced Income Tax and increased considerably Succession and Donation duties, with more
- 40 drastic legislation to follow.

I sincerely trust by now you will have won the Art Union prize

Exhibits  
 "A" to "M"  
 produced by  
 Minute  
 28th Feb.,  
 1950.  
 —continued.

and that you have already booked passages for Malta. May Xmas be a very pleasant one for you with Pat, Dr. Helen, and Jean. You may be seeing John Briffa as a Jesuit. Mary Rose went off to U.K. on 3 months holiday in search of adventure! Funnily enough the Wards went to see Mary once and have not been seen again. I have not seen them at all. Malta is small yet somehow when one wishes to meet somebody, it becomes almost impossible. I would like to meet them very much perhaps you will give me their address here.

Full marks for the tombstone and the wording which I read with the aid of a magnifying glass; I think it very befitting. Well done. I shall give the snaps to Mary for our archives at No. 10.

Some day soon I shall sit down and describe the whole of Saverina affair in detail putting au courant of the family tree. If the Birth certificates will not have left by the time you get this, perhaps you will try and hurry the Sydney crowd.

Grace, Greta, Diana, and Stephen join me in wishing you all the best. Tons of love to all.

(Signed) ETTIE.

"H"

609 Manukan Road,  
 27th October, 1948.

20

My dear Ettie,

Two letters and a cable to answer. Thank you for your prompt reply to mine of 22nd September, also for good wishes to Helen. Towle and Cooper rang me to say they had received your letter with due warning and said they would be on the lookout for anything from Vincenti. Nothing has come yet and they suggested in the event of any correspondence from him they would refer him to you, as being the one managing the affair — They have to send to Sydney for Helen's birth certificate and will post it with Pat's (which I have) to you as soon as it arrives. It takes 8 hours for mail to reach Sydney from here so if they do not dally at that end the delay should not be great. 30

I asked about the cost of P. of A. and Mr. Towle said it is trifling, we go into it later. Perhaps the cigarettes will counter-balance that. It was good for you to agree so quickly. I am only worried that through my bad writing you have sent them to Iceland not Ireland as that is how it looks in your letter. Fr. Mattiniol is holidaying in his native isle, Ireland or Eire as they call it now.

Has Mr. Vincenti any reason to think he is being robbed? It is strange that he was not more careful in the beginning for such a 40

valuable transaction. Tell me the whole story some day when you have time.

In June 1945 a letter from Grandma Virginia mentions that "Saverina's building went down and she thought of changing her damage share with a small house at Sliema." Would that be the property involved? That and a letter from Mary asking Tony for P. of A. for some transaction in December 1944, is all we knew about any business transactions. Tony did not seem very interested, just mentioned it when we received the letters, but no more.

10 Don't think I am worried, I am leavnig you in sole command and am grateful for your interest. Helen has written to you. I did not read her letter but she told me more or less what she said. She seems to think there may be some "feeling" about the whole thing and doesn't want to be the cause of any unpleasantness.

20 She wants to go to London after doing one year in Hospital here, to further her knowledge and gain experience. After that is in the lap of the gods — she may specialize in some branch or take up private practice. Tony said to me that he thought New Zealand would be the best place for Helen, but there is nothing binding in that and she can please herself.

We are very pleased that she has been accepted for Aukland General Hospital for next year as that means she will be near home — As she says "all she has to do now is to pass" — Please God, that will come to pass.

If I win the Art Union prize of £2,000, Jean and I will come over to see you all!

30 Pat thinks she may have a holiday at Xmas time and fly over to see us. I hope this will be possible, but is very doubtful as it is almost impossible to get a booking unless your name is down for months ahead. She is well and enjoying the life over there. She had a letter from M. Rose and was very pleased indeed to hear from her.

We are all very pleased to hear of Connie's engagement and wish her all good fortune and much happiness. Helen is writing to her.

This letter has gone on and on and you will be getting bored.

Jean joins me in love and good wishes to you, Grace and the three darlings.

Sincerely,  
KATH.

Exhibits  
"A" to "M"  
produced by  
Minute  
28th Feb.,  
1950.  
—continued.

40 P.S. — Louise and Ken Ward were wonderfully kind when we were



Exhibits  
"A" to "M"  
produced by  
Minute  
28th Feb..  
1950.  
—continued.

full of sorrow and worry. Give them a helping hand if you can Ettie and be sure to see them and give them our love.

I forget whether I told you of how they stayed with the girls while I could stay in the Hospital with Tony.

KATH.

"I"

609, Manukin Road,  
28th September.

Dear Uncle Ettie,

I'm sorry I don't write to you all in Malta, but there just is no time 10 to spare, but Mum gives you all the news of us all. I hope you don't think I am awful now, asking you what I am going to, but it all seems so strange this transaction going on in Malta. This is what I understood from your explanation — that the man (Vincenti or some such person) bought Grandma's share in the property and that now Pat and I are saying that we didn't know it was going to be sold and we want to buy it back, which we can force the man to let us do, by law. Is that correct? It seems a very strange thing to do — when the man has paid for his share and everything. It sounds as if "the 2 cousins from afar" will be most unpopular with the gentleman. If it is just 20 being done to get money for Pat and me, I'd much rather not have it, because we are quite happily provided for, thanks to darling Dad. Please don't think I'm awful saying all this; but I hate getting involved in law-suits etc. I'm sure I must have not understood properly, do please explain it all.

Love from Helen.

"J"

French Embassy,  
Canberra, A.C.T.  
7th Jan., 1949.

30

Dearest Uncle Ettie,

At last I am answering your letter dated September, 15th, sorry for the long delay. I suppose Auntie Grace and Greta and Diana have returned from their holiday in Switzerland by this time. That is one of the places I should really like to visit one day. I hope they write and tell me all about it.

Of course we are all feeling very pleased and proud of Helen, she certainly deserves everything she has gained by her perseverance and hard study. She was very thrilled with all your cables and has had

letters and messages from friends all over New Zealand including one from the Bishop of Auckland, — a great honour.

Exhibits  
"A" to "M"  
produced by  
Minute  
28th Feb.,  
1950.  
—continued.

I am hoping Mummy may come over here for a holiday and then we will return in April together, when I get my leave. How are you getting on with the Property, they seem to want so many certificates etc. I hope it all turns out well and to our advantage. You must be having a busy and worrying time Uncle Ettie, but I am sure everything will turn out well in the end. Yes, I think Daddy is looking after all our interests, particularly as I signed the P. of A. on his  
10 Anniversary, July 7th. May he rest in Peace.

I went to my cousins in the country for Xmas which I enjoyed as it was more homely being with relations. We had a big Xmas dinner with Turkey and Plum Pudding and oceans of cream, and everyone gave each other presents. I went riding over the farm, which is about 200 acres in all. It was grand to get on a horse again and I find that I can still ride, which is a good thing.

Have you seen anything of the Wards since their arrival in Malta? Her name is Louise (have forgotten her name before she was married) he is a New Zealander, and was in the Fleet Air Arm in Malta during  
20 the war. We saw quite a lot of them in Auckland, in fact I think you told them to look us up. He has returned to get a job in Malta. I would like their address, if possible.

Did you know that Jean has started at the Auckland Broadcasting Station and seems to like her work, she is hoping to broadcast sometime in the future.

We are all most interested in Connie's engagement. I suppose you have met her fiancé, he sounds very nice from Mary Rose's description. What class is Greta in now? We should have a lot more in common as we all went to the Sacred Heart, and the rules are the  
30 same all over the world.

Do you happen to know if Grandma received an air-letter from me before she died? I am afraid it may have come just after. It was telling her about the family's trip down to the South Island of New Zealand.

I wonder when I will be able to come and see "THE PALMS", it sounds and looks a lovely spot from the photos you sent us.

How are you all in Malta these days? Please give my love to Aunties Mary and Bice and of course my little cousin Stephen who has been looking after you, while the rest of the family were away.  
40 Also lots of love to Uncle Josie and Carmelina and my other three

Exhibits  
 "A" to "M"  
 produced by  
 Minute  
 28th Feb.,  
 1950.  
 —continued.

cousins. Helen was so pleased also to have a cable from her Godfather and Godmother.

I spent New Year in Sydney, it is about 189 mls. from Camberra and I was offered a lift down and back by car, so was very fortunate, as there was no expense in travelling incurred. Mummy's sister has a flat at the sea-side and I often stay with her and spend my time surfing and sunbathing.

How did you spend Xmas and New Year? Tell Auntie Grace to hurry up and write and tell me all the news of her trip.

I have been playing quite a lot of Ping Pong and we had the 10 Canberra Championship recently, in which I managed to win the Ladies Singles. There are some very good tennis courts nearby and an excellent Golf Course, but this is always very well patronised and during the week-ends when we want to have a few hits, it is very difficult to have a game.

I suppose you know that Helen has started at the Auckland Hospital as a House-Surgeon this year, she was to commence on New Year's Day and sounds very keen about the whole thing, She lives at the Hospital but occasionally has half-days off, when she can go home. So it will be nice for Mummy to have her popping in from time to 20 time.

Jean lives at home of course, and goes into the office everyday.

It is great news about John Briffa coming out to Australia. I am longing to see him and next time I go to Sydney will ring up and make enquiries.

I am enjoying some music on the wireless at the moment, some friends have gone to Melbourne on holiday and have lent me their radio while they are away for a month. I am sharing a room with a French girl and she speaks to me in English and I speak to her in French! It is quite a good idea we consider. 30

How is Malta looking now, are they getting on well with the re-building, and have they started a new Opera House yet? How is the "Ghar-id-Dud?" (not sure of the spelling!) The only words I remember in Maltese are "Yes" and "No": — "Eva" and "Le".

I am liking my position here very much, but wish it was a little closer to home, so that I could hop home in the week-ends, the ships are coming back on the run now, so that transport is improving at last and the Air Service is good, but very expensive, especially now that N.Z. has sterling currency and Australia has not. Hoping to hear from you soon. 40

Your loving Godchild,  
 PAT.

TOWLE & COOPER

"K"

P.O. Box 142,  
Auckland,  
New Zealand.

Exhibits  
"A" to "M"  
produced by  
Minute  
28th Feb.,  
1950.  
—continued.

Col. S.J. Borg,  
The Palms — MALTA.

19th April, 1949.

Dear Sir,

Your letter of the 30th of November last arrived just before Christmas. We hope the marriage certificate sent by us on the 23rd of 10 December arrived safely.

The writer was in touch with Mrs. Borg yesterday and we were wondering how matters with Mr. Vincenti were progressing.

Yours faithfully,  
TOWLE & COOPER

per:

(Sd.) J.L. TOWLE.

"L"

5. 7. 49.

Messrs. Towle & Cooper,  
New Zealand.

20 Dear Sirs,

Reference your query of the 29th April 1949.

All certificates were duly handed over and presented in Court. Mr. Vincenti is delaying matters in the hope of our losing patience and releasing the property in his favour. One Court decision has already been pronounced in our favour and an appeal has been lodged by Vincenti. The appeal has not been heard yet and the date of hearing not fixed yet. I shall keep you informed of any change in the situation.

"M"

TOWLE & COOPER.

P.O. Box 142.  
Auckland C.I. — N.Z.  
19th July, 1949.

30

Colonel S. J. Borg,  
The Palms,  
MALTA.

Dear Sir,

Thank you for your letter of the 5th instant. We are glad to learn that the first Court decision went in our favour. We note that Mr.

Exhibits  
"A" to "M"  
produced by  
Minute  
28th Feb.,  
1950.  
—continued.

Vincenti has appealed and that you will keep us informed of any change in the situation.

Yours faithfully,  
*TOWLE & COOPER*  
per:  
(Sd.) J.E. TOWLE.

Exhibit  
"A"—Loan  
Agreement.

EXHIBIT "A" — LOAN AGREEMENT PRODUCED  
BY PLAINTIFF'S MINUTE 15th MARCH, 1950.

—————  
This second day of September one thousand nine hundred and forty- 10  
eight (2. 9. 1948).

Before me, John Spiteri Maempel, Doctor of Laws and Notary Public, duly admitted and sworn and in the presence of the herein under mentioned witnesses personally came and appeared.

Paul Ferrante, Manager of the National Bank of Malta, son of the late Francesco Saverio born and residing in Sliema, for and on behalf of the said bank duly authorised for the purposes of this deed by a Resolution of the Board of Directors of the thirtieth (30) day of August of the same year 1948, of the one part.

And of the other part Lieutenant Colonel Stephen Joseph Borg, 20 son of the late John and of the late Virginia Debono born in Sliema and residing in Saint Julian's in the capacity as attorney of his nieces the Misses Patricia and Helen, unmarried daughters of the late Anthony Borg, Esquire, Doctor of Medicine and of Kathleen née Harnet born in Fiji Islands and residing at Epsom, Auckland, New Zealand, appointed by a power dated the seventh July of this same year 1948 hereto attached for registration as Document A.

The said parties are known to me the undersigned Notary.

In virtue of this deed the said Paul Ferrante, nomine, gives on loan to the said Misses Borg, jointly and severally between 30 them, represented hereon by Colonel Borg, who accepts on their behalf the sum of thirty six thousand pounds (£36,000) payable in the manner hereunder described for the purpose of pre-empting the block of buildings numbers (45, 46, 47) forty-five, forty-six, and forty-seven of Kingsway corner with numbers forty-six, forty-seven, and forty-eight

(46, 47, 48) of Saint John's Street Valletta actually demolished by enemy action from the possession of Gustavo Vincenti, Architect and Civil Engineer who purchased the same block of buildings in the Judicial sale by licitation held under the authority of the First Hall of His Majesty's Civil Court on the first day of April of this same year 1948, together with all the rights deriving to the said Vincenti from the said Judicial sale, as well as for the purpose of reconstructing the block of buildings aforesaid.

Exhibit  
"A"—Loan  
Agreement.  
—continued.

The appearer Colonel Borg, nomine, delegates the other appearer  
10 Paul Ferrante, nomine, who accepts, to lodge under the authority of the competent Court the sum of (£33213. 4. 1.) Thirty Three Thousand, Two Hundred and Thirteen Pounds Four Shillings and One Penny representing as to Thirty Two Thousand Five Hundred and Thirty Five Pounds and Fifteen Shillings (£32535. 15s.) the amount deposited and/or expended by the said Vincenti following the Judicial sale aforesaid and as to the balance of (£677. 9. 1.) six hundred and seventy seven pounds nine shillings and a penny interest at five per cent. per annum on the same deposit from the date of its lodging in Court up to  
20 the third day of September of this same year 1948, as well as to supplement the same deposit of £33213. 4.1. so as to include any other amount disbursed by the said Vincenti, whereof he is entitled to a refund, on the occasion of the same judicial sale, and thus ensure that the account finally deposited is legally valid and complete for the pre-emption to be exercised by Colonel Borg on behalf of the said constituents.

Furthermore the appearer Colonel Borg, nomine, delegates the other appearer Paul Ferrante nomine, who accepts to pay the balance of the said loan after deducting the amounts to be deposited in Court as hereinabove recited and the fees and costs of the present deed as  
30 well as any unused part of the amount to be deposited in Court as aforesaid and which will eventually be withdrawn by the Bank directly towards the reconstruction of the said block of buildings and the payment of workmen employed on such work against the production of duly certified "mandati".

This loan is being made and accepted on the following conditions:

- 1.) The borrowers will repay the loan within a period of six years from the date hereof. If they choose to pay instalments, these are not to be of less than one thousand pounds each.
- 40 2.) Interest will accrue at the rate of three and a half (3½%) per centum per annum on the amounts actually paid by the Bank in the execution of the delegations given to as above stated and will be pay-

Exhibit  
 "A"—Loan  
 Agreement.  
 —continued.

able half yearly in arrears on the last day of June and December of each year, until the repayment in full of the loan. Interest due for a period of not less than a year will be capitalised and produce interest at the said rate of three and a half per centum per annum.

3.) The borrowers will not give their consent to any party withdrawing any part of the amount deposited in Court by Vincenti, on the occasion of the Judicial sale referred to above if and when they are served with copies of applications filed to this effect, except with the approval of the Bank. For this purpose the borrowers undertake and limit themselves to file a note in the records of the said judicial sale to bring to the formal notice of the Court and all interested parties the exercise on their part of the right of pre-emption. 10

4.) The borrowers give their irrevocable consent to payments by the War Damage Commission being made to the Bank, the money so received shall be placed in a special account current as separate from the loan account in the name of the borrowers who will be at liberty to draw on the same account for the purpose of paying materials or labour in connection with the reconstruction of the said block of buildings against "mandati" over the signature of the engineer in charge of the works. The rate of interest allowed to borrowers in respect of this specified account shall also be three and a half per centum per annum. 20

5.) The borrowers bind themselves to pay to the Bank on account of the loan any reward they may stipulate in connection with any transaction in respect of the said tenement.

6.) The borrowers grant the Bank a general hypothec of all their property in solidum between them by way of security of repayment of the loan and of the payment of the interest, saving the privilege in favour of the Bank established by law, on the property above described.

The Bank will moreover have the option of retaining the buildings on antichresis until the payment of the capital and interest is settled in full. 30

7.) The borrowers undertake not to take over a portion of the block of buildings to be acquired by pre-emption until the above loan has been refunded, interest included — unless such sale is effected with the Bank's consent which shall not be withheld without good cause.

8.) In case of infringement of any of the covenants hereof on the part of the borrowers, the Bank will have the right to demand repayment of loan and the interest or of the balance thereof forthwith.

Finally as a further guarantee of the repayment of the said capital and interest the appearer Colonel Borg in his own name enters surety 40

of his said constituents jointly and severally with the same in favour of the other appearer Paul Ferrante, nomine, who accepts. Such guarantee will hold good and remain effective until the actual refund of the loan and settlements of relative interest.

Exhibit  
"A"—Loan  
Agreement  
—continued.

The payment of all the fees and expenses in connection with this deed are to be borne by the borrowers.

This done read and published the contents whereof having been duly explained to the parties hereto in Valletta, Kingsway, at the National Bank of Malta, in the presence of Professor Victor Caruana, advocate, son of the late Professor Giovanni residing at Sliema and Professor Joseph Henry Xuereb, advocate, son of the late Henry residing in Valletta.

(Signed) P. FERRANTE.  
" V. CARUANA.  
" S.J. BORG.  
" J.H. XUEREB.  
" DR. JOHN SPITERI MAEMPEL,  
*Notary Public, Malta.*

#### EXHIBIT "A"

Exhibit  
"A"—Letter  
15th Sept.,  
1948.

20 Letter dated 15th September, 1948 — Colonel Borg to Patricia Borg — produced by Plaintiff's Minute 3rd April, 1951.

Miss Patricia Borg,  
c/o French Legation,  
Canberra A.C.T.  
Australia.

"THE PALMS"  
15. 9. 48.

My dear Pat,

30 After a long delay I get down to answer yours of the 13th July, 1948. The cause of the delay is obvious to you. I was busy trying to get your P. of A. writing which I did on the 3rd of this month. There are several other formalities to be followed and these are now in the hands of my Lawyer.

The property which I pre-empted in your name used to belong to our common ancestors, Grandma Virginia had 1/30th share which she sold to me in 1944. The rest belonged to cousins and relatives of



Exhibit  
 "A"—Letter  
 15th Sept.,  
 1948.  
 —continued.

Grandma and so I tried to bring the whole back into our family. It was difficult to work with about 15 other co-owners, so I had it sold in Court. The local law allows the right of pre-emption to relatives who did not have a chance of bidding at the sale. You, Helen and Jean were the only three left out. The £32,000 odd pounds paid by the buyer are still deposited in Court and in due course will be withdrawn by the rightful co-owners. My share is just over £1,000 which I have not withdrawn yet.

I have now borrowed in your name £36,000, out of which I deposited £33,213. 4. 1. which should be withdrawn by the original 10 buyer. When he does so the property will be released to you and Helen. This last sum includes purchase price, expenses and legal interest due to Mr. Vincenti. I shall tell you more as and when developments take place. You need not worry as I hope to make you earn a little money.

I noticed the date of the signing of the P. of A. — the first anniversary of your dear father's death.

I am sorry to hear of Grandpa's death. I did not know. I shall write to condole.

Auntie Grace, Greta and Diana are having a holiday in Switzer- 20 land. Auntie Mary and Stephen are looking after me. Keep me posted up to date of your activities.

A special blessing from your Godfather.

ETTIE.

P.S. Ask as many questions as you like. I shall try and give the correct answer.

---

## EXHIBIT "A"

Exhibit  
"A"—Deed  
of Exchange  
of Property.

DEED OF EXCHANGE OF PROPERTY — PRODUCED  
BY PLAINTIFF'S MINUTE 3rd. APRIL, 1952.

—  
This Twelfth October One Thousand  
Nine Hundred and Forty-four.  
(12. 10. 1944).

Before me, Notary Giovanni Carmelo Chapelle, and in the presence of the undersigned competent witnesses, personally came and appeared:—

10 Virginia, the widow of John Borg, daughter of the late Antonio Debono and the late Francesca née Mifsud, born in Valletta, residing at Sliema.

Grace, the wife of Stephen Joseph Borg, daughter of Antonio Cassar Torregiani, Merchant, and the late Margherita née Cali, born in Valletta, residing at Sliema, appearing as a party hereto in the presence and with the consent and concurrence of her husband, the said Stephen Joseph Borg, Lieutenant-Colonel, Royal Malta Artillery, son of John, deceased, and the Appearer Virginia née Debono, born and residing at Sliema.

20 The Appearers are known to me Notary.

And, by virtue of these presents, the said Virginia Borg assigns and conveys to the said Grace Borg, in exchange for the property hereunder-mentioned, a one-thirtieth ( $\frac{1}{30}$ ) undivided portion of the block of buildings at Numbers forty-five, forty-six, and forty-seven (Nos. 45, 46 and 47), Kingsway, Valletta, corner with Numbers forty-six, forty-seven and forty-eight (Nos. 46, 47 and 48), Saint John Street, at present completely demolished through enemy action, free from and unencumbered by ground-rent burthens or fideicommissum and together with all the rights and appurtenances thereof.

30 The plot of ground formerly occupied by the aforesaid block of buildings measures fifty-eight decimal point eighty-six square canes (58. 86), and is bounded, on the north, by Kingsway, on the south, by the property of Professor Count Luigi Preziosi M.D., on the east, by Saint John Street, and, on the west, by the property of Joseph Formosa and Others. A plan of the aforesaid plot of ground is annexed hereto marked "A".

Exhibit  
 "A"—Deed  
 of Exchange  
 of Property.  
 —continued.

The value of the aforesaid one-thirtieth portion of the property, as fixed by the parties after they had been duly instructed by me Notary as to the importance of making a true statement in respect of the value thereof for the purposes of the Stamp Duty Ordinance, is of Six Hundred and Forty-three Pounds (£643).

In order to establish the root and origin of ownership, and to show that the portion of property above-mentioned is exempt from Succession and Donation Duty, it is hereby declared that Virginia Borg inherited that portion of property from her parents, Antonio Debono, who died on the Twenty-fifth December One Thousand Eight Hundred and Eighty-seven (1887), and Francesca Debono, who died on the Twentieth August One Thousand Nine Hundred and Eleven (1911), and, therefore, in both the one and the other case, before the Succession and Donation Duty Ordinances came into force. 10

The Appearer Grace Borg, in exchange for the portion of property herein made over to her, assigns and conveys to the said Virginia Borg the house (at Number Fifty (50), Graham Street, Sliema, known as Edith House, free from and unencumbered by ground-rent, burthens or fideicommissum and together with all the rights and appurtenances thereof. 20

The value of the aforesaid house, as fixed by the parties after they had been duly instructed by me Notary as to the importance of making a true statement in respect of the value thereof for the purposes of the Stamp Duty Ordinance, is of Eight Hundred Pounds (£800).

In order to establish the root and origin of ownership, and to show that the aforesaid house is exempt from Succession and Donation Duty, it is hereby declared that Grace Borg acquired the house by donation, from her father, Antonio Cassar Torregiani, by virtue of deed enrolled in the Records of Notary Rosario Frendo Randon on the Fifth of May One Thousand Nine Hundred and Forty, and that the conveyance thereof was notified to the Collector of Imposts and Lotto on the Fifth June One Thousand Nine Hundred and Forty (1940) by Notice Number One Thousand One Hundred and Sixty-seven (1167) and that the respective duty was paid on the Twenty-sixth August, 1940. 30

As warranty for the quiet possession and full enjoyment of the property herein exchanged and transferred, the parties making the exchange hypothecate each in favour of the other, reciprocally, the whole of their property in general, saving the provisions of article One Thousand Two Hundred and Thirty-seven of Ordinance VII of 1868.

The said Virginia Borg surrenders to the said Grace Borg all rights in respect of the payment of compensation for the war damage sustained 40

by the block of buildings aforementioned, excepting interest accruing on the value payment since the war damage occurred, which interest Virginia Borg reserves for herself, provided however that such interest shall with effect from this day accrue to the credit of the said Grace Borg.

Exhibit  
"A"—Deed  
of Exchange  
of Property.  
—continued.

The fees and costs in respect of the present deed shall be borne by Virginia Borg and Grace Borg one moiety each.

The said Grace Borg declares that she has received payment from Virginia Borg of the difference between the value of the two properties, amounting to One Hundred and Fifty-seven Pounds; and gives her due acquittance therefor.

Done, read and published — the parties having been duly instructed as to the import and purport hereof, — in Malta, at Number Ten, Victoria Avenue, Sliema, in the presence of Victor Curmi, Civil Servant, son of the late George, and George Curmi, of the Cable and Wireless Office, son of the said Victor, both residing at Sliema, witnesses.

(Signed) VIRGINIA BORG — GRACE BORG —  
STEPHEN J. BORG R.M.A. — V. CURMI  
— G. CURMI — GIO. CARMELO  
CHAPELLE,

20

*Notary Public, Malta.*

True Copy.

31st March, 1952.

(Signed) G.C. CHAPELLE.

Registered on 27th October, 1944.



**Defendant's.**



## EXHIBIT "A"

MINUTES OF BOARD MEETINGS PRODUCED BY  
THE WITNESS S. DE MARIA 29. 3. 1950.Exhibit  
"A"—  
Minutes of  
Board  
Meetings.

Demolished site in Kingsway, corner with St. John's Street, Valletta

Extracts from Minutes of Board meetings in re.

*Board meeting, May 7, 1947.*

..... An application by Col. S.J. Borg for an advance of £60,000 was then brought to the notice of the Board. The action of the Chairman in delegating his authority on the Committee of Advances to the  
10 Vice Chairman of the Bank in this particular and other similar circumstances was unanimously approved.

*Board meeting, July 15, 1947.*

..... The Board approved the grant of a Loan in Account Current to Col. S.J. Borg of a sum not exceeding £50,000 at the rate of 3½% per annum for the development of a site in Kingsway, corner with St. John's Street, for a period of ten years, subject to General Hypothecation, revision of interest rates after 10 years at the instance of either party and other provisions as outlined by the Chairman and as finally established by the Manager of the Bank on the lines  
20 suggested by the Legal Adviser to the Bank, Prof. V. Caruana, B.Litt., LL.D.

*Board meeting, March 17, 1948.*

..... The Board then took up the question of the purchase of a demolished site in Kingsway cornering St. John Street and *an adjacent damaged site* in St. John's Street for the purpose of erecting new premises to house the Bank. After having given the matter consideration the Board referred the whole question to a sub-committee, made up as under, for the purpose of investigating the position and referring on the feasibility or otherwise of acquiring the site in question.

30

A. CASSAR TORREGIANI, ESQ., O.B.E., *Chairman*,  
CAPT. THE NOBLE V. CHAPELLE,  
CHEV. F.K. GOLLCHER,  
CAPT. A. ZAMMIT CUTAJAR.



Exhibit  
"A"—  
Minutes of  
Board  
Meetings.  
—continued.

*Board meeting, March 29, 1948.*

..... The question of the demolished site in Kingsway, corner with St. John's Street, Valletta, to house the Bank, was then discussed and Chev. F.K. Gollcher was authorised to bid for same up to £32,000.

*Board meeting, July 28, 1948.*

..... The sub-committee appointed to consider the acquisition of new bank premises reported progress. The position was thoroughly reviewed and the matter was again referred to the sub-committee for further study.

*Board meeting, August 17, 1948.*

..... The sub-committee appointed to consider the acquisition of new bank premises reported progress and the advisability of the purchase by the Bank of the demolished site in Kingsway, Valletta, corner with St. John's Street was fully discussed, several arguments being brought for and against. The Chairman finally summed up and moved the following Resolution, which was seconded by Captain A. Zammit Cutajar:

RESOLVED "That the sub-committee be hereby  
"authorised to conduct negotiations  
"for the purchase of the demolished  
"site in Kingsway, Valletta, corner  
"with St. John's Street, for a sum  
"not exceeding £40,000".

The motion was not carried, five votes being cast in favour and five against. The Chairman declined to exercise the powers given him by the Statute and give the casting vote.

The following gentlemen then agreed to constitute a sub-committee:

CECIL J. CAMILLERI, ESQ.,  
J.C. DEGIORGIO, ESQ., O.B.E.,  
CHEV. F.K. GOLLCHER.

"To take the necessary steps to acquire from the Malta Govern-  
ment, by purchase or lease, the site in Kingsway, Valletta, of the site  
formerly occupied by the Law Courts, or part thereof, for the erection of  
bank premises thereon.

*Board meeting, August 23, 1948.*

..... On the suggestion of Lt. Col. A Arrigo, the Board then agreed to re-open and re-consider the question of the re-emption of

the demolished site in Kingsway, Valletta, corner with St. John's Street, in view of the altered circumstances of the case, following the publication, by the Government, of a new key plan for Valletta.

Exhibit  
"A"—  
Minutes of  
Board  
Meetings.  
—continued.

The matter was again brought forward and the Board agreed on the Chairman and Capt. A. Zammit Cutajar meeting Prof. J.H. Xuereb LL.D., this in view of Prof. Caruana's absence from the Island, to examine the legal aspects of the case.

*Board meeting, August 24, 1948.*

..... The Chairman referred to the Board the views expressed  
10 in their interview with Prof. J. H. Xuereb, as suggested in the last meeting of the Board.

The Board adjourned pending receipt of Prof. Xuereb's legal advice.

*Board meeting, August 30, 1948.*

..... The Board, having considered an application by Col. S.J. Borg, dated 23rd August, 1948, for an advance of £40,000, and having read the legal advice of Prof. J.H. Xuereb, LL.D., unanimously approved the following Resolution as proposed by A. Cassar Torregiani Esq., O.B.E. and seconded by Col. E.J. Vella, O.B.E., E.D.

20

RESOLVED: "That a loan of £36,000 be granted  
"To Col. S.J. Borg and his con-  
"stituents jointly and separately, for  
"a period of six years, at the rate of  
"3½% p.a., for the express purpose  
"of acquiring and exploiting the  
"demolished site in Kingsway,  
"Valletta, Nos. 45, 46, and 47, corner  
"with St. John's Street Nos. 46, 47  
"and 48, known as Saverina's Build-  
30 ings, the grant to be implemented  
"by a notarial deed, drawn up or  
"approved by Prof. J. H. Xuereb  
"LL.D., and entered into between  
"the parties concerned, stipulating  
"that the Bank will maintain the  
"privileges w i t h hypothecation,  
"according to law, on both the site  
"and the buildings erected thereon

Exhibit  
"A"—  
Minutes of  
Board  
Meetings.  
—continued.

"by depositing with the Treasury the  
"sum involved in the pre-emption of  
"the site and other expenses in rela-  
"tion to the cost involved, besides  
"defraying costs of works against  
"architect's certificates or "Mandati",  
"the whole not to exceed £36,000,  
"the War Damage to be paid to the  
"Bank.

It was further agreed that if possible, and in time, Professor 10  
Xuereb should show the draft deed to Prof. V. Caruana LL.D.

### EXHIBIT "B"

Exhibit  
"B"—Letter  
Towle &  
Cooper —  
Patricia  
Borg.

LETTER — TOWLE & COOPER TO PATRICIA BORG —  
PRODUCED BY DEFENDANT'S MINUTE 27. 4. 1951.

TOWLE & COOPER  
Barristers, Solicitors and Notary Public

R.P. Towle                      Notary Public  
A.N. Cooper

Cable and Telegraphic Address: "REBATO"  
Telephones: 43-900  
                  43-901

20

SAFE DEPOSIT BUILDINGS  
Corner High Street and Vulcan Lane  
Auckland, C.I., N.Z.  
1st. July, 1948.

Miss Patricia Borg,  
c/o The French Legation,  
Canberra,  
A.C.T., AUSTRALIA.

Dear Miss Borg,

30

Your mother tells us that she has already written to you about  
your uncle, Colonel Borg's, proposal regarding the family property in

Malta. We cannot be absolutely certain what the exact legal position is because it is quite different from anything in English law. However, it seems to be as follows —

Exhibit  
"B"—Letter  
Towle &  
Cooper —  
Patricia  
Borg.  
—continued.

Your Grandmother, Mrs. Virginia Borg, had an interest in a block of buildings in Kingsway, Valletta, which was destroyed by enemy action during the war. These buildings were sold at an auction held by the Court there to a Mr. Vincenti for £Stg.32,500. When a family has held property in Malta for a very long time and it is sold in these  
10 circumstances, any member of that family who has not received notice of the sale is entitled to recuperate off the purchaser the difference  
20 between the true value of the property and the price paid by the purchaser. You and your sisters were the only ones who did not receive notice of the sale and the difference is expected to be somewhere between £stg.400 and £stg.750. Your uncle thinks that you and your sisters can obtain this amount from Mr. Vincenti.

We have discussed the matter very fully with your mother and we have written to your uncle's solicitor in Malta, Dr. Alb. Magri, who has cleared up the points which seemed doubtful to us. As far as we can see, the transaction appears to be without risk and will return to  
20 you and your sisters something between £(N.Z.) 150 to 300 each net.

It is therefore our advice that you should proceed with the proposal. It is necessary for you to appoint someone in Malta to act on your behalf and your uncle has consented to act if you wish. We have prepared the necessary Power of Attorney for you and your sisters to sign. It is drawn the way Dr. Magri wanted it and gives your uncle power to do anything at all in Malta on your behalf in order to complete the proposed transaction. After that it will be of no effect.

We are today sending the Power of Attorney to Messieurs Davies and R.G. Bailey, Solicitors, Northbourne Avenue, Telephone 924. Would  
30 you call on them as soon as you possibly can and sign the document. They will return it to us and we will arrange for your sisters to sign it before we send it to Malta.

Please let us know immediately if there is any delay as the time is limited.

Yours faithfully,  
*TOWLE & COOPER*  
per:  
(Signed) J.E. TOWLE.

Encl.  
40 Air Mail.

Exhibits  
A, B, (C),  
D, (E), G.  
—continued.

EXHIBIT A, B, (C), D, (E), G. PRODUCED TOGETHER WITH  
DEFENDANT'S NOTE OF SUBMISSION 16. 5. 1951.

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"A"

JUDICIAL LETTER — COLONEL BORG  
TO Mr. G.R. VINCENTI, A. & C.E.

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In H.M. Civil Court, First Hall.

4th October, 1948.

TO: Gustavo Romeo Vincenti, Architect & Civil Engineer.

Colonel Stephen J. Borg, in his capacity as attorney for Patricia and Helen Borg, daughters of the late Dr. Anthony Borg, hereby gives 10 you four days within which to effect the re-sale of the property at Nos. 45, 46, and 47, Kingsway and Nos. 46, 47 and 48, St. John Street, which he recovered from your possession by the Schedule of Pre-emption filed on the 3rd September, 1948 — exercising the right by reason of consanguinity, as shown by the genealogical table already sent to you and by the supporting documents hereto annexed (Exhibits A, B, C, D).

Colonel Borg nonime warns you that, in default, he will withdraw the documents produced and take steps against you according to law. 20  
With the Costs hereof.

Without prejudice to the recovery of the damages sustained by reason of unjustifiable delay on your part.

(Signed) A. MAGRI,  
Advocate.

" G. MANGION,  
Legal Procurator.

"B"

JUDICIAL LETTER — COLONEL BORG  
TO Mr. G.R. VINCENTI, A. & C.E.

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In H.M. Civil Court, First Hall.

30th November, 1948.

TO: Gustavo Romeo Vincenti, Architect and Civil Engineer.

Colonel Stephen J. Borg, in his capacity as attorney for Patricia and Helen Borg, referring to your Judicial Letter of the 19th October,

last, hereby produces for the purposes of the right of pre-emption exercised by virtue of the Schedule filed on the 3rd September, 1948, a genealogical table together with the supporting documents establishing the title of consanguinity of the pre-emptors (Exhibits A, B, C, D, E, F), informing you at the same time that the property has not gone out of the family and that it rests with you to prove the contrary.

Exhibits  
A, B, (C),  
D, (E), G.  
—continued.

Colonel Borg therefore gives you four days within which to effect the re-sale of the property to his constituents, in default of which he will withdraw the documents produced and take steps against you according to law.

Without prejudice to all damages and costs.

(Signed) E. MAGRI,  
Advocate.

” G. MANGION,  
Legal Procurator.

“C”

*Schedule of Pre-emption 3rd September, 1948.*

(Vide Exhibit “B” produced by the Plaintiff together with the writ-of-summons).\*

20

“D”

### DEED OF DONATION

On this fifth day of May one thousand nine hundred and forty.

Before us, Rosario Frenco Randon, Doctor of Laws and Notary Public, and in the presence of the undersigned witnesses who possess all the qualifications required by law to constitute them good and valid witnesses personally came and appeared.

Of the first part Antonio Cassar Torregiani O.B.E. shipowner and Merchant, son of the late Agostino, born and residing in Valletta.

30 Of the second part Dame Grazia Maria sive Maria Grazia known as Grace wife of Lieutenant Colonel Stephen Borg, born in Valletta and residing in Sliema, who enters into this deed with the consent of her said husband Lieutenant Colonel Stephen Borg of the Royal Malta Artillery, son of the late Giovanni, born in Sliema and residing in

\* Exhibits p. 9.

Exhibits  
A, B, (C),  
D, (E), G.  
—continued.

Sliema, who appears for the purpose of authorising his said wife, who is the daughter of the said Antonio Cassar Torregiani.

Of the third part, the undermentioned Lieutenant Agostino known as Austin Cassar Torregiani who appears as special attorney appointed by the hereunto annexed writing marked "A" of his brother Captain Francesco Maria known as Frank Cassar Torregiani of the King's Own Malta Regiment, son of the said Antonio, born in Valletta and residing in Saint Julian's.

Of the fourth part Agostino known as Austin Cassar Torregiani of the King's Own Malta Regiment, son of Antonio born in Valletta and 10 residing in Sliema in his own name.

Of the fifth part Dame Filomena Maria known as Phyllis wife of the Most Noble Gerolamo De Piro D'Amico Inguanez, Baroncino di Budak, daughter of the said Antonio Cassar Torregiani, born and residing in Valletta, who enters into this deed with the consent of her said husband Gerolamo De Piro D'Amico Inguanez, landowner, son of the Most Noble Baron Igino, born in Casal Attard and residing in Valletta, who enters into this deed for the purpose of authorizing his said wife.

The Appearers are known to me aforesaid Notary.

Whereas it is the intention of the said Antonio Cassar Torregiani to 20 make four donations one to each of his said four children, the appearers enter this deed.

By virtue of this deed the said Antonio Cassar Torregiani transfers by title of donation to his said daughter Grace Borg, who accepts, the house in Sliema, Graham Street, number fifty (50) known as Edith House of the value of eight hundred pounds (£800).

— *Omissis* —

Done, read and signed after explanation having been made to the appearers of the contents of this deed, in Malta, in Saint Julian, at number twenty five of Strada Reale, in the presence of Giuseppe Borg 30

Carbott, broker, son of the late Guglielmo, and Edoardo Grixti, chauffeur, son of Giuseppe, both residing in Sliema.

Exhibits  
A, B, (C),  
D, (E), G.  
—continued.

(Signed) A. CASSAR TORREGIANI  
GRACE BORG  
S. BORG, Lieutenant Colonel  
A. CASSAR TORREGIANI  
PHYLLIS DEPIRO D'AMICO  
GEROME DEPIRO D'AMICO  
GIUSEPPE BORG CARBOTT  
EDWARD GRIXTI  
R. FRENDO RANDON,  
Notary Public, Malta

10

True Extract  
*Quod Attestor*  
This 16th May, 1951.

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

“E”

*Deed of Exchange of Property dated 12. 10. 1944.*

20 (Vide Exhibit “A” produced by the Plaintiff by Minute 3rd  
April, 1952).\*

“G”

FINAL ADJUDICATION IN SALE BY LICITATION  
1st APRIL, 1948

In H.M. Civil Court, First Hall.

Adjudication in sale by licitation  
“Col. S. Borg & Others

v.

Mgr. G. Chetcuti.

30 *Thursday, 1st April, 1948.*

In accordance with the Decree given by this Court on the 3rd March, 1948, the sale by licitation of the property described hereunder, ordered by *Judgment given on the 24th July, 1946* in re “Colonel Stephen Borg R.M.A. & Others v. The Right Revd. Mgr. Canon

\* Exhibits p. 53.



Exhibits  
A, B, (C),  
D, (E), G.  
—continued.

Gerolamo Chetcuti & Others”, was effected this day in the corridor of the building of these Courts, at and after 9 a.m., through Alfred Lewis, Crier:—

*The property.*

The block of buildings, demolished through enemy action, Nos. 45, 46 and 47, Kingsway, corner with Nos. 46, 47 and 48, St. John Street, Valletta, inclusive of the underlying cellar, with property owned by Major Amato Gauci on the south-east, Kingsway on the north-west and St. John Street on the north-east.

The property, which is included in the White Area of the Reconstruction Plan, and which carries with it the right to the amount of compensation payable by the War Damage Commission, is valued, free from and unencumbered by burthens and servitudes, £40,000. 10

The property is owned jointly by Grace, the wife of Colonel Stephen Joseph Borg R.M.A., Colonel Borg as head of the community of acquests, the vacant inheritance of Beatrice Apap, Marianna Debono Ciantar, personally and as usufructuary heiress of Salvatore Debono Ciantar, Mgr. Gerolamo Chetcuti, the vacant inheritance of Teresa Chetcuti, Daniele, Francesca, Stephania and Carmela Pellegrini Chetcuti, Albert Demartino, Beatrice, the widow of Lawrence Demartino, and Anna Maria Demartino (as heiress of her father John Demartino) — the said members of the Chetcuti, Pellegrini Chetcuti and Demartino families also as heirs of the *nuda proprietas* of Salvatore Debono Ciantar, and called to the sale by licitation on the Application of Colonel Stephen Joseph Borg R.M.A. and Others. 20

N.B. Extraneous parties will be admitted to the bidding and the property will be sold as described in the Civil Engineer’s Report sworn to on the 30th May, 1947, subsequently amended by Minute sworn to on the 3rd December, 1947.

During the auction, the following bids were tendered, subject to the condition that the parties withdrawing the price realised shall produce good and sufficient security:— 30

1. Antonio Theuma, Merchant, son of the late Francesco and the late Carmela née Borg, tendered a bid of £31,300.

2. Frederick K. Gollcher, Merchant, son of William and the late Carmela née Fleri Soler, tendered a bid of £32,100.

3. Gustavo R. Vincenti, Architect & Civil Engineer, son of the late Luigi and the late Concetta née Cutajar, tendered a bid of £32,200.

Whereas no person has appeared to tender a bid exceeding that last tendered, and whereas the last tendered bid has been announced three 40

times in succession, the above-mentioned property has been definitely adjudicated to Gustavo R. Vincenti A. & C.E. at the price of £32,200, subject to the condition that the parties withdrawing the price shall produce good and sufficient security.

Exhibits  
A, B, (C),  
D, (E), G.  
—continued.

(Signed) CARM. VELLA,  
Assistant Registrar.

EXHIBITS V, W, X, Y, (Z) PRODUCED TOGETHER  
WITH DEFENDANT'S PETITION 9. 6. 1951

Exhibits  
V, W, X,  
Y, (Z).

“V”

10

Sale Notice No. 208

Government Gazette (No. 9563) 20th June, 1947.

NOTICE

*Translation.*

BY DECREE dated 17th June, 1947, given by His Majesty's Civil Court, First Hall, on the Application of Colonel Stephen J. Borg, R.M.A. and Others, Friday, the 18th July 1947, at and after 9 a.m., has been fixed for the sale by licitation (ordered by Judgment given by His Majesty's Civil Court, First Hall, on the 24th July, 1946 in re “Colonel Stephen Joseph Borg, R.M.A. and Others v. The Right Reverend Canon Mgr. Girolamo Chetcuti and Others”) in the corridor of the building of these Courts, of the block of buildings Nos. 45, 46, 47 and 48, Kingsway, corner with Nos. 46, 47 and 48, St. John's Street, Valletta. This block of buildings, destroyed through enemy action, was flanked, on the South-east, by property belonging to Major Edgar Amato Gauci, on the North-west, by Kingsway, and, on the North-east, by St. John's Street. The surface measurement of the site is of 64 square canes. The block of buildings, which is included in the white area of the Reconstruction Plan, is valued, free from and unencumbered by burthens, £40,000; and the successful bidder is entitled to the compensation payable by the War Damage Commission.

The above-mentioned property belongs in common to:— Grace the wife of Colonel Stephen Joseph Borg, R.M.A.; the said Colonel Borg, as head of the community of acquets between him and his wife; the vacant inheritance of Beatrice Apap; Marianna Debono Ciantar, in her own name and as usufructuary heiress of Salvatore

Exhibits  
V, W, X,  
Y, (Z).  
—continued.

Debono Ciantar; Mgr. Gerolamo Chetcuti; the vacant inheritance of Teresa Chetcuti, Daniele, Francesca, Stefania and Carmela, brothers and sisters Pellegrini Chetcuti; Albert Demartino; Beatrice, the widow of Lawrence Demartino; and Anne Maria Demartino as heiress of her father John Demartino, absent from these Islands. The said Chetcuti, Pellegrini Chetcuti and Demartino are co-owners also in their capacity of bare heirs of Salvatore Debono Ciantar.

Extraneous parties will be admitted to the bidding.

N.B. The said block of buildings will be sold as described in the Civil Engineer's report sworn to on the 30th May, 1947. 10

Registry of His Majesty's Superior Courts, this 17th day of June, 1947.

(Signed) CARM. VELLA,  
Asst. Registrar.

“W” and “X”

### PROCES VERBAL SALE BY LICITATION

In H.M. Civil Court, First Hall.

*Thursday, 22nd January, 1948.*

In accordance with the Decree dated the 5th December, 1947, given by H.M. Civil Court, First Hall, on the Application of Colonel Stephen J. Borg R.M.A. & Others, the sale by licitation of the property described hereunder, ordered by Judgment given on the 24th July, 1946 in re “Colonel Stephen Borg R.M.A. & Others v. The Right Revd. Mgr. Canon Gerolamo Chetcuti & Others”, *had to take place this day* in the corridor of the building of these Courts, at and after 9 a.m., through Alfred Lewis, Crier:—

*The property.*

Omissis

During the auction, the following bids were tendered, subject to the condition that the parties withdrawing the price realised shall produce good and sufficient security:— 30

1. **E.G. Caruana Scicluna, Legal Procurator, son of the late Dr. G. Caruana Scicluna and the late Carmela née Vella, tendered a bid of £20,000.**

2. John Azzopardi, of independent means, son of the late Giorgio and the late Carmela née Guerrera, tendered a bid of £20,500.

3. Gustavo R. Vincenti, Architect & Civil Engineer, son of the late Luigi and the late Concetta née Cutajar, tendered a bid of £21,000.

*The sale was put off for continuation on Thursday 29th January, 1948, in the hope of more advantageous bids.* 40

Thursday 29th January, 1948.

During the auction, Antonio Theuma, Merchant, son of the late Francesco and the late Carmela née Borg, tendered a bid of £21,200.

The sale, in the hope of more advantageous bids, *has again been adjourned for continuation on the 19th, 26th, and 28th February, 1948.*

Exhibits  
V, W, X,  
Y, (Z).  
—continued.

Saturday, 28th February, 1948.

Whereas, during the auction, no person has appeared to tender a bid exceeding that last tendered on the 29th January, 1948, and whereas the last and highest bid tendered has been announced three times in  
10 succession, the property above-mentioned has been adjudicated to Antonio Theuma at the price of £21,200, subject to the condition that the parties withdrawing the price shall produce good and sufficient security.

(Signed) CARM. VELLA,  
Assistant Registrar.

1st March, 1948.

Gustavo R. Vincenti A. & C.E., son of the late Luigi and the late Concetta née Cutajar, has appeared personally and, interrupting the period of fifteen days established by law for the acceptance of higher  
20 bids, has tendered a bid of £21,300 for the property at Nos. 45, 46 and 47, Kingsway, corner with Nos. 46, 47 and 48, St. John Street, Valletta, at present demolished through enemy action. subject to the condition that the parties withdrawing the price shall produce good and sufficient security.

(Signed) GUSTAVO R. VINCENTI.  
I. 3. 48.

(Signed) CARM. VELLA,  
Assistant Registrar.

“Y”

30 DECREE ORDERING FINAL ADJUDICATION

H.M. CIVIL COURT, FIRST HALL.

Judge:

The Honourable Mr. Justice A.V. Camilleri B.Litt., LL.D.

The Court,

Upon seeing the procès verbal dated the 28th February, 1948, recording that the following property was adjudicated to Antonio Theuma for the sum of £21,200.

Exhibits  
V, W, X,  
Y, (Z).  
—continued.

## Omissis

Whereas Gustavo R. Vincenti A. & C.E. interrupted the period of fifteen days established by law for the acceptance of higher bids and offered the sum of £21,300 for the property above-described.

Appoints Thursday, *1st April, 1948*, between 9 a.m. and noon for *the sale by licitation and final adjudication* of the block of buildings above-mentioned, and orders that service hereof be made upon the co-owners and the party tendering the penultimate and the last bid.

## Omissis

This 3rd March, 1948.

10

(Signed) CARM. VELLA,  
Assistant Registrar.

## "Z"

*Final Adjudication in Sale by licitation 1st April, 1948.*  
(Vide Exhibit "G")\*

Exhibits  
"A" & "B".

EXHIBITS "A" AND "B" PRODUCED BY THE DEFENDANT  
17th JANUARY, 1952

## "A"

In H.M. Civil Court, First Hall.

In the matter of the sale by licitation: 20

Colonel Stephen J. Borg nomine &  
Others

v.

The Right Revd. Mgr. Canon  
Gerolamo Chetcuti & Others.

The Application of Bice, the widow of Lawrence Demartino.  
Respectfully sheweth:

As one of the parties in the above sale by licitation, it is in the interests of the Applicant that the property in question should be sold at the highest possible price, and, therefore, to the person who, without 30 fear of the possibility of the exercise of the right of pre-emption, may be induced to tender the highest bid.

\* Exhibits p. 67.

It is possible that, among the parties concerned in the licitation, Colonel Stephen J. Borg, and his wife, Grace, as the lawful representatives of their infant children and future issue, may be entitled to the exercise of the right of pre-emption. <sup>Exhibits</sup> "A" & "B",  
—continued.

The Applicant therefore respectfully prays that the advertisement of the sale and the Decree of Final Adjudication be served upon Colonel Borg and his wife Grace, as the lawful representatives of their infant children and future issue, for all the ends and purposes of the law.

(Signed) GIOVANNI CALLEJA,  
Advocate.

10

" E.G. CARUANA SCICLUNA,  
Legal Procurator.

This Sixth March, 1948.

Filed by E.G. Caruana Scicluna L.P. without Exhibits.

(Signed) S. BUGEJA,  
Deputy Registrar.

#### H.M. CIVIL COURT, FIRST HALL

20

Judge:

The Honourable Mr. Justice A.V. Camilleri B.Litt., LL.D.

The Court,

Upon seeing the Application.

Allows the demand.

This Eighth March, 1948.

(Signed) S. BUGEJA,  
Deputy Registrar.

"B"

30 In H.M. Civil Court, First Hall.

In the matter of the sale by licitation:—

Colonel Stephen J. Borg nomine  
& Others

v.

The Right Revd. Mgr. Canon  
Gerolamo Chetcuti & Others.

The Application of Bice, the widow of Lawrence Demartino.  
Respectfully sheweth:—

As one of the parties in the above sale by licitation, it is in the

<sup>Exhibits</sup>  
 "A" & "B",  
 —continued. interests of the Applicant that the property in question should be sold at the highest possible price and, therefore, to the person who, without fear of the possibility of the exercise of the right of pre-emption, may be induced to tender the highest bid.

It is possible that, among the parties concerned in the licitation, Colonel Stephen J. Borg, and his wife, Grace, as the lawful representatives of their infant children and future issue, as well as the persons mentioned in the Minute hereto annexed (Exhibit X), may be entitled to the exercise of the right of pre-emption.

The Applicant therefore respectfully prays that the advertisement 10 of the sale and the Decree of Final Adjudication be served upon Col. Borg and his wife Grace, as the lawful representatives of their infant children and future issue, and also upon the persons mentioned in the annexed Minute (Exhibit X), for all the ends and purposes of the law.

(Signed) GIOVANNI CALLEJA,  
 Advocate.  
 " R. DINGLI,  
 Legal Procurator,

This Sixteenth March, 1948.

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

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

20

H.M. CIVIL COURT, FIRST HALL.

Judge:

The Honourable Mr. Justice T. Gouder LL.D.

The Court,

Upon seeing the Application.

Allows the demand.

This Eighteenth March, 1948.

(Signed) J. CAMILLERI CACOPARDO, 30  
 Deputy Registrar.