

JUDGMENT 9, 1973

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In The Privy Council <sup>appeal</sup> 19 OF 1971

ON APPEAL

FROM THE COURT OF APPEAL, MALTA.

BETWEEN

EMMA the widow of ERIK W. GOLLCHER

Applicant (*Appellant*)

AND

WALTER BALDACCHINO *et*

(*Respondent*)

## ERRATA CORRIGE

Page 9, line 12 — “2nd July 1966” to read “21st July 1966”

Page 29, line 20 — “2nd July 1966” to read “21st July 1966”

Page 34, line 28 — “assume” to read “resume”

Page 37, line 32 — “Donvergier” to read “Douvergier”

Page 43, line 40 — “Donvergier” to read “Douvergier”

Page 44, line 10 — “Donvergier” to read “Douvergier”

Page 58, line 29 — “the strictly legal meaning” to read “a strictly legal  
meaning”.

**In The Privy Council      19 OF 1971**  
**ON APPEAL FROM THE COURT OF APPEAL,**  
**MALTA.**

Between:  
EMMA the widow of ERIK W. GOLLCHER  
Applicant (*Appellant*)

and

WALTER BALDACCHINO *et*  
(*Respondents*)

**RECORD OF PROCEEDINGS**

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**IN THE RENT REGULATION BOARD**

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**In The Privy Council      19 OF 1971**  
**ON APPEAL FROM THE COURT OF APPEAL,**  
**MALTA.**

Between  
 EMMA the widow of ERIK W. GOLLCHER  
 Applicant (*Appellant*)

and

WALTER BALDACCHINO *et*  
 (*Respondents*)

**RECORD OF PROCEEDINGS**

**DOCUMENTS**

*Translation*

**No. 1**

**Application**

In the Rent Regulation Board.

**No. 1  
 Application**

231/66

Emma the widow of Erik W. Gollcher

*v.*

Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the com-

munity of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia as head of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by a decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerie Valente and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity, who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have, who are absent from these Islands, and Romeo Said, who is absent from these Islands.

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The application of the said Emma Gollcher  
Respectfully sheweth:

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That by a public deed in the records of Notary Victor Bisazza of the 7th March, 1951 (Exh. "A") the applicant and the respondents and/or their predecessors in title extended the lease of tenement number one hundred and thirtyeight (138), St. Lucia Street, Valetta, at the rent of three hundred and thirty pounds (£330) a year, payable quarterly in advance, and with the modifications indicated in the said public deed.

That the aforesaid lease was for a period of eight years certain and eight years optional, which latter period is to expire on the 6th March, 1967.

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That the lessees assigned the said lease by two public deeds, one in the records of Notary Paul Pellegrini Petit of the 31st March, 1966 (Exh. 'B') and the other in the records of Notary Paul Pullicino of the 6th April, 1966 (Exh. 'C').

That neither in terms of the said public deed in the records of Notary Victor Bisazza of the 7th March, 1951 (Exh. 'A') nor in terms of the preceding public deed of the 6th July, 1943, in the records of Notary Giorgio Borg Olivier (Exh. 'D') did the respondents have the right to assign the lease.

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That the applicant was informed by the assignees by a letter

dated the 9th July, 1966 (Exh. 'E') that the aforesaid assignments had taken place and she promptly protested against the said assignments by a judicial letter of the 21st July, 1966 (Exh. 'F').

No. 1  
Application  
— *continued*

Wherefore the applicant respectfully prays that she be authorised by this Board to recover possession of the aforesaid tenement number 138, St. Lucia Street, Valletta, at the termination of the lease, that is to say on the 6th March, 1967, according to law, saving any other right competent to the applicant according to law.

10 Registry fee £1. 10s. od.

(Signed) René Cremona, LL.D.  
Rob. Dingli, L.P.

This 5th day of August, 1966.

Filed by Renè Cremona, Advocate, with six Exhibits.

This case is put on the list for hearing on the 6th October, 1966, at 9 a.m.

(Signed) VIC. APAP,  
Deputy Registrar.

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No. 2  
Reply.

No. 2

Reply

In the Rent Regulation Board.

Application No. 231/1966.  
Emma the widow of Erik W. Gollcher  
v  
Walter Baldacchino *et*

The Reply of the respondents.

Respectfully shew:

That the demand is unfounded as the power to sublet granted to the original lessees by the public deed in the records of Notary Bisazza of the 7th March, 1951, and by that in the records of Notary Borg Olivier of the 6th July, 1943, included the power of assignment both because there is no substantial difference between the two *vis-a-vis* the owner, and for this reason these expressions are used promiscuously, and also because in the present case the wording of the clause which allows the subletting provided the lessees remain responsible to the owner for the performance of the obligations is more appropriate to the hypothesis of an assignment. 10  
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Respondents make reference to the judgement delivered by the Court of Appeal in its Civil Jurisdiction in re "Rita Brown v Charles Gerada" on the 19th May, 1952.

(Signed) V. Caruana, Adv.  
Anthony Apap Bologna, L P.

This 4th day of October, 1966.  
Filed by Anth. Apap Bologna, L.P., without Exhibits.

(Signed) J. Brimmer,  
Dep. Registrar.

## No. 3

**Judgment, Rent Regulation Board,  
17th November, 1966.**

No. 3  
Judgment  
Rent  
Regulation  
Board.

## RENT REGULATION BOARD

Magistrate G.F. Gouder, LL.D, B.A., Chairman.  
O. Rizzo, A. & C.E.  
J. Camilleri Galea, A. & C.E.

Sitting held on the 17th November, 1966.

Application No. 231/66

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Emma the widow of Erik W. Gollcher

v

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Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia as head of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by a decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerio Valente, and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity, who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli

and the said John Natoli as head of the community of acquests and for any interest he may have, who are absent from these Islands, and Romeo Said, who is absent from these Islands.

### The Board,

The applicant's demand to recover possession of tenement number 138, Saint Lucia Street, Valletta, let to the respondents, at the termination of the current lease on the 6th March, 1967, on the ground that the latter have assigned the lease of the said tenement without her consent;

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Having seen the reply whereby the respondents opposed the demand on the ground that the power to sublet granted to them included the power to assign, both because there is no substantial difference between the two *vis-a-vis* the owner, and for this reason these expressions are used promiscuously, and also because the wording of the clause which allows the subletting, provided the lessees remain responsible to the owner for the performance of the obligations, is more appropriate to the hypothesis of an assignment;

Having heard counsel for the contending parties;

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Having seen the Exhibits produced and all the acts of the case;

Considers:

That the facts which gave rise to these proceedings are not in dispute and may be summarised, so far as is relevant to this case, as follows:

By a deed in the records of Notary Victor Bisazza of the 7th March, 1951, in view of certain improvements which the lessees undertook to carry out in the tenement, the lease was extended for a period of eight years certain and eight years optional from the date of the deed, and a new clause (No. 7) was included to the effect that "the tenants are empowered to sublet the said premises or part thereof, provided that they will be responsible for the performance of all the obligations undertaken by them in virtue of this deed". By two deeds in the records of Notary Paul Pellegrini Petit of the 31st March, 1966, and of Notary Paul Pulicino of the 6th April, 1966, respectively, the respondents transferred to "Regency Estates Limited" the *utile dominium* of tenement 254 Kingsway, Valletta, and also assigned their right of

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tenancy of the tenement *de quo* in the following words: "This sale also includes the cession in favour of Regency Estates Limited of the right of lease of the adjoining property presently held by vendors and by them sublet to third parties, namely premises at number 138, Saint Lucia Street, Valletta, as per two deeds one in the records of Notary George Borg Olivier of the 6th July, 1943, and the other in the records of Notary Victor Bisazza of the 7th March, 1951". By the letter of the 9th July, 1966, Regency Estates gave notice of the said assignment to the applicant, informing her that "this Company has acquired the right of sublease of the premises . . . etc." and the applicant replied by the judicial letter of the 2nd July, 1966, whereby she refused to acknowledge what had taken place which amounted to an assignment of lease and not to a sublease, and instituted the present proceedings;

That the respondents submit that assignment of lease and sublease are substantially the same, especially *vis-a-vis* the owner. This submission is evidently based on some text writers who comment on section 1717 of the French Code and 1573 of the Italian Code which are substantially identical to section 1703 of the Maltese Civil Code, which grants the lessee the right to sublet the thing held on lease or to assign the lease unless this is prohibited in the contract.

That in fact some writers such as Ricci and Laurent, basing themselves on the authority of Pothier who does not distinguish between sublease and assignment of lease for the purposes of the said section, hold that in the said section by sublease the law meant sublease of part of the tenement whilst by assignment of lease it meant the sublease of the whole tenement and not a true assignment in the juridical sense of an assignment of a right or sale of an incorporeal thing.

That this opinion appears to have been followed by the Civil Court, First Hall, in the judgment "Brown v Gerada" delivered on the 3rd July, 1951, where it said: "that it appears that the parties, rather than an assignment of the lease or a total sublease in the traditional sense and as the said expression in section 1703 of the Civil Code is understood to mean, wanted to effect an assignment of the right to the enjoyment of the tenement, that is to say a true and proper alienation".

That other writers, on the contrary, maintain that in that section assignment of the lease should signify a true and proper juridical assignment. This latter interpretation appears to be better

No. 3  
Judgment  
Rent  
Regulation  
Board  
— continued

tounded. In fact it is a principle of legal interpretation that when the legislator makes use of a word which has a certain juridical meaning he will be using it in such juridical sense, and not in another. Moreover when in sub-section (2) of the said section the legislator provides that such power may be restrained, he mentions expressly that such restraint may be total or partial. Now had the legislator intended to use the words "assignment of the lease" as synonymous with a total sublease, and the words "to sublet" as a partial sublease, the words "such restraint may be total or partial" in subsection (2) would have been useless, and it would have been enough to say that such power may be restrained, because he would thus have already covered both partial and total sublease; and it is another principle of interpretation that "*illa interpretatio capienda est ut dispositio magis valeat quam pereat*". 10

That, therefore, the Board cannot but follow the opinion of those writers including Marcadé (Vol. IV on section 1717) who says: "To assign a lease or to sublet are not, therefore, the same thing . . . in subletting, the lessee becomes himself a lessor; whereas when he assigns his lease he makes an assignment, a sale of his rights; so that one cannot understand how Troplong, after having himself, although very summarily, pointed out this difference (n. 129), tells us further on (n. 134) that to sublet is to assign a part of one's own lease!" 20

That the Court of Appeal has also followed this doctrine. In the case "Brown v Gerada" (Vol. XXXVI, I, 97) that Court said: "As was held by this Court on the 12. 3. 51 in 'Blackman v Apap Bologna', subletting and assignment of lease are not, therefore, one and the same thing", and the said Court went on to say, "It is to be admitted, however, that in practice they are promiscuously used, and it is therefore, the duty and task of the judge to try to interpret the intention of the contracting parties. One should follow the advice of Pacifici Mazzoni who, having prefaced that "assignment of lease may be prohibited but not subletting and vice-versa" says "but when such prohibition is not formally limited to either one of the two, it extends to both, although it is expressed for only one of them." 30

Nor can it be said that subletting and assignment of a lease are substantially identical *vis-a-vis* the owner. In fact although some writers, on the strength of the principle that one may assign one's rights but not one's obligations hold that the assignor remains responsible to the owner for the performance of the obligations 40

arising from the lease, the prevailing doctrine is to the contrary. Laurent himself, who under paragraph 208 (*op. cit.*) says that, "The right of enjoyment is assigned. But the obligations inherent in such enjoyment remain the responsibility of the lessee. The latter, therefore, has to continue to pay the rent", immediately goes on to say "The contrary opinion is generally taught. It is said that the assignee of a lease is liable to the lessor just the same as the lessee, his assignor, himself was, one concludes therefrom that whatever the price of the assignment he may be made by the  
10 lessor to pay all the rents and ground rents; and concludes: "Court decisions conform with doctrine". In fact Baudry-Lacantinerie (*Locaz. I n. 1053 (7)*) says "the assignee has to comply with the conditions of the lease, in derogation of the common law" and Pacifici Mazzoni (*Della Locaz. n. 176, 40*) says "the assignee has a direct action against the lessor to make him comply with all the obligations assumed *vis-a-vis* the lessee; but vice-versa the assignee is directly responsible to the lessor for the performance of the obligations arising from the contract". This is a logical consequence of the assignment. In fact as Borsari says (*Commentario,*  
20 *Vol. IV, part I art. 1573 § 3658*), "the lessee who no longer has any *reliquiae conductionis*, having divested himself of any connection with the thing let, has no other action against the assignee except the personal ones which derive to him from the sale, whilst the assignee takes the place of the first lessee for those effects which we shall explain later on."

That doctrine and jurisprudence have occupied themselves with the question of the prohibition imposed in a contract of lease in derogation of the right which the common law gives to the lessee to sublet and assign the lease in the course of the lease and  
30 with the relative question as to whether the prohibition of one of them amounts also to a prohibition of the other, and as far as this Board has been able to ascertain, they have not occupied themselves with a question similar to the one in issue here, where the point is not one of a prohibition which derogates from the common law, but of a permission granted to the lessee in derogation of the special law, that is to say of Chapter 109, which gives the owner the right to recover possession of the tenement, that is to enforce his right to the restitution of the tenement let, at the end of the lease, if the lessee has sublet or assigned the lease dur-  
40 ing its course without the express consent of the owner. Therefore one has to be cautious in the application of the principles enun-

ciated in the said doctrine and jurisprudence, because the position is more or less reversed.

That on the matter of the prohibition of subletting, all the writers are in agreement that such prohibition involves also that of assignment of lease and this principally on the ground that whoever does not want the lesser thing does not want the greater. In fact, as Baudry-Lacantinerie (*loc. cit.*) say "this latter transaction (that is to say the assignment) appears to us to be much more radical than the first." In fact, in the case of assignment there is the substitution of the lessee, and the severance of relations between the lessor and the original lessee. Even Laurent (*op. cit.* n. 215), notwithstanding that he follows the theory that to assign the lease is synonymous with a total subletting, says that "the right to assign the lease is a much more extensive right than the right to sublet. Wherefrom it follows that whoever does not want the lesser thing cannot, with more reason, want the greater".

That, however, this argument cannot be transported *sic et simpliciter* to the case where subletting is permitted by the lease agreement, because the argument operates *a contrario*, in the sense that it cannot be logically said that whoever permits the lesser things wants also to permit the greater. On the contrary in this case the principle applicable is that "*inclusio unius est exclusio alterius*". When the contending parties entered into the new lease agreement and the applicant granted the respondents the power to sublet — a power which as appears from the said contracts of assignment, the respondents made use of when they declared that the lease which they were assigning to Regency Estates Limited was "the adjoining property presently held by vendors and by them sublet to third parties" — it is not logical to hold that had she wanted to grant also the power of assignment she would not have mentioned it expressly, when this is a more radical transaction, which involves relations and consequences quite different from those of a subletting.

That the respondents submitted that the condition attached to the said power "Provided that they will be responsible for the performance of all the obligations undertaken by them in virtue of this deed", is more appropriate to assignment than to subletting, and from this they want to infer that the parties had in mind also assignment. This argument in the opinion of the Board, does not appear to be decisive. It is true that according to law the subletting does not create any relations between the lessor and the sub-lessee, but the said condition emphasizes also that the ap-

plicant intended to make it clear that she did not want to enter into lease relations with other persons except with the respondents, or their predecessors in title and, therefore, wanted to exclude assignment, which necessarily would have placed her in lease relations with the assignees. Besides, the deed in the records of Notary Bisazza was not one of a lease *sic et simpliciter*, and in that deed the respondents undertook special obligations besides those of lessees, such as the building of the third storey of the tenement, and by the clause above-mentioned the applicant wanted to place upon the respondents the responsibility of making such improvements, even in the event of their subletting the tenement and imposing the same obligation on the sublessee;

That it is also to be observed that Chapter 109 requires the express permission of the owner for the subletting or assignment, in order that the lessee may avoid the recovery of possession of the tenement at the end of the lease.

That there can be no doubt that the transaction entered into by the respondents and the Regency Estates Limited is a true and proper assignment of the right of lease of the tenement in question, and not as set forth in the letter which the said company sent to the applicant informing her that "this Company has acquired the right of sublease of the premises". This is not even contested by the respondents, because in fact their allegation was never that they have only affected a subletting to that company, but that they had the power to make such assignment;

On these grounds:

Allows applicant's demand and authorises her to recover possession of the tenement in question on the termination of the current period of lease on the 6th March, 1967; in view of the circumstances of the case each party is to bear its own costs. Counsel's fees ten shillings per sitting, not to exceed one month's rent.

(Signed) G.F. Gouder.

C. Micallef,  
ff. Deputy Registrar

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IN H.M. COURT OF APPEAL

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**No. 4**  
**Application of Appeal**

**No. 4**  
**Application**  
**of Appeal.**

In Her Majesty's Court of Appeal.

Application Number 231/1966.

Emma the widow of Erik W. Gollcher

v

10 Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia, as head of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by a  
20 decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerio Valente, and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have, who are absent from these Islands, and Romeo Said, who is absent from these Islands.

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The application of all the respondents.

Respectfully shew:

That by an application filed before the Rent Regulation Board

on the 5th August, 1966, the said Emma the widow of Erik W. Gollcher prayed for permission to recover possession of tenement number 138, Saint Lucia Street, Valletta, let to the respondents, at the termination of the current lease on the 6th March, 1967, on the ground that the latter had assigned the lease of the said tenement without her consent;

That the said Rent Regulation Board by its judgment of the 17th November, 1966, allowed the demand of the applicant Emma Gollcher and authorised her to recover possession of the tenement in question at the termination of the current period of lease on the 6th March, 1967, and ordered that each party was to bear its own costs in view of the circumstances of the case; fees payable to counsel, at the rate of ten shillings per sitting, not to exceed one month's rent. 10

That the appellants feel aggrieved by the said judgment and, therefore, they enter an appeal therefrom before this Honourable Court.

That the whole dispute in this case is solely one of interpretation of the clause in the lease whereby the lessees were granted the power to sublet the tenement provided they remain responsible towards the lessor. Does this clause include the power on the part of the lessees to assign their rights of lease? This Court in its authoritative judgment in re "Brown v Gerada" (Vol. XXXVI, 1, 97) decided most reasonably that this is not a question which can be determined *a priori* and on the basis of doctrinal criteria but a question of interpretation of the will of the contracting parties and that, as a rule, the power (or the prohibition) to sublet extends to assignment of lease and viceversa as in common practice these words are used promiscuously; this promiscuous use is quite justified because such permission or prohibition concerns the relations between the lessor and the lessee and in these relations there is no substantial distinction between subletting and assignment of lease; in both cases the lessee substitutes a third person in the enjoyment of the thing and it is indifferent to the lessor whether such substitution is effected by a contract of assignment of the lease or by one of subletting as his rights are in either case perfectly the same. The distinction between assignment of lease and subletting exists only in the relations between the lessee and the sublessee or the assignee of the lease (*vide Pacifici Mazzoni — Trattato delle Locazioni para. 175, 176, 177 and 178*); in fact even subletting involves an assignment by the lessee to the sublessee of his rights of enjoyment of the tenement 20 30 40

and it is not called assignment simply because, always in the relations between the lessee and the sublessee only, it reproduces the form of a lease;

10 It follows, therefore, that, saving some particular circumstances, which in this case do not apply, or an express stipulation to the contrary, the power (or the prohibition) to sublet includes that of assigning the lease. The argument in the judgment appealed from that this reasoning does not hold good when the law applicable is not the ordinary law but the special law governing the reletting of urban property cannot be upheld. If the interpretation of the clause in question as maintained by the appellants is correct, then such clause expressly grants the power of assignment of the lease. The special law — which is now a permanent statute — makes no difference between subletting and assignment and this most reasonably so because in both cases the enjoyment of the thing passes equally from the lessee to another person; for the same reason it is to be said that when the lessor has expressly granted to the lessee the power to transfer his rights to another person, without forfeiting the benefits of the law, the lessee is entitled to think that even if only one form of such transfer has been mentioned, any form is included — because whatever may be the other form of transfer, the result is always the same: the transfer of the enjoyment of the thing from the lessee to another person. So much so that one can hardly imagine that a lessor who grants the lessee the power to assign the lease is prohibiting him from subletting it or that a lessor who grants the lessee the power to sublet is prohibiting him from assigning the lease. The power or prohibition should reasonably apply to both. In the present case had the appellants not been more than convinced of this they would have entered into a sublease — and, then, how would the position of the lessor have been different? The lessees, in this case, have carried out building improvements costing thousands of pounds and it would have been equally easy for them to effect a sublease instead of an assignment but it never occurred to them that this would make any difference to the lessor or that the latter would take advantage of a subtlety which does not regard his relations with the lessee and which does not cause him any prejudice. It has been repeatedly decided by this Court that the provisions of this law which give to the lessor the right to recover possession of the tenement are meant to safeguard his real rights and not to enable him to take advantage of acts which are not

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prejudicial to him so as to cause the lessee to lose the benefit afforded to him by the law.

That it need not be said that in the case of an assignment as well as in the case of a subletting, the original lessee is not freed of the obligations arising from the lease agreement as one may assign one's rights but one cannot assign one's obligations by substituting another debtor for oneself without the consent of the creditor. This is obvious by way of a general argument but, moreover, in the present case, it is expressly stipulated; and the said stipulation — that is to say that the lessees shall continue to be always responsible to the lessor — is another strong argument in the sense that the parties understood and agreed that the lessees were to have the power to sublet or assign the lease. It is true that in the case of an assignment the assignee assumes the obligations of the assignor towards the owner, but this means solely that the owner will have two debtors instead of one — after all, this takes place also in the case of a subletting (*vide* Pacifici Mazzoni *op. cit.* para. 178) — but in the event of a subletting the sublessee is not bound towards the lessor except within the limits “of what is stipulated in the sublease of whom he is the debtor at the time of the intimation” whilst the assignee is bound without any limitation so that assignment is more advantageous to the lessor than subletting.

That appellants, therefore, respectfully pray that the said decision given by the Rent Regulation Board on the 17th November, 1966, be reversed and that the demand of the applicant be disallowed with costs.

(Signed) V. Caruana, Adv.  
Gius. Pace Bonello. L.P.

This nineteenth (19th) day of November, 1966.  
Filed by Giuseppe Pace Bonello, L.P., without Exhibits.

(Signed) J. Brimmer,  
Dep. Registrar.

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**Emma Gollcher's Reply**

In Her Majesty's Court of Appeal.

Application Number 231/1966.

Emma Gollcher, a widow

v

Walter Baldacchino *et*

The Reply of the said Emma Gollcher, respondent

Respectfully sheweth:

10 That the judgment appealed from is just and should be affirmed and, therefore, respectfully prays that that judgment be affirmed by this Court, the appeal being disallowed with costs against the appellants.

(Signed) René Cremona, Adv.  
Rob. Dingli., L.P.

This thirtieth (30th) day of November, 1966  
Filed by Robert Dingli, L.P., without Exhibits.

(Signed) Paul Micallef,  
Dep. Registrar.

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## No. 6

## Appellants' Note of Reference

In Her Majesty's Court of Appeal

Application No. 231/1966

Emma the widow of Erik W. Gollcher

v

Walter Baldacchino *et*

The Note of the appellants.

Who pray that leave be given by this Honourable Court to submit the annexed note of reference marked 'X'.

10

(Signed) V. Caruana, Adv.  
J. Busuttil, L.P.

This twentieth (20th) day of January, 1967.

Filed by Joseph Busuttil, L.P., with a note of reference.

(Signed) J.B. Micallef,  
Deputy Registrar.

In Her Majesty's Court of Appeal.

Application No. 231/1966

Emma the widow of Erik W. Gollcher

v

Walter Baldacchino *et*

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Appellants' note of reference to the authorities cited in the oral argument:

1. Baudry Lacantinerie — Locazione Vol. I para. 1057.
  2. Troplong — Contrat de Locage.
  3. Pacifici Mazzoni — Locazione paras. 175, 176, 177, 178.
  4. Laurent n. 208, Vol. 25.
  5. Appeal "Brown v Gerada" (Vol. XXXVI. I. 97).
  6. Marcadé — Code Civil art. 1717 T. 6 — 1868 Edit. p. 444
- which reads: "It is quite true that, in effect, as we have seen above, 30

assignment of the lease is something more than a subletting; but we have also said that this is so only between the lessee and the third party, and not *vis-a-vis* the lessor for whom the agreement made by the lessee is *res inter alios acta*. For the lessor an assignment produces no greater effects than a subletting: when the latter lays down the prohibition, it is because he does not want the thing to pass to a person other than the one with whom he has entered into an agreement and in whom he has confidence: and as the thing would pass just the same to a third party by assignment,  
 10 the two acts, although they are different the one from the other in the relations between the lessee and the third party, are on equal terms in the relations between the lessor and the lessee and the prohibition of one involves the prohibition of the other”.

(Signed) V. Caruana, Adv  
 J. Busuttil, L.P.

No. 6  
 Appellants'  
 Note of  
 Reference  
 — continued

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No. 7

Emma Gollcher's Note

No. 7  
 Emma Gollche  
 Note.

In Her Majesty's Court of Appeal

Application No. 231/1966

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Emma Gollcher, a widow

v

Walter Baldacchino *et*

The Note of the applicant respondent

Who for the better understanding of the point at issue in this cause produces the annexed note (Exh. A).

(Signed) René Cremona, Adv.  
 Rob. Dingli, L.P.

This 21st day of January, 1967.  
 Filed by Robert Dingli, L.P., with a note.

30

(Signed) G. Izzi Savona,  
 Dep. Registrar.

In Her Majesty's Court of Appeal.

No. 7  
Emma  
Gollcher's  
Note  
*continued*

Application Number 231/1966.

Emma Gollcher, a widow

v

Walter Baldacchino *et*

The Note of the applicant respondent

Respectfully sheweth:

The respondent makes reference:

1. To section 1594 of the Italian Civil Code now in force which reads: "The lessee, saving an agreement to the contrary, has the power to sublet the thing let to him, but he cannot assign the lease without the consent of the lessor" — this shows that whilst section 1573 of the old Italian Civil Code allowed subletting as well as assignment of lease, the drafters of the new Code found a marked difference between "subletting" and "assignment" and realised that assignment of lease has such a wider and more radical import than subletting that they felt they should allow subletting but prohibit assignment of lease. 10

2. To *Traité Pratique de Droit Civil Francais* of Marcel Planiol et George Ripert, 2 Ed. Tome X, *Contrats Civils, Première Partie*, Paris 1956, which at n. 555 *bis*, reads: "The rule which results from section 78 of the law of 1948 is exactly the opposite of that of the civil code, it is in principle prohibited to sublet or assign the lease saving a clause to the contrary in the lease or the consent of the lessor . . . . If a clause of the lease exceptionally authorises assignment of the lease or subletting, it is probable that case-law will give it the restrictive interpretation which it gives to prohibitory clauses, it being understood that authorisation to sublet does not imply authorisation to assign, and vice-versa. 20

The said section 78 of the French law of 1948 has inverted the position as previously envisaged by section 1717 of the French Civil Code exactly in the same manner that section 10 of our Ordinance XXI of 1931 has inverted the position previously envisaged by the Civil Code. 30

(Signed) René Cremona, Adv.  
Rob. Dingli, L.P.

## No. 8

## Appellants' Note of Submissions

No. 8  
Appellants'  
Note of  
Submissions.

In Her Majesty's Court of Appeal.

Emma Gollcher, a widow

v

Walter Baldacchino *et*

Appellants' Note of Submissions.

Respectfully sheweth:

10 That it appears clear that the summary of the judgment of the Rome Court of Cassation in re "Muster v Ciriminna (a photo-static copy whereof is annexed hereto) reproduced in the "Reper-

20 torio di Giurisprudenza" does not correspond at all to the true contents of the judgment.

In fact this judgment does not concern the present question between the contending parties i.e. "Whether in the present case the power granted to the lessees to sublet includes the power to assign the lease"; the question was totally different i.e. "whether the prohibition of subletting includes assignment". The reply should undoubtedly have been in the affirmative because, as has already

20 been submitted by the appellants, subletting and assignment of lease are substantially identical: they substitute another person in the enjoyment of the tenement. The motivation of the judgment given by the Court of Cassation is however worth quoting so as to show the difference between Italian law (as expounded by that Court) and Maltese law.

30 In fact the judgment states as follows: The reason, then, which makes the lessor decide to exclude (*recte* include) the clause prohibiting subletting — the personal character which he wants to maintain in the agreement — applies with the same force in the case of prohibition of assignment; indeed it applies with greater force on the basis of an *a fortiori* argument, as it is certain that assignment, since it substitutes another lessee for the original lessee, implies something more than a subletting whereby the original lessee remains bound . . ." Now these words, (underlined by the appellants) if they mean anything, must mean that in the case of assignment, in the opinion of the said Court, the original lessee ceases to be bound. But according to Maltese law, Sections 1708,

No. 8  
Appellants'  
Note of  
Submissions.  
— continued

1709 and 1710 of the Civil Code, in any case of subletting or assignment whether not prohibited and whether expressly allowed, the original lessee remains bound until the owner shall have expressly released him from his obligations or until the owner shall have expressly acknowledged the sublessee (or assignee) instead of the (original) lessee.

Moreover in the present agreement between the parties it was expressly stipulated that the original lessees were to remain directly responsible to the owner for the performance of the obligations arising from the lease!

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(Signed) V. Caruana, Adv.

This 29th day of May, 1967.

Filed at the sitting by Dr. V. Caruana, Advocate, with one Exhibit.

(Signed) Ant. Tonna.  
Dep. Registrar.

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**No. 9****Judgment, H.M. Court of Appeal**

No. 9  
Judgment  
H.M. Court  
of Appeal.

HER MAJESTY'S COURT OF APPEAL  
(Civil Jurisdiction)

Judges:

His Honour Prof. Sir Anthony J. Mamo, C.B.E., C.St.J.,  
Q.C., B.A., LL.D. — President.

The Hon. Mr. Justice Prof. John J. Cremona, K.M., LL.D.,  
B.A., D.Litt. (Rome), B.A. Hons. (Lond), Ph.D. (Lond.),  
F.R.Hist.S. — Vice President.

10

The Hon. Mr. Justice Joseph Flores, B.L.Can., LL.D.

Sitting held on

Friday, 8th March, 1968.

Number 5

Application No. 231/1966

Emma the widow of Erik W. Gollcher

v

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Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia as head

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of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by a decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerio Valente, and Raffaele Said were appointed curators to represent respective-

ly Salvina the wife of Salvatore Attard and the said Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity, who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have, who are absent from these Islands, and Romeo Said, who is absent from these Islands. 10

The Court,

Having seen applicant's demand before the Rent Regulation Board to recover possession of tenement number 138 Saint Lucia Street, Valletta, let to the respondents, at the termination of the current period of lease on the 6th March, 1967, on the ground that the latter had assigned the lease of the said tenement without her consent;

Having seen the reply whereby the respondents opposed the demand on the ground that the power to sublet granted to them included the power to assign, both because there is no substantial difference between the two *vis-a-vis* the owner, and for this reason these expressions are used promiscuously and also because the wording of the clause which allows the subletting provided the lessees remain responsible to the owner for the performance of the obligations, is more appropriate to the hypothesis of an assignment. 20

Having seen the decision given by the said Board on the 17th November, 1966, whereby it allowed applicant's demand and authorised her to recover possession of the tenement in question on the expiry of the current lease on the 6th March, 1967, and ordered that each party was to bear its own costs in view of the circumstances of the case, after having considered: 30

"That the facts which gave rise to these proceedings are not in dispute and may be summarised, so far as is relevant to this case, as follows:

By a deed in the records of Notary Victor Bisazza of the 7th March, 1951, in view of certain improvements which the lessees undertook to carry out in the tenement, the lease was extended for a period of eight years certain and eight years optional from the date of the deed, and a new clause (No. 7) was included to 40

the effect that "the tenants are empowered to sublet the said premises or part thereof provided that they will be responsible for the performance of all the obligations undertaken by them in virtue of this deed". By two deeds in the records of Notary Paul Pellegrini Petit of the 31st March, 1966, and of Notary Paul Pullicino of the 6th April, 1966, respectively, the respondents transferred to "Regency Estates Limited" the *utile dominium* of tenement 254 Kingsway, Valletta, and also assigned their right of tenancy of the tenement *de quo* in the following words: "This sale also includes the cession in favour of Regency Estates Limited of the right of lease of the adjoining property presently held by vendors and by them sublet to third parties, namely premises at number 138, Saint Lucia Street, Valletta, as per two deeds one in the records of Notary George Borg Olivier of the 6th July, 1943, and the other in the records of Notary Victor Bisazza of the 7th March, 1951". By the letter of the 9th July, 1966, Regency Estates gave notice of the said assignment to the applicant, informing her that "this Company has acquired the right of sub-lease of the premises . . . etc." and the applicant replied by the judicial letter of the 2nd July, 1966, whereby she refused to acknowledge what had taken place which amounted to an assignment of lease and not to a sublease, and instituted the present proceedings;

That the respondents submit that assignment of lease and sublease are substantially the same, especially *vis-a-vis* the owner. This submission is evidently based on some text writers who comment on section 1717 of the French Code and 1573 of the Italian Code which are substantially identical to section 1703 of the Maltese Civil Code, which grants the lessee the right to sublet the thing held on lease or to assign the lease unless this is prohibited in the contract.

That in fact some writers such as Ricci and Laurent, basing themselves on the authority of Pothier who does not distinguish between sublease and assignment of lease for the purposes of the said section, hold that in the said section by sublease the law meant sublease of part of the tenement whilst by assignment of lease it meant the sublease of the whole tenement and not a true assignment in the juridical sense of an assignment of a right or sale of an incorporeal thing.

That this opinion appears to have been followed by the Civil Court, First Hall, in the judgment "Brown v Gerada" delivered on the 3rd July, 1951, where it said: "that it appears that the parties, rather than an assignment of the lease or a total sublease

in the traditional sense and as the said expression in section 1703 of the Civil Code is understood to mean, wanted to effect an assignment of the right to the enjoyment of the tenement, that is to say a true and proper alienation”.

That other writers, on the contrary, maintain that in that section assignment of the lease should signify a true and proper juridical assignment. This latter interpretation appears to be better founded. In fact it is a principle of legal interpretation that when the legislator makes use of a word which has a certain juridical meaning he will be using it in such juridical sense, and not in another. Moreover when in sub-section (2) of the said section the legislator provides that such power may be restrained, he mentions expressly that such restraint may be total or partial. Now had the legislator intended to use the words “assignment of the lease” as synonymous with a total sublease, and the words “to sublet” as a partial sublease, the words “such restraint may be total or partial” in subsection (2) would have been useless, and it would have been enough to say that such power may be restrained, because he would thus have already covered both partial and total sublease; and it is another principle of interpretation that *“illa interpretatio capienda est ut dispositio magis valeat quam pereat”*. 10

That, therefore, the Board cannot but follow the opinion of those writers including Marcadè (Vol. IV on section 1717) who says: “to assign a lease or to sublet are not, therefore, one and the same thing . . . in subletting, the lessee becomes himself a lessor; whereas when he assigns his lease he makes an assignment, a sale of his rights; so that one cannot understand how Troplong, after having himself, although very summarily, pointed out this difference (n. 129), tells us further on (n. 134) that to sublet is to assign a part of one’s own lease!” 20 30

That the Court of Appeal has also followed this doctrine. In the case “Brown v Gerada” (Vol. XXXVI. I. 97) that Court said: “As was held by this Court on the 12. 3. 51 in ‘Blackman v Apap Bologna’, subletting and assignment of lease are not one and the same thing”, and the said Court went on to say, “It is to be admitted, however, that in practice they are promiscuously used, and it is therefore, the duty and task of the judge to try to interpret the intention of the contracting parties. One should follow the advice of Pacifici Mazzoni who, having prefaced that “assignment of lease may be prohibited but not subletting and viceversa”, says “but when such prohibition is not formally limited to either one 40

of the two, it extends to both, although it is expressed for only one of them”.

Nor can it be said that subletting and assignment of a lease are substantially identical *vis-a-vis* the owner. In fact although some writers, on the strength of the principle that one may assign one's rights but not one's obligations, hold that the assignor remains responsible to the owner for the performance of the obligations arising from the lease, the prevailing doctrine is to the contrary. Laurent himself, who under paragraph 208 (*op. cit.*) says that “The right of enjoyment is assigned. But the obligations inherent in such enjoyment remain the responsibility of the lessee. The latter, therefore, has to continue to pay the rent”, immediately goes on to say “The contrary opinion is generally taught. It is said that the assignee of a lease is liable to the lessor just the same as the lessee, his assignor, himself, was, and one concludes therefore that whatever the price of the assignment, he may be made by the lessor to pay all the rents and ground rents”; and concludes: “Court decisions conform with doctrine”. In fact Baudry-Lacantinerie (*Locaz. I n. 1053 (7)*) says “the assignee has to comply with the conditions of the lease in derogation of common law” and Pacifici Mazzoni (*Della Locaz. n. 176, 40*) says “the assignee has a direct action against the lessor to make him comply with all the obligations assumed *vis-a-vis* the lessee; but viceversa the assignee is directly responsible to the lessor for the performance of the obligations arising from the contract”. This is a logical consequence of the assignment. In fact as Borsari says (*Commentario, Vol. IV, part I art. 1573 § 3658*), “the lessee who no longer has any *reliquiae conductionis*, having divested himself of any connection with the thing let, has no other action against the assignee except the personal ones which derive to him from the sale, whilst the assignee takes the place of the first lessee for those effects which we shall explain later on”.

That doctrine and jurisprudence have occupied themselves with the question of the prohibition imposed in a contract of lease in derogation of the right which the common law gives to the lessee to sublet and assign the lease in the course of the lease and with the relative question as to whether the prohibition of one of them amounts also to prohibition of the other, and as far as this Board has been able to ascertain, they have not occupied themselves with a question similar to the one in issue here, where the point is not one of a prohibition which derogates from the common law, but of a permission granted to the lessee in derogation of the special

law, that is to say of Chapter 109, which gives the owner the right to recover possession of the tenement, that is to enforce his right to the restitution of the tenement let, at the end of the lease, if the lessee has sublet or assigned the lease during its course without the express consent of the owner. Therefore one has to be cautious in the application of the principles enunciated in the said doctrine and jurisprudence, because the position is more or less reversed.

That in the matter of the prohibition of subletting all the writers are in agreement that such prohibition involves also that of assignment of lease and this principally on the ground that whoever does not want the lesser thing does not want the greater. In fact, as Baudry-Lacantinerie (*Loc. cit.*) say, "this latter transaction (that is to say the assignment) appears to us to be much more radical than the first". In fact, in the case of assignment there is the substitution of the lessee, and the severance of relations between the lessor and the original lessee. Even Laurent (*op. cit.* n. 215), notwithstanding that he follows the theory that to assign the lease is synonymous with a total subletting, says that "the right to assign the lease is a much more extensive right than the right to sublet. Wherefrom it follows that whoever does not want the lesser thing cannot, with more reason, want the greater".

That, however, this argument cannot be transported *sic et simpliciter* to the case where subletting is permitted by the lease agreement, because the argument operates *a contrario*, in the sense that it cannot be logically said that whoever permits the lesser thing wants also to permit the greater. On the contrary in this case the principle applicable is that "*inclusio unius est exclusio alterius*". When the contending parties entered into the new lease agreement and the applicant granted the respondents the power to sublet, — a power which as appears from the said contracts of assignment, the respondents made use of when they declared that the lease which they were assigning to Regency Estates Ltd. was "the adjoining property presently held by vendors and by them sublet to third parties" — it is not logical to hold that had she wanted to grant also the power of assignment she would not have mentioned it expressly, when this is a more radical transaction, which involves relations and consequences quite different from those of a subletting.

That the respondents submitted that the condition attached to the said power "Provided that they will be responsible for the performance of all the obligations undertaken by them in virtue

of this deed", is more appropriate to assignment than to subletting, and from this they want to infer that the parties had in mind also assignment. This argument in the opinion of the Board, does not appear to be decisive. It is true that according to law the subletting does not create any relations between the lessor and the sub-lessee, but the said condition emphasizes also that the applicant intended to make it clear that she did not want to enter into lease relations with other persons except with the respondents, or their predecessors in title and, therefore, wanted to exclude  
 10 assignment, which necessarily would have placed her in lease relations with the assignees. Besides, the deed in the records of Notary Bisazza was not one of a lease *sic et simpliciter*, and in that deed the respondents undertook special obligations besides those of lessees, such as the building of the third storey of the tenement, and by the clause above-mentioned the applicant wanted to place upon the respondents the responsibility of making such improvements, even in the event of their subletting the tenement and imposing the same obligation on the sublessee;

20 That it is also to be observed that Chapter 109, requires the express permission of the owner for the subletting or assignment, in order that the lessee may avoid the recovery of possession of the tenement at the end of the lease.

30 That there can be no doubt that the transaction entered into by the respondents and the Regency Estates Limited is a true and proper assignment of the right of lease of the tenement in question, and not as set forth in the letter which the said Company sent to the applicant informing her that "this Company has acquired the right of sublease of the premises". This is not even contested by the respondents, because in fact their allegation was never that they have only effected a subletting to that company, but that they had the power to make such assignment";

Having seen the application of appeal of the appellants whereby they prayed that the said decision be reversed and that the demand of the said Emma widow Gollcher, be disallowed with costs.

Having seen the reply of the respondents Gollcher who submitted that the Board's decision is just and should be affirmed with costs.

40 Having seen the record of the proceedings, heard the submissions of counsel, now considers as follows:

The facts of the case, so far as relevant to the question on appeal, may be briefly recapitulated as follows:

The respondent is the owner of tenement No. 138 St. Lucy Street, Valletta. This tenement was initially let to the appellants by a deed in the records of Notary Doctor Giorgio Borg Olivier of the 6th July, 1943. The lease was subsequently extended with some modifications by another deed in the records of Notary Victor Bisazza of the 7th March, 1951, and this for a period of eight years certain and eight years optional which expired on the 6th March, 1967.

It is not contested by the respondent Gollcher — indeed this is implicitly recognised by her by the very fact that she instituted the proceedings before the Board — that, normally, that is to say apart from the question on which this suit turns, the appellants at the end of the period of the lease which had been agreed as aforesaid, would have been entitled to a renewal of the lease in virtue of the provisions of Chapter 109 of the Laws of Malta. Section 4 of the said law provides, so far as relevant —

“It shall not be lawful for the lessor of any premises at the expiration of the period of tenancy (whether such period be conventional, legal, customary or consequential on the provisions of this Ordinance) to refuse the renewal of the lease . . . without the permission of the Board . . . ”

By her application to the Board the respondent in fact prayed that she be granted that leave not to renew the lease after the said date of the 6th March, 1967. Although this is not expressly stated in the application, it appears clear that respondent's demand was made on the basis of sections 9 (1) and 10 (a) of the said Ordinance. Section 9 (1) states: —

“Where the lessor desires to assume possession of the premises at the termination of the lease he shall apply to the Board for permission to do so”.

And section 10 (a), in its relevant part, states —

“The Board shall grant the permission referred to in the last preceding section in the following cases —

(a) If the tenant has in the course of the previous lease . . . sublet the premises or made over the lease without the express consent of the lessor . . . ”

Respondent's claim arose in this way. By the aforesaid deed of the 7th March, 1951, the appellants were empowered:

“To sublet the premises or part thereof provided that they will be responsible for the performance of all the obligations undertaken by them in virtue of this deed”.

In virtue of the two deeds, one in the records of Notary

Paul Pellegrini Petit of the 31st March, 1966, and the other in the records of Notary Doctor Paul Pullicino of the 6th April, 1966, the appellants sold to a certain company known by the name of "Regency Estates Ltd." the temporary *utile dominium*, for the remaining period of the emphyteutical grant, of tenement No. 254 Kingsway Valletta, and in both deeds it was laid down that:

10 "This sale also includes the cession in favour of Regency Estates Ltd. of the right of lease of the adjoining property presently held by the vendors and by them sublet to third persons namely the premises at number one hundred and thirty eight Saint Lucia Street Valletta as per two deeds one in the records of Notary George Borg Olivier of the sixth July one thousand nine hundred and forty three and the other in the records of Notary Victor Bisazza of the seventh March nineteen hundred fifty one and includes the sub-lease indicated in Document J. annexed".

20 The respondent claimed that the cession of the lease thus made by the appellants to Regency Estates Ltd. is not covered by the power which they had, as aforesaid, "to sublet the premises or part thereof" and constitutes a transfer of the lease without her consent and therefore a ground for the Board to allow her to recover possession of the tenement in terms of the aforesaid section 10 (b) of the said Ordinance.

30 The appellants opposed this claim maintaining that the power to sublet granted to them includes the power of assignment both because there is no substantial difference between the two *vis-a-vis* the owner and for this reason these expressions are used promiscuously and also because in the present case the wording used in the deed, which allows subletting provided the lessee remains responsible to the owner for the performance of all the obligations, is more appropriate to the hypothesis of an assignment.

40 The Board in the judgment appealed from allowed respondent's demand. The Board held that subletting and assignment of lease are not one and the same thing, not even *vis-a-vis* the owner because in an assignment, the assignee takes the place of the original lessee. According to doctrine — it is further said in the decision appealed from — when in the contract of lease subletting is prohibited, such prohibition involves also prohibition of an assignment of the lease because assignment involves a greater and much wider right than the right to sublet and "whoever does not want a lesser thing cannot, with more reason, want a greater thing". In the present case this argument operates *a contrario* in the sense

that it cannot be logically said that whoever permits the lesser thing wants also to permit the greater: on the contrary in this case the principle that "*inclusio unius est exclusio alterius*" applies. So long as the appellants, as they appear to have done from the deeds entered into with Regency Estates Ltd., sublet the tenement to third parties, they were making use of the power they had "to sublet"; but they did not also have the power to assign the lease; and the fact that, in the clause whereby the power of subletting was granted, it was stated that the appellants were to remain responsible to the respondent for the performance of all the obligations deriving from the deed was not, in the Board's opinion, decisive in favour of their thesis because in that clause the respondent should be only deemed to have wanted to bind the appellants by the said obligations even in the event of their subletting the tenement and imposing the said obligations on the sublease.

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The appellants have not questioned that, in the relations between lessee and sublessee and between the lessee and the assignee of the lease, subletting and assignment of the lease are two different contracts and that in such relations they create different rights and obligations: but — and this is what is important, they say — as regards both the relations of the lessee with the owner as well as the relations or absence of relations of the sublessee or assignee with the owner, there is no substantial difference between the case of subletting and that of assignment: in both cases the lessee substitutes another in the enjoyment of the thing and it is indifferent to the owner whether such substitution is made by means of an assignment of the lease or a subletting once his rights in either case remain perfectly the same. From this it follows — the appellants go on to submit — that, saving some particular circumstances which do not exist in this case or some specific stipulation to the contrary, both the prohibition and the power to sublet include the assignment of a lease and vice-versa. The special law (Chapter 109) makes no difference between the two forms of transfer of the enjoyment of the thing let by the tenant to a third person and, even for the purposes of that law, it should be held that when the owner has expressly given the lessee the power to sublet, he will also have given him the power to assign the lease. The appellants go on to say that, if they had not been convinced of this, they would have entered into a subletting agreement: and how would respondent's position have been different then? The appellants have carried out in the tenement building improvements costing thousands of pounds and it would have been equally

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easy for them to effect a sublease, but it never occurred to them that this would make any difference or that the respondent would try to take advantage of a legal subtlety which does not affect her relations with them and which does not cause her any prejudice: it has been repeatedly decided by this Court, the appellants conclude, that the provisions of the special law which give the lessor the right to recover possession of the tenement are meant to safeguard his real rights and not to enable him to take advantage of acts which are not prejudicial to him so as to cause the lessee to lose the benefit which he is afforded by that law.

10 This Court confesses that it has found the solution of this case difficult but, having pondered at length, it has come to the conclusion that the substantial complaint of the appellants should be accepted.

This Court finds no difficulty in agreeing with the doctrine followed in the decision appealed from which has already been applied several times by our Courts, in the sense that subletting and assignment of lease are not in themselves as contracts one and the same thing. Subletting creates another lease between the lessee and the sublessee which — as expressly provided by section 20 1702 of our Civil Code — in the absence of special provisions is regulated by the same provisions which regulate the contract of letting. Assignment on the other hand, is regulated by the provisions relating to assignment of rights (Law Reports XIV p. 227). This difference between the two contracts had already been pointed out in the notes of Sir Adrian Dingli (with reference to the former section 1366 of Ordinance VII of 1868). To sublet means that the lessee constitutes himself lessor *vis-a-vis* the sub-lessee and their relations are governed by the law of lease. To assign the lease 30 means to alienate the right acquired by the agreement by way of sale of such right". In the said note there is a reference to Trop-Long and to Donvergier and this, in the opinion of the Court, is relevant as it shows which doctrine has in general inspired the codifier of our law. This will be referred to again hereunder.

But, although in their nature as contracts, assignment and subletting are different, this applies to the relations between the contracting parties themselves that is to say, between the lessee and the assignee or between the lessee and sublessee, as the case may be. The Court with respect cannot agree with the Board that 40 there is also any substantial difference between them with regard to the owner. For the purposes of the question in this case, this

is, as the appellants submit, the relevant relation. With regard to this question the Court considers with respect that the doctrinal quotations cited in the decision appealed from give an impression which is neither balanced nor wholly correct of the doctrine of the writers quoted in the decision appealed from, or of legal doctrine in general. Marcadè was quoted in the decision appealed from. It is true that this commentator of the French Code writes, in § 1 of his comments on section 1717, the words quoted in that decision, that is to say that: “to assign a lease and to sublet are not, therefore, one and the same thing . . . in subletting, the lessee becomes himself a lessor; on the contrary when he assigns his lease, he makes an assignment, a sale of his rights.” But further on in paragraph II Marcadè goes on to say:

“There is no doubt that an assignment of the lease is much more than a subletting, as we have said above: but we have said also that this occurs between the lessee and the third party and not in respect of the lessor, for whom the assignment by the lessee is *res inter alios acta*. Vis-a-vis the lessor an assignment is equal to a subletting; he has laid down the prohibition to ensure that his thing will remain in the hands of the person with whom he has entered into the agreement and in whom he has placed his trust: but since both in the case of subletting as well as in the case of assignment the thing passes to a third person, these two contracts, therefore, although they are different in the relations between the lessee and the third party, are the same *vis-a-vis* the lessor.

Consequently the two words subletting and assignment have the same import for the lessor, and mean, differently from what happens between the third party and the lessee, any transfer of the enjoyment to a third party”. (Words underlined by the Court).

In the decision appealed from it is stated that “although some writers, on the strength of the principle that one may assign one’s rights but not one’s obligations, hold that the assignor remains responsible to the owner for the performance of the obligations arising from the lease, the prevailing doctrine is to the contrary”. With all due respect this latter assertion does not appear to be well founded. As far as the Court could ascertain there is no disagreement, either in doctrine or in jurisprudence, about the proposition that the lessee who assigns the lease remains neverthe-

less liable to the lessor for the performance of all the obligations arising from the lease, unless of course the lessor acknowledges the assignee in his place as lessee or frees the original lessee from his obligations. The doctrine quoted in the judgment appealed from does not refer to, and in no way affects this proposition, but it refers to the question whether, following the assignment, the owner acquires also any direct right of action against the assignee to enforce the performance of the obligations deriving from the lease, and whether on the other hand the assignee acquires any direct right of action against the lessor for the fulfilment of the latter's obligations originally contracted with the lessee/assignor in virtue of the lease. In the extract quoted in the decision appealed from where Laurent says that the contrary opinion is generally taught and that Court decisions conform to doctrine, the question discussed is not whether the lessee/assignor remains responsible to the owner for all the obligations of the lease notwithstanding the assignment, but whether the owner has also a direct right of action against the assignee in respect of payment of rent and of the other obligations arising from the lease. And this is also the question discussed by the other writers quoted in the decision appealed from. The object of the Board, in quoting this doctrine, was to show that whilst in the case of a sublease no direct relation is created between the sublessee and the lessor, in the case of an assignment the assignee takes the place of the lessee and a direct relation is created between him and the lessor. However, insofar as that doctrine was quoted to show that in the case of an assignment the original lessee/assignor is released from his obligations towards the lessor or that, in the relations with the lessor, the assignee takes the place of the assignor, the Board's interpretation is, in the Court's opinion, erroneous. The principle that a person may assign his rights but not his obligations is affirmed in the most clear and emphatic manner even by the writers quoted in the decision appealed from. It would only be correct to say that some of the writers maintain that in the case of an assignment (and to a certain extent also in the case of a sublease) the owner although he is not a party to the agreement of assignment (or of sublease) nevertheless acquires direct rights also against the assignee (or sublessee) in such a way that he adds a new debtor, that is to say the assignee (or sublessee), to his original debtor (lessee). This appears clearly from those very text-writers quoted in the judgment appealed from. To quote just the last one

of these, Borsari, this author explains in which sense the assignee "takes the place of the first lessee". He in fact says: "We have said that it is the rights and not the obligations which are assigned: it is not within the power of the lessee to break the ties which bind him to the lessor. The lessee divests himself of what constitutes his right, that is to say, of the possession and enjoyment. This is of little importance to the lessor: he remains entitled to claim the rent from the lessee as if he were still in possession. As far as he is concerned, nothing has changed, except that he has added a new debtor, as we shall say hereunder" (art. 10 1573-1574 § 3660).

But to quote any doctrine at all as to whether in the case of an assignment the original lessee remains liable to the owner for all the obligations arising from the contract of lease is, in the opinion of the Court, idle in the present case, because, supposing it were to be held, as the Court considers that it should be held, that the power of subletting granted to the appellants includes the power of assignment — there is the express stipulation in the contract in question in the sense that the appellants shall remain responsible for the performance of all the obligations arising from the said contract. 20

Then, with regard to the question as to whether in the case of an assignment the assignee substitutes the original lessee and acquires any direct action against the owner, the quotation of doctrine or case-law which interprets the French or Italian Code, is not only idle but, in the Court's opinion, should be excluded because, differently from those Codes, and presumably — as Sir Adriano Dingli did in several other cases — precisely in order to avoid the question which had arisen under the said Codes, our Code introduced an express provision which reads: "the sublessee" (and, as will be said, this in our Code means also the assignee), "may not claim against the lessor any of the rights competent to the lessee" (Sect. 1709). 30

It is the opinion of the Court that our Code makes use of the word "sublease" in several contexts in sections 1702/1711 to mean not only sublease proper but also the assignment of the lease, and even when it mentions them both, it equates them altogether insofar as the power of the lessee to effect such subletting or assignment and the relations of the sublessee or assignee with the owner are concerned. 40

First of all, although the said sections mention both subletting and assignment of the lease, the title is "Of Sub-letting". In Section 1702 it is stated that "in the absence of special provisions the contract of sub-letting" (and here it appears that the law is referring to subletting true and proper) "is regulated by the same provisions which regulate the contract of letting and hiring". The law does not say anything here in respect of the regulation of **the contract of assignment of a lease** because, as has already been said, as regards the internal relations between the lessee and the assignee, the contract is governed by the provisions relating to the assignment of rights

Section 1703 then gives the lessee, promiscuously and without any distinction between the two, the right to sublet or assign the lease unless he has been restrained from so doing in the contract. Perhaps it is to be observed *en passant* that the word "also" between the words "to sublet or" and the words "assign the lease" which was to be found in the corresponding section of the French Code, and on the basis of which also in French doctrine it was argued that assignment is more radical than a mere subletting, has been omitted from our Code. Sections 1704/1707 were inserted in our Code in order to solve questions which used to arise under the French model and in these sections subletting and assignment of lease are treated entirely in the same way. Sections 1708/1710 are, in the opinion of the Court, of particular importance. Although in Sections 1708 and 1709 only the sublessee is mentioned the Court believes that there should be no doubt that that word includes also the assignee. This is so, firstly because it may be so argued from the nature of the said two sections, and, then above all, because it appears to be so from section 1710 which, whilst referring to the said two sections, speaks both of subletting and of assignment of the lease. The Court is also of the opinion that even in section 1711 the reference to subletting and sublessee applies also to assignment and to assignee.

From all this it follows, in the Court's opinion, that, according to the Civil Code, subletting true and proper and assignment of the lease are wholly equated as regards the relations with the lessor.

Wherefore, this Court agrees with the opinion expressed in the decision appealed from, in the sense that when, for the purposes of section 1703, subletting is prohibited in the contract it should be deemed that assignment of the lease has also been prohibited: but the Court agrees with that opinion not for the reason

suggested by the Board on the basis of foreign doctrine and case-law, in the sense that assignment of a lease is a greater thing than subletting or that it includes “the substitution of the lessee and the severance of relations between the lessor and the original lessee”, as is stated in the decision appealed from. The Court has already tried to show that these assertions are not confirmed even by the writers themselves quoted by the Board, and in any case are not, in the opinion of the Court, justified under our law. The Court agrees with the said opinion because the law treats both hypotheses in the same way *vis-a-vis* the owner and if the latter in the contract prohibits subletting he is to be deemed to have also prohibited assignment and vice-versa. After all, the writers themselves quoted in the decision appealed from who say that the prohibition of subletting is to be deemed to include that of assignment as this follows *a fortiori*, destroy any validity of that argument insofar as they hold also that whenever the assignment alone is prohibited it should none the less be deemed, unless it is otherwise formally stated in the contract, that subletting, which is supposed to be a lesser thing, is also prohibited. Thus for example, Baudry-Lacantinerie who, in the decision appealed from, is quoted as saying that assignment appears to be more radical than subletting, maintains that “the question whether the clause restraining subletting restrains also the assignment of the lease, and vice-versa, is a question of fact, which in the event of a contestation has to be resolved by the judge. Almost always the clause which prohibits subletting should be deemed to carry with it the prohibition to assign the lease. As assignment of lease, like subletting, causes the substitution of one person for another, the parties could not but have had the intention of preventing such substitution. The prohibition to assign the lease equally brings with it the prohibition to sublet, at least the whole of the thing. Subletting causes the lessor more or less the same inconveniences as assignment of lease. But does the prohibition to assign the lease involve the prohibition to sublet a part of the house? Here too we answer in the affirmative: if the lessor wanted to prevent the lessee from substituting a third person, partial substitution is also prohibited in the same degree, both when there is a prohibition to assign as well as when there is a prohibition to assign and to sublet” (Vol. XX § 1092).

Marcadè also, quoted in the judgment appealed from, says that “as a general rule, the prohibition to sublet implicitly carries

with it, as is acknowledged by all, that of assigning the lease; in general the latter is also to be deemed to imply the former as had also been stated in two decisions of the Courts of Anger and of Amiens. There is no doubt that the assignment of the lease is, as we have already said, something more than a sub-letting; but we also said that this is so between the lessee and the third party, and not with regard to the lessor . . . but since both in the case of subletting and in the case of assignment the thing would pass to a third party these two acts, therefore, the one differing from the other with regard to the lessee and the third party, are one and the same with regard to the lessor, so that, one of them being prohibited, it is implicitly understood that the other is also prohibited" (*loc. cit.*).

Pacifici-Mazzoni, also quoted in the decision appealed from says: "Similarly the lessee may be restrained from assigning the lease and not from subletting and viceversa. But when the prohibition is not formally limited to one of the two, it extends to one and the other although it is expressed for only one of the two. And not only does the prohibition to sublet include the prohibition to assign the lease, because the former is a lesser thing than the latter, and whoever prohibits the lesser thing with greater reason wants as a rule to prohibit the greater thing: but even the prohibition to assign the lease includes the prohibition to sublet, not so much because the prohibition of the greater thing may include also the prohibition of the lesser, as because the lessor by such prohibition manifests clearly his will to prevent the thing let by him from passing from the lessee to another person" (*op. cit.* § 164).

From this it appears, in the Court's opinion, that according to some at least of the writers quoted in the decision appealed from in a matter of prohibition, in the system of the Civil Code, when only one of the two contracts is mentioned, whichever one it may be, the prohibition is deemed as a rule to extend to both: if only subletting is mentioned, it is deemed that assignment is also prohibited, and viceversa, if only assignment is mentioned, it is deemed that subletting is also prohibited.

It has been said above that Sir Adriano Dingli, with regard to the provisions of the Civil Code, which have been discussed, appears to have been influenced by the doctrine of Troplong and Donvergier. Troplong's opinion was as follows: "I would say in general, that the prohibition to sublet, in special cases, is included in that to assign the lease. True that we have shown above the

difference which exists between these two contracts: but such difference is not important with regard to the lessor, to whom it matters little whether the change of person is effected by way of subletting rather than by way of assignment. What interests him, the motive which has caused him to prohibit the assignment, is that he does not want to see the tenement occupied by a tenant different from the one chosen by him. It is this intention, therefore, which has to be respected" (Diritto Civile (1841) Della Permuta e Della Locazione § 134).

The opinion of Donvergier is substantially identical. He starts by saying that "the prohibition to sublet evidently includes the prohibition to assign the lease; since the lessor who has forbidden the lesser thing, certainly did not want to allow the greater thing. (This writer too builds an argument on the word "also" in the French law which, as has been said, has been omitted from our law). Then, although he says that the question is more difficult if only assignment has been prohibited, he arrives at the following conclusion: "but when the lessor prohibits the assignment of the lease, he does not prohibit it to prevent the lessee from placing himself in one situation rather than another *vis-a-vis* third parties, because this ought to be totally indifferent to him; nor does he prohibit assignment to secure himself personally against the consequences which an assignment properly so called would produce in his regard, because such consequences, in so far as he is concerned, hardly differ from those which arise from a subletting. The principal, and very often the only, reason which causes the insertion of the clauses which prohibit assignment of lease is precisely the confidence which the person with whom he contracts inspires in the lessor and the latter's wish that the thing let should not pass into the hands of others. Now, evidently, his intention is not satisfied, both where the lessee sublets and also where he assigns the lease: and looking at things under this aspect, there is no difference at all between assignment of the lease and total subletting of the thing: and it follows that the prohibition to assign the lease includes the prohibition to sublet the whole".

This doctrine was embraced in re "Gerada v Brown" quoted by the appellants (Vol. XXXV. I. 97). The aforesaid opinion of Pacifici-Mazzoni was quoted with approval and it was stated that in practice the two expressions "subletting" and "assignment of

the lease” are promiscuously used and in case of doubt the probable intention of the parties is to be sought.

Now the fundamental question in this case which has caused the Court to ponder, is whether what applies to the prohibitory clause under the Civil Code, applies also to the authorisation clause for the purposes of the provisions of Chapter 109. The Court, having thought at length, has come to the conclusion that the answer should be in the affirmative.

10 As has already been said for all civil purposes subletting and assignment are vis-a-vis the owner substantially the same thing and in that regard it is not a case of speaking of the greater or of the lesser thing.

In Chapter 109 too, the two hypotheses appear to have been placed altogether on an equal footing, and when one considers the reason for the provision this appears to be natural. The law was made in order to ensure a certain measure of protection to the lessee. Normally a lessee who voluntarily divests himself of the enjoyment and the detention of the tenement by subletting or assigning the lease is no longer protected and the owner may, at  
20 the end of the current lease, demand to recover possession of the tenement. But when the owner himself has granted the lessee the power to transfer the enjoyment and the detention to a third person, then he cannot make such a demand, and, in the Court’s opinion, it should make no difference whether such power has been given in one form rather than in another.

The Court does not consider that this is a case where the maxim “*inclusio unius est exclusio alterius*” should be applied. In general, this is very often an uncertain rule of interpretation of contracts. Toullier, Laurent says, calls it “a miserable maxim”  
30 In England, in the case “Colquhoun v Brooks” Wills J. said, “I may observe that the method of construction summarised in the maxim ‘*Expressio unius exclusio alterius*’ is one that certainly requires to be watched . . . . The failure to make the ‘*expressio*’ complete very often arises from accident, very often from the fact that it never struck the draughtsman that the thing supposed to be suppressed needed specific mention of any kind. Lopez L.J., in the Court of Appeal said: “The maxim ‘*expressio unius exclusio alterius*’ has been pressed on us. I agree with what is said in the Court below by Wills J. about this maxim. It is often a valu-  
40 able servant, but a dangerous master to follow in the construction of statutes or documents. The ‘*exclusio*’ is often the result of inadvertence or accident: the maxim ought not to be applied when

its application having regard to the subject-matter to which it is applied, leads to inconsistency or injustice”

It has already been said that in the general system of our law the word “subletting”, as regards the relations with the owner, includes also “assignment” and, as was said in the judgment “Brown v Gerada” already quoted, the two words are promiscuously used in legal practice. In the contract in question there is nothing to show that although only the word “sublet” has been used it was the intention of the parties to give to such word the restrictive meaning of true and proper subletting only. Indeed, if respondent’s argument, accepted in the decision appealed from, is true, that whilst subletting leaves the relations of the lessee and the owner wholly unaltered, assignment, on the other hand, substitutes the assignee for the lessee even *vis-a-vis* the owner, then it has to be said, as submitted by the appellants, that in the contract in question the parties although they made use of the word “sublet” rather had assignment in mind, insofar as it was expressly stipulated that the appellants were to remain responsible for the performance of all the obligations arising from the contract, including the obligation to pay rent, to keep the tenement in good state, besides the other specific obligations mentioned in the contract. In the case of a true and proper subletting, the appellants would, according to the argument of the said respondents, manifestly and obviously remain responsible to the owner for all such obligations and there would have been no need of any special stipulation in the aforesaid sense either with regard to the ordinary obligations as lessees or with regard to the special obligations assumed by them. If there could have been any doubt as to the continuance of the obligations of the appellants *vis-a-vis* the respondent, this could — according to respondent’s general argument — have referred only to the case of assignment, and it should, therefore, be said that this was probably envisaged by the parties when they expressly stipulated that the appellants were to remain responsible “for the performance of all the obligations undertaken by them in virtue of this deed”.

In the decision appealed from it was stated that this submission of the appellants was not “decisive”. But this Court believes that even if the said submission is not “decisive” by itself, it should, however, added to the other reasonings now set forth in this judgment contribute to the claim of the appellants being allowed.

This is a tenement which was intended to be used and is

used for commercial purposes and parts of it appear also to have even been incorporated with another building which belonged to, or at any rate was held on emphyteusis by, the appellants. There was no reason, and no reason has been even remotely suggested (with the exception, of course, of the doctrinal reason which this Court cannot accept) why the respondent should authorise subletting but disallow assignment. The important thing for her was that, in the event of the appellants personally not continuing in the enjoyment of the tenement, they would still remain responsible to her for the performance of the obligations assumed by them towards her: and this holds good, absolutely and in its entirety, even though the appellants have now assigned the lease.

In her note at fol. 68 the respondent made reference to section 1594 of the Italian Civil Code now in force which reads: "The lessee, saving an agreement to the contrary, has the power to sublet the thing let to him, but he cannot assign the contract without the consent of the lessor", and observed that this shows that, while section 1573 of the old Italian Civil Code allowed both subletting and assignment, the draftsmen of the new Code have found a marked distinction between subletting and assignment and realised that assignment has an import so much more ample and more radical than subletting that they felt that they should permit subletting but prohibit assignment.

This Court thinks that this argument cannot help the respondent and may in fact be turned against her. It is a fact that our Code, to date, like the old Italian Code, still allows both subletting and assignment, saving an agreement to the contrary. If the new Italian Code has changed this provision, this is a matter of legislative policy and the fact which caused it to be changed by an express provision is in the opinion of the Court obviously because under the old Code, the two contracts were, at least in accordance with the doctrine which appears to have been prevalent, treated in the same way *vis-a-vis* the owner. Had the mention of the "power to sublet" by itself excluded assignment of the lease, obviously there would have been no need for assignment to be expressly and differently regulated.

The respondent has also made reference to *Planiol et Ripert* where it is stated that section 78 of the law of 1948 has inverted what had been the position in France according to the Civil Code, in the sense that, in principle both subletting and assignment are prohibited unless there is a clause to the contrary in the contract

of lease with the consent of the lessor. "If a clause of the lease exceptionally authorises assignment of the lease or subletting, it is probable that case-law will give it the restrictive interpretation which it gives to prohibitory clauses, and therefore in the sense that the authority to sublet does not imply authority to assign and viceversa". The respondent has submitted that the said section 78 of the French law of 1948 has inverted the position previously established by section 1717 of the French Code precisely in the same manner as section 10 of our Chapter 109 has inverted the position as established by our Civil Code.

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The Court, notwithstanding its endeavours, has not had the opportunity to consult recent case-law of the French Courts to see whether the opinion expressed in advance by Planiol et Ripert has in fact been given effect to or not. But the Court thinks that the inference to be drawn from the said opinion should, in the present case, be against and not in favour of the respondent. It is said that French jurisprudence, under the Civil Code, used to give a strict interpretation to prohibitory clauses, applying them literally only with regard to what they expressly prohibited; if only subletting was prohibited, it was not deemed to include assignment also and, viceversa, if only assignment was prohibited, it was not deemed to include subletting. Planiol et Ripert expected that the French Courts would give the same strict interpretation to authorization clauses for the purposes of the 1948 law.

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Now, whatever French case-law may be — it has already been said that French doctrine appears to have been rather in the sense that it treated prohibitory clauses promiscuously — and perhaps it may also be noted that in section 1717 of the French Code it was stated, what we do not find stated in our Code, that prohibitory clauses were "of strict application" — the fact is that this Court in the judgment "Brown v Gerada" adopted the doctrine that, as a general rule, the prohibition of subletting, implies also the prohibition of assignment, and vice versa, and pointed out that, in practice, both terms are used promiscuously. On the basis of Planiol et Ripert's reasoning one can, in the opinion of the Court, conclude that the same interpretation should be given to authorisation clauses under Chapter 109.

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Finally it has been held several times by this Court that even if there is a doubt as to the correct interpretation, such doubt should go to the benefit of the lessee, who, as a result of the other interpretation might lose possession of the tenement (Vol XXXI.

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1. 110 — Civil Appeal, "Calleja v Debono", 10. 2. 1961; Civil Appeal "Miggiani v. Chetcuti", 16. 11. 1962).

On these grounds the Court allows the appeal, reverses the decision appealed from and disallows respondent's demand: but in view of the circumstances, orders that each party must bear its own costs of both instances.

(Signed) Ant. Tonna,  
Dep. Registrar.

No. 9  
Judgment  
H.M. Court  
of Appeal.  
— continue

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**No. 10**

10                                    **Petition for Leave to Appeal**  
**to the Judicial Committee of H.M. Privy Council**

In Her Majesty's Court of Appeal.

No. 10  
Petition for  
Leave to Appeal  
to the Judicial  
Committee of  
H.M. Privy  
Council

Application Number 231/1966.

Emma the widow of Erik W. Gollcher

v

20                                    Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia as head of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by a decree  
30                                    of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerio Valente, and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said Salvatore

No. 10  
Petition for  
leave to Appeal  
to the Judicial  
Committee of  
H.M. Privy  
Council.  
- continued

Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have, who are absent from these Islands, and Romeo Said, who is absent from these Islands.

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The Petition of the said Emma widow of Erik W. Gollcher.

Respectfully sheweth:

That by the aforementioned application filed before the Rent Regulation Board the applicant premised that by a public deed in the records of Notary Victor Bisazza of the 7th March, 1951, (Exh. "A" annexed to the application) the applicant and the respondents and/or their predecessors in title extended the lease of tenement number one hundred and thirtyeight (138), St. Lucia Street, Valletta, at the rent of three hundred and thirty pounds (£330) a year, payable quarterly in advance, and with the modifications included in the said deed; that the aforesaid lease was for a period of eight years certain and eight years optional, which latter period expires on the 6th March, 1967; that the lessees assigned the said lease by two public deeds one in the records of Notary Paul Pellegrini Petit of the 31st March, 1966 (Exh. "B" annexed to the application) and the other in the records of Notary Paul Pullicino of the 6th April, 1966 (Exh. "C" annexed to the application); that neither in terms of the said public deed in the records of Notary Victor Bisazza of the 7th March, 1951 (Exh. "A" annexed to the application) nor in terms of the preceding public deed of the 6th July, 1943, in the records of Notary Giorgio Borg Olivier (Exh. "D" annexed to the application) did the respondents have the right to assign the lease; that the applicant was informed by the assignees by a letter dated the 9th July, 1966, (Exh. "E" annexed to the application) that the aforesaid assignments had taken place and she promptly protested against the said assignments by a judicial letter of the 21st July, 1966 (Exh. "F" annexed to the application); and prayed that therefore she be authorised by the said Board to recover possession of the aforesaid tenement number 138, St. Lucia Street, Valletta, let to the

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respondents, at the termination of the current lease, on the 6th March, 1967, according to law, saving any other right competent to the applicant according to law.

That the respondents by their reply opposed the demand on the ground that the power to sublet granted to them included the power of assignment, both because there is no substantial difference between the two *vis-a-vis* the owner and for this reason these expressions are used promiscuously, and also because the wording of the clause which allows the subletting provided the lessees remain responsible to the owner for the performance of the obligations is more appropriate to the hypothesis of an assignment.

That the Rent Regulation Board by the judgment given on the 17th November, 1966, allowed applicant's demand and authorised her to recover possession of the tenement in question on the expiry of the current period of lease on the 6th March, 1967, and ordered that each party was to bear its own costs in view of the circumstances of the case.

That the respondents entered an appeal from the said judgment and prayed that it be reversed and that the applicant's demand be disallowed with costs;

That the applicant by her reply submitted that the Board's decision was just and should be affirmed with costs;

That this Honourable Court by its judgment of the 8th March, 1968, allowed the appeal, reversed the decision appealed from and disallowed applicant's demand: but in view of the circumstances ordered that each party was to bear its own costs of both instances.

That petitioner, the said Emma Gollcher, with all the respect due to this Honourable Court, considers that she has been aggrieved by the aforesaid judgment and therefore wishes to appeal to the Judicial Committee of Her Majesty's Privy Council from the judgment given by this Court on the 8th March, 1968, in the case in the aforesaid names.

That this case turned on whether the respondents were or were not entitled to assign the lease of the aforesaid tenement (which formed the merit of the case) which they did by the public deeds mentioned in the judgment, that is to say those published by Notary Paul Pellegrini Petit on the 31st March, 1966, and Doctor Paul Pullicino on the 6th April, 1966. Therefore the matter resolved by the said decision was whether the respondents had or had not forfeited the lease of the tenement in question, which

results also from the said decision itself. Now the value of the lease of the tenement in question is certainly much higher than five hundred pounds (£500) and, if necessary, such value may be better ascertained by technical references in the course of these proceedings; and therefore the appeal involves, directly or indirectly, a matter which refers to property or rights of a value in excess of five hundred pounds (£500).

That, subordinately, and only in case this Court were to decide that a value of five hundred pounds (£500) was not involved in the case, petitioner Emma Gollcher respectfully considers that this Court should make use of its discretion insofar as the said case involves a matter of great general importance and, in any case, deserves to be submitted to Her Majesty's Privy Council; 10

That in fact this Court in its judgment has expressed itself as follows: "This Court confesses that it has found the solution of this case difficult but, having pondered at length, it has come to the conclusion that the substantial complaint of the appellants should be accepted . . . ." and, further down, in the same judgment appealed from, this Court acknowledged that there might exist a doubt as to the correct interpretation of the law whereon this case is based, and this Court held that such doubt should be interpreted so as to benefit the lessee as the other interpretation might cause him to lose possession of the tenement. 20

That in view of the foregoing and of the difficulties of the case this Court, in its judgment, tempered the judicial costs;

All these circumstances separately, and more so when considered together, in petitioner's humble opinion support her submission that, independently of the value involved, which is certainly not a particular to be overlooked, this case merits to be referred to Her Majesty's Privy Council; 30

Wherefore, petitioner, the said Emma Gollcher, whilst making reference to all the records of both instances, and to the relative decisions, respectfully prays that, saving any proper and appropriate direction, this Court may be pleased:

1. To grant petitioner leave to appeal from the decision given by this same Court on the 8th March, 1968, in the aforesaid case to the Judicial Committee of Her Majesty's Privy Council, as the merit involved in the case, decided by the said judgment, has a value of five hundred pounds (£500) or upwards;

2. Subordinately, and only if it is decided that the value involved is not that required by law, that in view of the importance 40

of the case and of the matter involved, this Court may be pleased to use the discretion vested in it and to grant petitioner leave to appeal from the said judgment to the Judicial Committee of Her Majesty's Privy Council, on the grounds submitted above.

And this — in both cases — so that the judgment given by this Court on the 8th March, 1968, may be reversed and the demand made by petitioner in her application to the Rent Regulation Board may be allowed, as had been decided by the said Board by the judgment given on the 17th November, 1966.

10 With costs.

(Signed) Renè Cremona, Advocate.  
Rob. Dingli, L.P.

This twentyeighth day of March, 1968.  
Filed by Robert Dingli, Legal Procurator, without Exhibits.

(Signed) Ant. Tonna,  
Dep. Registrar.

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## No. 11

### Reply

In Her Majesty's Court of Appeal.

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Application Number 231 of 1966.

Emma the widow of Erik Gollcher

v

Walter Baldacchino *et*

The Reply of the respondents.

That an Appeal to Her Majesty's Privy Council is inadmissible in the present case as the demand involved in the appeal is solely the termination of the lease of the tenement let at eighty two pounds ten shillings (£82. 10. 0.) for three months. In this case the ownership or appurtenance of the tenement is not in

No. 10  
Petition for  
Leave to App-  
to the Judici-  
Committee  
H.M. Privy  
Council.  
— *continua*

No. 11  
Reply

No. 11  
Reply.

-- continued

question nor any real right connected therewith; moreover, as the original term of the lease has expired the applicant is always entitled to claim an increase in the rent of the tenement as improved by the respondents. That it is certain that the question merely concerns petitioner's private interest and in future there is nothing to stop any owner, if he considers that he should do so, from prohibiting absolutely subletting and assignment or either of them, and, therefore, there is in this case no question of general interest which would justify the Court to use its discretion to grant leave to appeal even though the value involved does not exceed five hundred pounds (£500). If the Court were to use its discretion in this case a wide door would be opened to abuses on the part of owners who would be able to face the enormous expense involved in a Privy Council appeal whilst the tenant will not be in a position to incur such expense and will have to give way to the owner's imposition. 10

Wherefore Emma Gollcher's demand should be disallowed with costs.

(Signed) V. Caruana, Adv. 20  
C. Vassallo L.P.

This 17th day of April, 1968.

Filed by Charles Vassallo, L.P., without Exhibits.

(Signed) G. Izzi Savona,  
Dep. Registrar.

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## No. 12

## Respondents' Note

No. 12  
Respondents  
Note

In Her Majesty's Court of Appeal.

Application Number 231/1966.

Emma the widow of Erik W. Gollcher

v

10 Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech. Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia as head of the community of acquests and for any interest he may have, 20 Raphael Said, Joseph Said, and by a decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerio Valente and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have, 30 who are absent from these Islands, and Romeo Said, who is absent from these Islands.

The Note of the respondents Walter Baldacchino *et*

Whereby they plead preliminarily that an Appeal to the Privy Council is not admissible in the present case as such an appeal

No. 12  
Respondents'  
Note.  
— continued

is limited to cases where the Court of Appeal is exercising its ordinary jurisdiction, whilst in this case it is exercising an extraordinary jurisdiction.

(Signed) Hugh W. Harding, Adv.

This twentyfirst (21st) day of June, 1968.  
Filed at the sitting by Dr. Hugh Harding without exhibits.

(Signed) Ant. Tonna,  
Dep. Registrar.

No. 13  
Respondents'  
Note of  
Submissions.

## No. 13

### Respondents' Note of Submissions

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In Her Majesty's Court of Appeal.

Application Number 231/1966

Emma the widow of Erik W. Gollcher

v

Walter Baldacchino *et*

The Note of the said Walter Baldacchino *et*

Whereby he produces the annexed note of submissions marked XX.

(Signed) Hugh W. Harding, Adv.  
J. Privitera, L.P.  
C. Vassallo, L.P.

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This 30th day of August, 1968.  
Filed by Charles Vassallo, L.P., with a note of submissions.

(Signed) G. Izzi Savona.

In Her Majesty's Court of Appeal.

Application Number 231/1966.

No. 13  
Respondents  
Note of  
Submissions.  
— *continued*

Emma the widow of Erik W. Gollcher

v

10 Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg, assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia as head of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by a  
20 decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerio Valente, and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have,  
30 who are absent from these Islands, and Romeo Said, who is absent from these Islands.

The Note of submissions of the respondents Walter Baldacchino *et* Respectfully shew:

That the respondents have pleaded preliminarily that an Appeal to the Privy Council is not admissible in the present case as such an appeal is limited to cases where the Court of Appeal is exercising its ordinary jurisdiction, whilst in this case it is exercising an extraordinary jurisdiction.

That respondents wish to make the following submissions on their aforesaid plea :

(1) The right of appeal to Her Majesty's Privy Council has always been deemed to be limited to appeals from a decision of the ordinary Courts in their ordinary jurisdiction. In fact it has been decided that there lies no appeal from decisions of this Court in connection with marriage legacies (Vol. XXVI, part I, page 92) and in electoral cases (Vol. XXVI part I, page 940). In both cases this Court was exercising exceptional functions outside its ordinary jurisdiction.

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It is to be noted that in Bentwich's "Privy Council Practice" Third Edition, page 120 *et seq* it is stated that leave to appeal is not granted "if it appears that the matters in dispute have only a narrow application" and the same writer goes on to quote cases in which there lies no appeal to the Privy Council because the case was in the competence of a tribunal which was exercising special jurisdiction, as is precisely the case of the Rent Regulation Board which has the special function of taking cognizance of rent cases and which is presided by a Magistrate specially appointed for the purpose. The Board is a special tribunal so much so that it was necessary to state expressly in the Reletting of Urban Property (Regulation) Ordinance, Chapter 109, that the provisions relating to procedure of the Civil Court, First Hall, were applicable to the Board. Had the Board been "an ordinary court of justice", those provisions would have automatically applied thereto without the need of a special provision.

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(2) In Section 103 (1) (a) of the Constitution one finds the words "in any civil proceedings". It is the humble submission of the respondents that the strictly legal meaning is to be attributed to the said words. Which are civil proceedings? The logical and legitimate answer is that civil proceedings are those which take place before the Courts of civil jurisdiction. Now which are the Courts of civil jurisdiction? Here too the answer which imposes itself is that supplied by section two of the laws which refer precisely to the organisation of the Courts, that is to say the Code of Organization and Civil Procedure. Section 2 of this Code reads :

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"The Courts of Justice of civil jurisdiction for the Island of Malta and its Dependencies are the Superior or Inferior Courts".

The appeal to the Privy Council does not concern the Inferior Courts. There remain, therefore, the Superior Courts and

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these, according to Section 3, are the First Hall, the Commercial Court and this Court

It is to be observed that it is a constant principle, repeatedly affirmed in the decisions of our Courts, that the local laws of procedure are a source of interpretation of the Order-in-Council regulating appeals to the Privy Council (See by analogy Vol. V, page 108, Vol. XXVII, part I, page 743 and Vol. XXXIV, page 390). In establishing which are civil proceedings it is, therefore, lawful to resort to the Code of Civil Procedure, as argued above.

(3) It is to be added that it is almost axiomatic that the appeal to the Privy Council concerns the Courts. The Rent Regulation Board is not a Court but a Board. The fact that a case, which was originally before the Board, was subsequently brought before this Court by way of appeal, does not change the substantial fact that the case was one which does not come within the competence of the ordinary Courts in their ordinary functions but within the competence of a Board (not a Court) exercising exceptional functions — as in the case of appeals from decisions of the Marriage Legacies Commission. 10

(4) There is also another consideration. An appeal to this Court from the decisions of the Board (except in cases of eviction) lies as a rule on points of law only, whilst a case referred to the Privy Council constitutes an appeal of a general devolution, not limited to points of law. It is, therefore, respectfully submitted that there would be a juridical incongruity — in fact were leave to appeal to the Privy Council to be granted from a decision of the Board which has been brought before this Court on a point of law only, the examination of the Privy Council may cover the whole merit once the appeal to such Tribunal is of a general devolution. In the present instance the case is one of eviction and, therefore, the appeal is not limited to a point of law — but in order to resolve the preliminary point raised by the respondents, one has to consider not this case only but all the cases which come before the Board including those which are not eviction cases. 20 30

(5) Another most important submission is that in the Constitution under the Title “The Judiciary” and the subtitle “Courts” — precisely in section 96 — mention is made of the Superior Courts. Now the interpretation based on the principle “*statuta in uno eademque volumine compilata unum ab alio debet recipere interpretationem*” has great weight, because it cannot be logically 40

No. 13  
 Respondents'  
 Note of  
 Submissions.  
 — *continued*

held that the legislator has mentioned first the Superior Courts and then civil proceedings and that he had in mind two irreconcilable concepts — that is to say on the one hand the Superior Courts and on the other hand civil proceedings not only before the Superior Courts but also before a mere Board. It is more logical to believe that the legislator was all the time referring to civil proceedings before the ordinary Courts in their ordinary jurisdiction.

(6) Nor is the historic argument to be overlooked. In fact as appears from the Preamble of the Order-in-Council printed in Vol. VI, page 312, Revised Edition, an appeal to the Privy Council lay originally from decisions of the Supreme Council of Justice and the decisions of the Supreme Council of Justice were given on appeals from the Courts existing at that time which corresponded to the present Superior Courts. Therefore, when by the Order-in-Council appeals were made applicable to decisions of this Court of Appeal which replaced the said Supreme Council of Justice, it is logical to say that the decisions wherefrom there lies an appeal have always remained those given on an appeal from decisions of the Superior Courts and not of the Board.

(Signed) Hugh W. Harding, Adv.

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## No. 14

Decree, H.M. Court of Appeal, 18th October, 1968

No. 14  
Decree,  
H.M. Court  
of Appeal,  
18th October  
1968.HER MAJESTY'S COURT OF APPEAL  
(Civil Jurisdiction)

Judges:

His Honour Prof. Sir Anthony J. Mamo, C.B.E., C.St.J.,  
Q.C., B.A., LL.D. — President.The Hon. Mr. Justice Prof. John J. Cremona, K.M., LL.D.,  
B.A., D.Litt. (Rome), B.A. Hons. (Lond.), Ph.D. (Lond),  
F.R. Hist. S. — Vice President.

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The Hon. Mr. Justice Joseph Flores, B.L.Can., LL.D.

Sitting held on

Friday, 18th October, 1968.

Number 10.

Application No. 231/1966.

Emma the widow of Erik W. Gollcher

v

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Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia as head of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by a decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerio Valente and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said

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No. 14  
Decree,  
H.M. Court  
of Appeal,  
8th October,  
1968.  
— continued

Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity, who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have, who are absent from these Islands, and Romeo Said, who is absent from these Islands.

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The Court,

Having seen the petition of the said Emma Gollcher whereby she asked leave to appeal from the judgment given by this Court on the eighth (8th) March, 1968, to the Judicial Committee of Her Majesty's Privy Council.

Having seen the reply of Walter Baldacchino and others (hereinafter referred to as the defendants) whereby they opposed the said demand.

Having seen all the relevant acts in the record, heard the submissions on the hereundermentioned incident and considered that — 20

The judgment of this Court, in respect of which there is an application for leave to appeal to the Judicial Committee of Her Majesty's Privy Council, concerned a decision of the Rent Regulation Board. By an application filed before the said Board petitioner had asked to recover possession of tenement number 138 Saint Lucia Street, Valletta, let to the defendants, on the ground that the latter had as she alleged, assigned the lease of the said tenement in breach of their contractual obligations. The said Board, by its decision of the 17th November, 1966, had allowed petitioner's claim and authorised her to recover possession of the tenement on the expiry of the then current period of lease on the 6th March, 1967. The defendants had appealed to this Court from the said decision of the aforesaid Board, and this Court by its aforesaid judgment of the 8th March, 1968, allowed the appeal, reversed the Board's decision and disallowed petitioner's demand. 30

Now at the sitting of the 21st June, 1968, the defendants set up a preliminary plea against petitioner's demand for leave to appeal to the Judicial Committee of Her Majesty's Privy Council. They submitted that in the present case no leave to appeal to the Privy Council from the judgment of this Court can be given. In 40

their submission the provisions of the Order-in-Council which regulate such appeal apply only to judgments given by this Court in appeals from the ordinary Courts mentioned in the Code of Organisation and Civil Procedure and do not apply to judgments given in appeals from decisions of Boards or special tribunals such as the Rent Regulation Board. The hearing by this Court of appeals from decisions of Boards and similar tribunals — the defendants say — constitutes the exercise of a special and extraordinary jurisdiction, whereas the provisions of the Order-in-Council providing for appeals to the Privy Council should be understood to refer only to judgments of this Court given in the exercise of its ordinary jurisdiction as a Court of Appeal from the judgments of Courts properly so called constituted in accordance with the Code of Organization and Civil Procedure and which truly form the structure of the judicial system of Malta. In support of this submission the defendants have made reference to the judgment given by this Court in re “Agius noe v Savona et” on the 14th December, 1927 (Law Reports, Vol. XXVI, I, 937).

To this objection petitioner has replied that the Order-in-Council makes no distinction between one kind of judgments and another given by this Court. Were this objection to be allowed, it would remove the possibility of appeal to the Privy Council from the many judgments given by this Court in important cases such as are very often, for example, those given in appeals from the decisions of the Land Arbitration Board, the Income Tax Board of Special Commissioners, etc.

The Court considers that the plea of the defendants cannot be allowed in the present case. In accordance with the Order-in-Council of the 22nd November, 1909, as amended, leave to appeal to the Privy Council — apart from judgments delivered by the Constitutional Court — from judgments given by this Court, is given in certain cases as of right and in certain other cases by leave at the discretion of the Court, saving Her Majesty’s right to grant leave to appeal from other judgments of this Court.

Now, also, the Constitution of Malta expressly provides for cases of appeal to the Privy Council. According to section 103 of the said Constitution an appeal shall lie from the decisions of this Court in certain cases as of right and in other cases by leave of this Court, as laid down in the said Section. In subsection (4) there is a reservation with regard to the Queen’s Prerogative.

In as much as both the Order-in-Council and the Constitution refer to “judgments” and “decisions” of this Court from which

No. 14  
Decree,  
H.M. Court  
of Appeal,  
18th October,  
1968.  
— continued

an appeal to the Privy Council may lie, no distinction is made between judgments or decisions given by this Court in the exercise of its jurisdiction as a Court of Appeal from judgments or decisions of the ordinary Courts and judgments or decisions given in virtue of the jurisdiction vested in this Court by other laws from the decisions of Boards or special tribunals; and in the absence of any such distinction the Court does not consider that it may itself make such distinction, provided, as will be said, it is a judgment or decision given by this Court in civil proceedings".

By section 45 of the Code of Organisation and Civil Procedure this Court, in addition to the jurisdiction conferred upon it by section 42 to hear appeals from judgments given by the ordinary Courts of first instance, is given jurisdiction to take cognizance of "all other causes which by express provision of the law are assigned to it". Chapter 109 gives a right of appeal to this Court from decisions of the Rent Regulation Board in the cases envisaged in section 25 of that law. *Pro tanto* the hearing of these appeals constitutes a part of the jurisdiction of this Court conferred upon it by law.

The defendants observed in their note of submissions that for leave to appeal to the Privy Council to be given from judgments or decisions of this Court, it is necessary that such judgment or decision should be in civil proceedings (Section 103 (1) (a) and 103 (3) (a) of the Constitution of Malta) and added that "civil proceedings" should mean only proceedings before the Ordinary Courts. The Court does not consider it can make such limitation and is of the opinion that proceedings before the Rent Regulation Board are "civil proceedings".

The case "Agius v Savona" cited by the defendants was an exceptional case concerning an election petition which obviously has totally particular features of its own. In regard to election petitions it is now expressly stated in section 64 of the Constitution of Malta that the decision of the Constitutional Court is final and that there lies no appeal therefrom to the Privy Council (Section 103 (2)). The principle established in the Privy Council judgment in the cases cited in the said judgment "Agius v Savona" should not, in the opinion of the Court, be extended in the manner suggested by defendants. In the first place the said cases appear to refer to petitions made directly to the Privy Council for special leave to appeal in virtue of the Prerogative, while in the present case it is a question of interpreting the general wording of the Order-in-Council of 1909 and of the Constitution of Malta.

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Secondly, as has been said, the proceedings before the Rent Regulation Board from which there is an appeal to this Court are "causes" within the proper meaning of the word, between contending parties concerning civil rights and such proceedings are neither political nor administrative but truly judicial.

No. 14  
Decree,  
H.M. Court  
of Appeal,  
18th October,  
1968.

10 It must be stressed that in this decision the Court is not pronouncing itself generically with regard to judgments or decisions given by it in all kinds of appeals brought before it from any kind of special tribunals or Boards or other authorities, but, it is pronouncing itself only with regard to judgments given by it on appeals from decisions of the Rent Regulation Board. In other cases there might eventually be — the Court is not making any pronouncement on this — some grounds of difference.

For these reasons the Court disallows the said preliminary plea raised by the defendants as aforesaid, costs to be borne by the defendants, and orders the hearing to be continued.

(Signed) Ant. Tonna,  
Dep. Registrar.

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## No. 15

### Decree granting Conditional Leave to Appeal

HER MAJESTY'S COURT OF APPEAL  
(Civil Jurisdiction)

Judges:

His Honour Prof. Sir Anthony J. Mamo, C.B.E., C.St.J.,  
Q.C., B.A., LL.D. — President.

The Hon. Mr. Justice Prof. John J. Cremona, K.M., LL.D.,  
B.A., D.Litt. (Rome), B.A. Hons. (Lond.), Ph.D (Lond.),  
F.R. Hist. S. — Vice President.

The Hon. Mr. Justice Joseph Flores, B.L.Can., LL.D.

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**Sitting held on**

Saturday, 28th December, 1968.

Number 1.

Application No. 231/1966.

Emma the widow of Erik W. Gollcher

v

Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia assisted by him and the said Alfred Cachia as head of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by a decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerio Valente and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said

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10 Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity who is absent from these Islands, Antonia *sive* Annetta, the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have who are absent from these Islands, and Romeo Said, who is absent from these Islands.

The Court,

Having seen its decision of the 18th October, 1968, whereby it disallowed the plea raised by the defendants in the sense that, in the present case, there lies no appeal to Her Majesty's Privy Council as the judgment of this Court from which the said appeal is being made referred only to a decision of the Rent Regulation Board.

20 In her petition the said Gollcher prayed for leave to appeal to the Privy Council principally as of right in that she claims that the value involved exceeds £500 and, subordinately, *ex gratia* in that she claims that the question determined by the judgment of this Court concerns a point of law which it is proper to submit to the Privy Council.

30 The defendants Baldacchino et have now opposed that demand both on the first as well as on the second ground. As regards value, the defendants Baldacchino submitted that this Court as far back as 1889 in the case "Luke v Scicluna" (Vol. V, p. 108) repeatedly held that, as the Order-in-Council which regulates appeals to the Privy Council does not lay down how the value is to be determined, when such value is not determined by the demand it should be assessed in accordance with the provisions of the Code of Organization and Civil Procedure. Among other decisions the defendants have made reference to "Dimech v Chritien" Vol. XXVII, I, 743, "Spiteri v Hili" Vol. XXXIII, I, 248, "Grima v Camilleri" Vol. XXIV, I, 392. In the present case— the defendants have submitted — section 757 combined with section 756 of that Code are applicable and the value involved should be deemed to be that corresponding to three months' rent for the tenement, that is to say £82, or, as a maximum, that correspond-

40 ing to one year's rent that is to say £330.

As regards the importance of the case for the purposes of *ex*

*gratia* leave to appeal the defendants submitted that, as has been held several times (see e.g. Vol. XXXIX, I, 129) it is not enough that a point of law be involved but it is necessary that the question be in some way of public or general interest.

To these submissions petitioner Gollcher has replied, in the first place, that the provisions of our Code of Organization and Civil Procedure regulate only the competence as between the local Courts and are not applicable for the purposes of a special appeal to the Privy Council. The present case concerns a tenement of considerable value used for commercial purposes and the amount involved should be deemed to be that resulting from the difference between the present rent as controlled by Chapter 109 and the rent which such tenement could realize in a new lease if it were to become available for such new lease. In the second place, and in any event, the question involved concerns a point of law of great importance which might easily recur in other cases and it is proper, therefore, that there should be a decision about it by the highest Court. 10

Having considered —

According to section 2 (a) of the Order-in-Council of 1929 as amended and section 103 (1) (a) of the Constitution of Malta, an appeal to the Privy Council shall lie as of right from a final decision of this Court in civil proceedings — 20

“Where the matter in dispute on the appeal to Her Majesty in Council is of the value of five hundred pounds or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of five hundred pounds or upwards”.

What has been submitted by the defendants is certainly true, that is to say that, on several occasions, this Court has held that, when the value is not determined by the demand, the value, even for the purposes of an appeal to the Privy Council, is to be regulated in accordance with the provisions of our Code of Civil Procedure relating to competence. However, it is also to be pointed out that in the judgment given by the Privy Council on the 16th October, 1930, in re “Dimech v Chritien”, where it was also submitted that this Court in assessing the value for the purposes of granting leave to appeal, was bound to be guided by those provisions, their Lordships of the Privy Council, although they did not give a formal decision on this point, said, “Their Lordships . . . do not assent to the view which was urged before them that the rules regulating appeals to His Majesty in Council from 30 40

Malta (which are contained in an Order-in-Council dated the 22nd November 1909) are to be construed in some way by reference to the provisions of the Maltese Code of Civil Procedure so as to compel the Court of Appeal to be satisfied by the valuation of experts, under article 768 of the Code, as to the existence of the value of £500 which is required by Rule 2. Their Lordships think that the Order-in-Council falls to be construed in the light of the language employed therein. (This extract was quoted by this Court in its decision reported in Vol. XXIX, I, 1163-4).

10 The fact that now the appeal to the Privy Council is regulated also by the Constitution of Malta, in addition to the said Order-in-Council, does not, in the opinion of this Court, make any relevant difference.

But, even if the provisions of the Code of Civil Procedure are not applied, this Court does not consider that the value involved in the case is of £500 or upwards. In this case the property or ownership of the tenement or of any real right connected thereto was not in question. What formed the merit of the case was only whether petitioner Gollcher was or was not entitled to refuse  
 20 to renew the lease to the defendants for another three months on the expiry of the term of the lease then current. The Court does not consider that, for the purposes of reckoning the value involved, account should be had of the damages which petitioner claims she might eventually suffer by a decision disallowing her demand. As was stated by this Court in re "Luke v Scicluna" (Vol. V p. 112 quoted with approval by this Court in re "Dimech v Chretien" 5th November, 1928) "in determining the value at issue, even for the purposes of an appeal to the Judicial Committee of H.M. Privy Council, one cannot take into account the damages and interests,  
 30 which might eventually be sustained, as a consequence of the decision from which it is intended to appeal, for the reason that such damages have not been claimed, and there is therefore no decision on such damages from which an appeal may be entered, involving either directly or indirectly a claim, demand or question for or with regard to such damages.

The subject matter of the case, that is to say the lease of the tenement for another term, does not exceed £500 either on the basis of the present rent or on the basis of any other potential rent.

40 There remains, therefore, to be considered whether in the discretion of the Court, the leave applied for should be granted because of the importance of the question involved. The defendants

No. 15  
Decree  
granting  
Conditional  
Leave to  
Appeal.  
— *continued*

have drawn the attention of the Court to what was stated by the Privy Council itself as quoted in the decision of this Court reported in Vol. XXXI, I, 136, in the sense that leave is not granted “save where the case is of a gravity involving a matter of public interest or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance, or of a very substantial character”. This was stated with reference to the grant of special leave by the Privy Council itself.

The Court, however, considers that, even by the said criterion, the question involved in the present case is substantial enough to render desirable its submission for the final decision of the Privy Council. The question, in general, is whether an authorisation or consent given by the lessor to the lessee to sublet authorises also the lessee in our system of law, to assign the lease. Of course in the present case, the conclusion arrived at in the judgment of this Court from which leave to appeal is being sought, was, as also appears clearly from the judgment itself, influenced by the particular circumstances of the case and especially by the whole context of the clause in the deed whereby the authorisation to sublet was given: nevertheless the fact remains that the correct solution of the general legal question remains important also because, obviously, it might arise in other cases. 10 20

For these reasons the Court disallows the demand of the petitioner Gollcher for leave to appeal as of right, but allows the said demand for leave to appeal *ex gratia* and, therefore grants, the said petitioner conditional leave to appeal to the Judicial Committee of Her Majesty’s Privy Council, and gives petitioner twenty days time from this day to produce the security envisaged in section 4 (a) of the said Order-in-Council in the sum of £500 (five hundred pounds) and three months time to prepare and transmit the record to the said Judicial Committee. Costs reserved to the direction on final leave to appeal. 30

V. Borg Grech,  
A/Registrar.

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**No. 16**  
**Emma Gollcher's Note —**  
**Deposit of sum by way of security**

No. 16  
 Emma Gollch  
 Note —  
 Deposit of S  
 by Way  
 of Security

In Her Majesty's Court of Appeal.

Emma Gollcher, a widow  
 v  
 Walter Baldacchino *et*

The Note of the said Emma Gollcher, a widow.

10       Whereby she declares that, for the purposes of the decree given by this Court on the 28th December, 1968, whereby the applicant was granted provisional leave to appeal to the Judicial Committee of Her Majesty's Privy Council, she has this day deposited by a schedule filed in the Registry of this Court the sum of £500 (five hundred pounds) by way of security which she had to provide according to law and according to the said decree.

(Signed) Paul Mallia, Adv.  
 Rob. Dingli, L.P....

This tenth (10th) day of January, 1969.  
 Filed by R. Dingli, L.P., without Exhibits.

20

(Signed) Vic Apap,  
 Dep. Registrar.

**No. 17**

**Emma Gollcher's Application**

In Her Majesty's Court of Appeal.

Application Number 231/1966

Emma Gollcher

v

Walter Baldacchino *et*

The application of the said Emma Gollcher.

Respectfully sheweth:

That this Court on the 28th December, 1968, gave the 10  
 applicant three months time to prepare the translation of the re-  
 cord to be transmitted to Her Majesty's Privy Council.

Wherefore she respectfully prays that this Court may be pleas-  
 ed to authorise the undersigned counsel to withdraw the record  
 in order that the said translation may be made as early as poss-  
 ible.

(Signed) Renè Cremona, Adv.  
 Rob. Dingli, L.P.

This 20th day of January, 1969.  
 Filed by R. Dingli, L.P., without Exhibits.

20

(Signed) Vic Apap,  
 Dep. Registrar.

**No. 18****Decree, H.M. Court of Appeal**

HER MAJESTY'S COURT OF APPEAL

No. 18  
Decree,  
H.M. Court  
of Appeal.

The Court,

Allows the demand under the usual directions and particularly that the record be kept in the custody of counsel for the applicant and that it shall be accessible to the other party and to the Court if necessary.

This twentyfirst (21st) day of January, 1969.

10

(Signed) J. Brincat,  
Dep. Registrar.

**No. 19****Emma Gollcher's Application**No. 19  
Emma Gollcher  
Application.

In Her Majesty's Court of Appeal.

Emma the widow of Erik W. Gollcher

v

Walter Baldacchino *et*

The application of the said Emma Gollcher, a widow.

Respectfully sheweth:

20

That by a decree given on the 28th December, 1968, this Court granted the applicant provisional leave to appeal *ex gratia* to Her Majesty's Privy Council (Judicial Committee of Her Majesty's Privy Council) and gave her three months for the preparation of the record for transmission to the said Judicial Committee.

That the translation is now ready and is being checked by the undersigned advocate so that it may later be sent for check-

No. 19  
 ma Gollcher's  
 Application  
 — continued

ing by counsel for the other party and subsequently to this Court for its final approval before the printing of the record.

That the time given to the applicant expires on the 27th March, 1969, and it is evident that by that time all this will not have been done.

Wherefore the applicant respectfully prays that this Court may be pleased to extend the aforesaid term for a further period of three months.

(Signed) Renè Cremona, Adv.  
 Rob. Dingli, L.P.

10

This eighteenth (18th) day of March, 1969.  
 Filed by Rob. Dingli, L.P., without Exhibits.

(Signed) J B. Micallef,  
 Deputy Registrar.

No. 20  
 Decree,  
 H.M. Court  
 of Appeal.

## No. 20

### Decree, H.M. Court of Appeal

#### HER MAJESTY'S COURT OF APPEAL

The Court,

Having seen the application.

Allows the demand.

This twentieth (20th) day of March, 1969.

20

(Signed) G. Izzi Savona,  
 Deputy Registrar.

## No. 21

## Emma Gollcher's Application

No. 21  
Emma Gollcher  
Application

In Her Majesty's Court of Appeal.

Emma the widow of Erik W. Gollcher  
v  
Walter Baldacchino *et*

The application of the said Emma Gollcher, a widow.

Respectfully sheweth:

10 That by a decree given on the 28th December, 1968, this Court while it granted the applicant provisional leave to appeal *ex gratia* to the Judicial Committee of Her Majesty's Privy Council, gave her three months time to prepare the record for transmission to the said Judicial Committee.

That subsequently the said time was extended for another three months which expire on the 27th June, 1969.

20 That the translation of the record is ready and has been examined by the undersigned Advocate and has now been passed to counsel for the opposite party, Dr. Hugh W. Harding, B.A., LL.D., and is now in the possession of the said counsel for his examination and approval.

That the record will not be ready for transmission by the 27th June, 1969.

Wherefore applicant respectfully prays that this Court may be pleased to extend the aforesaid term for another three months.

(Signed) Renè Cremona, Adv.  
Rob. Dingli, L.P.This 10th day of June, 1969.  
Filed by Rob. Dingli, L.P., without Exhibits.(Signed) R. Savona,  
Deputy Registrar.

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

**No. 22**

**Decree, H.M. Court of Appeal**

HER MAJESTY'S COURT OF APPEAL

The Court,

Having seen the application;

Allows the demand and extends the term for another three months.

This application and decree are to be communicated to Doctor Hugh Harding, Advocate.

This eleventh day of June, 1969.

10

(Signed) Edw. Cauchi,  
Deputy Registrar.

I have to report that I have communicated this application and decree to Dr. Hugh Harding, Advocate.

This 11th day of June, 1969.

(Signed) Jos. Zammit,  
Marshal.

No. 23  
Emma Gollcher's  
Application.

**No. 23**

**Emma Gollcher's Application**

In Her Majesty's Court of Appeal

20

Emma the widow of Erik W. Gollcher

v

Walter Baldacchino *et*

The application of the said Emma Gollcher, a widow

Respectfully sheweth:

That the time given to the applicant to prepare the record for transmission to Her Majesty's Privy Council, as subsequently extended, expires on the 27th (twentyseventh) September, 1969;

That the translation of the record is ready and has been examined by applicant's counsel and passed to counsel for the respondent's for his examination. That the said translation is still in the possession of the said counsel for the respondents who has however declared that he will be returning it soon.

That as soon as the translation is so returned the record will have to be printed.

That it is evident that this will not have been done by the 27th September, 1969;

10 Wherefore the applicant respectfully prays that this Court may be pleased to extend again the aforesaid time for a further period of six months.

(Signed) Renè Cremona, Adv.  
Rob. Dingli, L.P. ‘

This 11th day of September, 1969.  
Filed by Robert Dingli, L.P, without Exhibits.

(Signed) R. Savona,  
Deputy Registrar.

## No. 24

### Decree, H.M. Court of Appeal

#### HER MAJESTY'S COURT OF APPEAL

The Court,

Having seen the application;

Allows the demand.

This twelfth (12th) day of September, 1969.

(Signed) R. Savona,  
Deputy Registrar.

No. 23  
Emma Gollch  
Application  
— continue

No. 24  
Decree,  
H.M. Court  
of Appeal.

**No. 25**

**Emma Gollcher's Application**

In Her Majesty's Court of Appeal

In the matter of Application 231/66

Emma the widow of Erik W. Gollcher

v

Walter Baldacchino *et*

The application of the said Emma Gollcher, a widow

Respectfully sheweth:

That following the provisional leave, given to the applicant 10  
 by the decision of the 30th December, 1968, to appeal to the Judi-  
 cial Committee of Her Majesty's Privy Council from the decision  
 given by this Court on the 8th March, 1968, the applicant has  
 prepared the translation of the record of proceedings into the Eng-  
 lish language and by a schedule of deposit of today's date has  
 filed the said translation (approved by the opposite party) at the  
 Registry of this Court.

Wherefore the applicant respectfully prays that, before the  
 said translation is submitted for printing, this Court may be  
 pleased to examine it and eventually to approve it making any 20  
 corrections it may deem proper.

(Signed) Renè Cremona, Adv.  
 Rob. Dingli, L.P.

This 18th day of February, 1970.  
 Filed by Rob. Dingli, L.P., without Exhibits.

(Signed) A. Fiott,  
 Dep. Registrar.

**No. 26**No. 26  
Emma Gollch  
Application**Emma Gollcher's Application**

In Her Majesty's Court of Appeal

Emma the widow of Erik W. Gollcher  
v  
Walter Baldacchino *et*

The application of Emma Gollcher

Respectfully sheweth:

10 That the time given to the applicant to prepare the record for  
transmission to Her Majesty's Privy Council, as subsequently ex-  
tended, is due to expire.

That the translation of the record of proceedings has been  
prepared and has been approved by counsel for the parties and  
was deposited under the authority of this Court by schedule of  
deposit of the 18th February, 1970, and awaits the examination  
and eventual approval of this Court.

That, therefore, a further extension of time is required so that,  
after this Court will have approved the said translation, the record  
may be printed according to law.

20 Wherefore the applicant respectfully prays that it may be  
pleased to extend the time for a further period of six months.

(Signed) Renè Cremona, Adv  
Rob. Dingli, L.P.This 11th day of March, 1970.  
Filed by Robert Dingli, L.P., without Exhibits.(Signed) C.J. Esposito,  
Deputy Registrar.

No. 27  
Decree,  
H.M. Court  
of Appeal.

**No. 27**

**Decree, H.M. Court of Appeal**

HER MAJESTY'S COURT OF APPEAL

The Court,  
Having seen the application.  
Allows the demand.  
This 16th day of March, 1970.

(Signed) G. Izzi Savona,  
Deputy Registrar.

No. 28  
Emma Gollcher's  
Application.

**No. 28**

**Emma Gollcher's Application**

10

In Her Majesty's Court of Appeal

Emma the widow of Erik W Gollcher  
v  
Walter Baldacchino *et*

The application of the said Emma Gollcher

Respectfully sheweth:

That the time for the preparation of the record to be transmitted to Her Majesty's Privy Council, as extended several times, is again due to expire.

That the translation of the record, as submitted in the preceding application, has been completed and has been approved by counsel for the contending parties and awaits the final approval of this Court. The said translation was deposited by Schedule of Deposit dated the 18th February, 1970. 20

That the said translation, after it will have been so approved, has to be printed and, therefore, a further extension is necessary.

Wherefore the applicant respectfully prays that this Court may be pleased to extend the aforesaid term for a further period of six months as from the date of its expiry.

No. 28  
Emma Gollcher's  
Application  
— continued

(Signed) Renè Cremona, Adv.  
Rob. Dingli, L.P.

This 31st day of August, 1970.  
Filed by Robert Dingli, L.P., without Exhibits.

(Signed) C.J. Esposito,  
Deputy Registrar.

10

## No. 29

### Decree, H.M. Court of Appeal

HER MAJESTY'S COURT OF APPEAL

No. 29  
Decree,  
H.M. Court  
of Appeal

The Court,  
Having seen the application;  
Allows the demand.  
This first (1st) day of September, 1970.

(Signed) A Fiott,  
Deputy Registrar.

20

## No. 30

### Decree, H.M. Court of Appeal

HER MAJESTY'S COURT OF APPEAL

No. 30  
Decree,  
H.M. Court  
of Appeal

The Court,  
Has revised and approved the translation of the judgments and decrees given by it and has suggested that the other parts of the record of proceedings be similarly corrected where applicable.  
This 23rd day of October, 1970.

(Signed) C.J. Esposito,  
Dep. Registrar.

No. 31

Emma Gollcher's Application

In Her Majesty's Court of Appeal.

Emma Gollcher, a widow

*v.*

Walter Baldacchino *et*

The application of the said Emma Gollcher.

Respectfully sheweth :

That with the approval of the opposite party she has accepted the corrections suggested by this Court and made the same corrections wherever necessary in the record.

10

That now the record is ready for printing.

Wherefore the applicant respectfully prays that this Court may be pleased to grant her final leave to appeal to Her Majesty's Privy Council so that the relative decree might be included in the record.

(Signed) Renè Cremona, Advocate.  
 Rob. Dingli, L.P.

This 12th day of March, 1971.

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

(Signed) G. Izzì Savona,  
 Dep. Registrar

20

**No. 32****Decree, H.M. Court of Appeal**

HER MAJESTY'S COURT OF APPEAL

No. 32  
Decree,  
H.M. Court  
of Appeal.

The Court,

Having seen the application;

Orders that it be served on the opposite party and that it be put on the list of the sitting to be held on the fifth (5th) April, 1971, at 9 a.m. for hearing and for determination.

This twelfth (12th) day of March, 1971.

10

(Signed) Albert A. Palmier,  
Deputy Registrar.**No. 33****Emma Gollcher's Application**

In Her Majesty's Court of Appeal.

No. 33  
Emma  
Gollcher's  
Application.Emma Gollcher, a widow  
*v*  
Walter Baldacchino *et*

The application of the said Emma Gollcher a widow.

Respectfully sheweth:

20 That on the 12th March, 1971, the applicant filed an application praying that this Court might be pleased to grant her final leave to appeal to Her Majesty's Privy Council in the aforesaid case.

That, pending the said decision, the record cannot be transmitted according to law.

That the time given for the preparation of the record stands extended to the 27th March, 1971, and, therefore, there is the possibility that the said time might expire before the proceedings are completed.

No. 33  
Emma  
Gollcher's  
Application.  
— continued

Wherefore the applicant respectfully prays that, without prejudice to the demand contained in the application of the 12th March, 1971, this Court may be pleased to extend the aforesaid time for a further period of three months.

(Signed) Renè Cremona, LL.D.  
Rob. Dingli, L.P.

This 17th day of March, 1971.

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

(Signed) P. Piscopo,  
Dep. Registrar.

10

## No. 34

### Decree, H.M. Court of Appeal

#### H.M. COURT OF APPEAL

No. 34  
Decree,  
H.M. Court  
of Appeal.

The Court,

Having seen the application;

Orders that it be communicated to counsel for the opposite party who shall have two days within which to reply if he deems fit.

This eighteenth (18th) day of March, 1971.

(Signed) C.J. Esposito,  
Dep. Registrar.

20

I have to report that I have communicated the said application and decree to Dr. Hugh Harding, LL.D.

This 20th day of March, 1971.

(Signed) Jos. Zammit,  
Marshal.

**No. 35**  
**Decree, H.M. Court of Appeal**

No. 35  
 Decree,  
 H.M. Cot  
 of Appea

H.M. COURT OF APPEAL

The Court,

Having seen the application:

Having seen its preceding decree and the absence of a reply by the other party within the time given.

Allows the demand and extends the time for a further period of three months as requested.

10        This twentyfourth (24th) day of March, 1971.

(Signed) C.J. Esposito,  
 Dep. Registrar.

**No. 36**

**Respondents' Note**

No. 36  
 Responder  
 Note.

In Her Majesty's Court of Appeal

Application No 231/1966.

Emma the widow of Erik W. Gollcher

*v.*

20        Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino, a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have,  
 30        Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia as head

No. 36  
 Respondents'  
 Note  
 — continued

of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by a decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerie Valente and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity, who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have, who are absent from these Islands, and Romeo Said, who is absent from these Islands. 10

The Note of the said Walter Baldacchino *et*

That as the security for costs was not given within the time of three months from the date of the hearing of the application for leave to appeal, final leave cannot be given in view of the fact that conditional leave was vitiated by the aforesaid defect. 20

(Signed) Hugh Harding, Advocate.  
 J. Privitera, L.P

This 5th day of April, 1971.

Filed at the sitting by Dr. Hugh Harding without Exhibits.

(Signed) R. Savona,  
 Dep. Registrar.

## No. 37

## Decree granting final leave to Appeal

No. 37  
Decree  
granting  
final leave  
to Appeal.

HER MAJESTY'S COURT OF APPEAL

(Civil Jurisdiction)

Judges:

His Honour Prof. Sir Anthony J. Mamo, O.B.E., C.St.J.,  
Q.C., B.A., LL.D. — President.

The Hon. Mr. Justice Prof. J.J. Cremona, K.M., LL.D., B.A.,  
D.Litt. (Rome), B.A. Hons. (Lond.), Ph.D. (Lond.),  
10 F.R. Hist. S. — Vice President.

The Hon. Mr. Justice J. Flores, B.L.Can., LL.D.

Sitting held on Friday, sixteenth (16th) April, 1971.

Application No. 231/66.

Emma the widow of Erik W. Gollcher

*v.*

20 Walter Baldacchino, Joseph Baldacchino, John Baldacchino, Victor Baldacchino, Carmela Baldacchino a spinster, Paul Woods, Mary Rose the wife of Vincent Martin assisted by him and the said Vincent Martin as head of the community of acquests and for any interest he may have, Paul Grech, Arthur Grech, Edward sive Edgar Grech, Vittorina Grech, a spinster, Ines the wife of Victor Borg assisted by him and the said Victor Borg as head of the community of acquests and for any interest he may have, Joseph Sciortino, Carmela the wife of Alfred Cachia, assisted by him and the said Alfred Cachia as head of the community of acquests and for any interest he may have, Raphael Said, Joseph Said, and by  
30 a decree of the 29th September, 1966, Walter Baldacchino, Paul Woods, Valerie Valente and Raffaele Said were appointed curators to represent respectively Salvina the wife of Salvatore Attard and the said

Salvatore Attard as head of the community of acquests and for any interest he may have, who are absent from these Islands, Carmela Woods known as Sister Luisa Teresa in the religious community of the Sisters of Charity, who is absent from these Islands, Antonia *sive* Annetta the wife of John Natoli and the said John Natoli as head of the community of acquests and for any interest he may have, who are absent from these Islands, and Romeo Said, who is absent from these Islands.

10

The Court,

Having seen the application of the said Emma Gollcher of the 12th March, 1971, whereby she submitted that the record is ready for printing and, therefore, prayed that this Court may grant her final leave to appeal to the Judicial Committee of Her Majesty's Privy Council;

Having seen the note of the said Walter Baldacchino and others whereby they submitted that, as the security for costs was not given within the time of three months from the date of the hearing of the application for leave to appeal, final leave cannot be given in view of the fact that the conditional leave was vitiated by the aforesaid defect;

20

The relevant facts were as follows;

The judgment of this Court from which the said Emma Gollcher wishes to appeal to the Judicial Committee of the Privy Council was given on the 8th March, 1968. Within twentyone days from the said date (that is to say on the 28th March, 1968), the said Gollcher filed her petition whereby she prayed for leave to appeal, in accordance with rule 3 of the Order in Council of the 22nd November, 1909, as amended.

30

In their reply to the said petition the said Baldacchino opposed the demand both because an appeal did not lie as of right on the ground of value, as well as because there were no grounds for such an appeal on the basis of the general or public importance of the question involved.

The petition was originally to be heard by this Court at the sitting of the 29th April, 1968, but because of the indisposition of counsel for the said Baldacchino and also because the parties wished to explore the possibility of a compromise, the hearing was put off to the 21st June, 1968. At this sitting the said Baldacchino raised a new preliminary plea in the sense that, in the

40

present case, an appeal to the Privy Council was not admissible in as much as an appeal is limited to cases where this Court is exercising its ordinary jurisdiction, whilst in this case the Court was exercising an extraordinary jurisdiction. This Court, having heard counsel for both parties on this question, reserved giving its decision on the said plea after the summer recess, that is to say on the 18th October, 1968, giving the parties leave to file notes of submissions, if they so wanted, by the 30th August.

10 On the 18th October, 1968, the Court disallowed the said preliminary plea of the said Baldacchino and ordered the continuation of the hearing of the petition. This took place at the sitting of the 21st December, 1968, and on the 28th of the same month the Court gave its decision whereby it disallowed Emma Gollcher's demand for leave to appeal as of right to the Privy Council, but allowed the demand for leave *ex gratia*, allowing her twenty days from that day for the production of the security envisaged in rule 4 (a) of the said Order in Council in the sum of five hundred pounds (£500) and the time of three months for the preparation and transmission of the record to the Privy Council.

20 The security for costs was in fact given on the 10th January, 1969, that is to say within the time of 20 days fixed by the Court. The time allowed for the translation and preparation of the record was extended several times on the application of the petitioner.

Now rule 4 (a) of the Order in Council, so far as relevant, reads as follows:—

“4. Leave to appeal under Rule 2 shall only be granted by the Court in the first instance —  
 (a) upon condition of the Appellant, within a period  
 30 to be fixed by the Court, but not exceeding three months from the date of the hearing of the application for leave to appeal, entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding five hundred pounds for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Respondent . . . .”

40 By the question now raised by them the respondents Baldacchino claim that the security for costs was not given within a period “not exceeding three months from the hearing of the application for leave to appeal” as prescribed by the said Rule and that, therefore, the grant of provisional leave should be deemed to be null and, accordingly, final leave cannot now be given. In

the submission of the respondents "hearing of the petition" means its first hearing before the Court. The appellant Gollcher replies to this objection by submitting that, once the amount of security has to be fixed by the Court up to a maximum of £500, she evidently could only give the security after the amount had, in the present case, been in fact fixed by the Court when granting provisional leave and she did give the security within the time of twenty days as ordered by the Court.

The Court is of opinion that respondents' claim cannot be allowed. Normally the hearing of a petition for provisional leave and the granting of such leave, if admissible, take place shortly after the judgment from which the appeal is to be made. In the present case, unfortunately, the granting of such leave took some time, also on account of the questions raised by the respondents, and in any case without the appellant Gollcher being in any way to blame. In any case the Court is of opinion that, in the context of the Rule in question, since both the time for the giving of the security and the amount of such security, within the limits of the maximum both of the time and of the amount prescribed by the said Rule, are to be established in each particular case by the Court, the words "hearing of the application for leave to appeal" should include the hearing before the Court and the Court's decision thereon. In other words the Court considers that the word "hearing" in this context means "hearing and determination" (vide *Re Green*, 51 L.J.Q.B. 44). Even if this is wrong and "hearing" does not include the Court's decision, there should be no doubt that, in the present case, the proper "hearing" on the merits of the petition for leave to appeal took place or at any rate was continued at the sitting of the 18th November, 1968, after the Court had disposed of the preliminary plea raised by the respondents as to the alleged inadmissibility of the appeal. The security was given on the 10th January, 1969, that is to say well within the three months from the date of the said hearing.

On these grounds the Court disallows the new plea raised by the respondents with costs against them.

And whereas the translation and preparation of the record is now ready, the Court gives the said Emma Gollcher final leave to appeal to Her Majesty's Privy Council from the judgment given by this Court on the 8th March, 1968. The costs relative to this decree and those relative to the decision whereby provisional leave was granted are to be borne by the said Emma Gollcher (saving, of course, the costs relating to the other two decisions given by

this Court whereby the respondents Baldacchino were ordered to pay the costs thereof) and saving any right the said Emma Gollcher may have to recover such costs in full or in part from the respondents if and as ordered by the Judicial Committee of Her Majesty's Privy Council.

No. 37  
Decree  
granting  
final leave  
to Appeal.  
— *continua*

R. Savona,  
Dep. Registrar.

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**APPLICANT'S EXHIBITS**

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**Exhibit "A"****"A"**  
**Deed dated**  
7th March, 1951**Deed dated 7th March, 1951**

This seventh day of March one thousand nine hundred and fifty-one (7. 3. 1951).

Before me, Victor Bisazza, Notary Public, practising in the Island of Malta, and in the presence of the undersigned duly qualified witnesses, known to me, have personally appeared:—

10 Erik William Gollcher, merchant, son of Chevalier William, born at Vittoriosa and residing in Valletta, for and on behalf of Emma Gollcher, his wife, daughter of the late Agostino Cassar Torreggiani, born and residing in Valletta as her attorney hereto appointed by an instrument which is annexed to the hereinafter mentioned deed of lease in the records of Notary Doctor Giorgio Borg Olivier of the sixth day of July one thousand nine hundred and forty-three (1943) — of the one part.

And of the other part:—

20 Edgar Baldacchino, merchant, son of the late Salvatore, born at Sliema and residing in Valletta — Paul Grech, merchant, son of the late Giuseppe, born and residing at Sliema, in his capacity as attorney of Maria Dolores widow of Giuseppe Grech, daughter of the late Giorgio Cassar, born at Casal Curmi and residing at Sliema, appointed by a deed in the records of Notary Giovanni Carmelo Chapelle of the fourteenth November one thousand nine hundred and forty-one (1941) and Raffaele Said, merchant, son of Michele, born at Cospicua and residing in Valletta, hereto appearing in his name and as the attorney of his said father Michele Said, merchant, son of the late Carmelo, born at Vittoriosa and residing at Valletta, and of his brothers Giuseppe Said and Romeo Said, 30 merchants, sons of the said Michele, born in Cospicua and residing Giuseppe in Valletta and Romeo in Sliema, verbally appointed.

Known to me the said Notary.

Whereas in virtue of a deed received by Notary Doctor Giorgio Borg Olivier of the sixth day of July one thousand nine hundred and forty three the said Erik William Gollcher nomine granted to the other parties the lease for commercial purposes of the building at the time demolished by enemy action number (138) one hundred and thirty eight, Saint Lucia Street, Valletta, at the

"A"  
Deed dated  
March, 1951.  
— continued

rent to be assessed by an architect appointed by the parties and for the duration of eight years from the twenty fifth day of July one thousand nine hundred and forty five (1945) and on the other conditions thereby agreed upon between the parties;

And whereas the said rent had been fixed at (£250) two hundred and fifty pounds per annum;

And whereas the said lessees proposed to the landlord that they erect another floor, that is the third floor, in addition to those existing before the building was demolished, and the landlord accepted such proposal and in view thereof the parties have agreed to make the following additions and alterations to the said lease:— 10

Now therefore, by these presents, it is agreed as follows:—

1. The said tenants shall build at their own expense the third floor of the said building which shall be of the same area as the top floor now existing and similar to it in other respect saving such alterations as may be required under Government Regulations or Governmental Board decisions.

2. The tenants shall not have any right of demanding compensation from the landlord in respect of the said floor to be built by them at the termination of the lease at any time and whatever the cause of such termination; 20

3. The duration of the lease shall be eight years certain and eight years optional from the date hereof;

4. The rent shall be of (£330) three hundred and thirty pounds per annum, payable quarterly in advance from the date thereof;

5. All maintenance repairs shall be borne by the tenants who bind themselves to keep the tenement in good condition and so to deliver it at the termination of the lease, provided extraordinary repairs will be the landlord's liability.

6. Saving the foregoing all other conditions of the lease above referred to of the 6th July 1943 shall remain unaltered. 30

7. The tenants are empowered to sublet the said premises or part thereof, provided that they will be responsible for the performance of all the obligations undertaken by them in virtue of this deed.

8. The tenants are empowered to connect the said premises with others and will hold themselves responsible to disconnect same at the termination of the lease and restore the building internally to the satisfaction of the landlord.

9. It is agreed that any deposit received from the War Damage Commission made in the joint names of Messrs. Baldacchino and Erik William Gollcher is to be withdrawn by the tenants 40

after the rebuilding of the house in accordance with the terms laid down in this contract.

Read published and executed the contents whereof having been duly explained by me to the parties in Malta, at Valletta, Britannia Street, number fifty-four, in the presence of witnesses Professor Doctor Victor Caruana, son of the late Professor Doctor Giovanni, residing at Sliema and Alfred Aquilina, messenger, son of the late Paul, residing at Valletta.

"A"  
Deed dated  
7th March, 1958  
— continue

10

(Signed) Erik W. Gollcher.  
Edgar Baldacchino.  
Paul Grech.  
Raphael A. Said.  
V. Caruana.  
Alf. Aquilina.  
Victor Bisazza,  
Notary Public, Malta.

A true copy from my records. This 23rd day of January, 1958.

(Signed) Not. V. BISAZZA.

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## Exhibit "B"

20

### Deed dated 31st March, 1966

"B"  
Deed dated  
31st March, 1966

This thirty-first day of March of the year one thousand nine hundred and sixty-six (1966).

Before me, Paul Pellegrini Petit, Notary Public, duly admitted and sworn and in the presence of the undersigned witnesses have personally appeared.

30 Walter Baldacchino, in business son of the late Salvatore Baldacchino and of the late Carmela née Micallef born in Hamrun and residing at Sliema, who is appearing on this deed in his own name and as attorney (i) of his brothers and sister, Joseph civil employee, John, civil employee, Victor in business and Carmela a spinster, sons and daughter of the aforementioned late Salvatore Baldacchino and late Carmela née Micallef all born in and resid-

"B"  
Deed dated  
March, 1966.  
- continued

ing at Hamrun except Joseph who resides in Valletta, appointed to represent them by a power of attorney hereto annexed Document marked 'A', (ii) of his niece Salvina wife of Salvatore Attard, daughter of the late Joseph Woods and of the late Teresa née Baldacchino born in Valletta and residing in Ontario Canada — appointed to represent her by the annexed Document marked 'B'.

Paul Grech, in business, son of the late Giuseppe and of the late Maria Dolores née Cassar, born in and residing at Sliema, who is appearing on this deed in his own name and as attorney of (i) his brothers Arthur of independent means, and Edward apprentice, (ii) of his sisters Vittorina spinster and Inez wife of Victor Borg, brothers and sisters Grech, of the late Giuseppe and of the late Maria Dolores née Cassar, born and residing at Sliema, (iii) of Joseph Sciortino, clerk, son of the late Matteo and the late Maria née Cassar born at Casal Curmi and residing at Sliema and (iv) of Carmela wife of Alfred Cachia daughter of the aforementioned Joseph Sciortino and of the late Mary née Grech born in Sliema and residing at Msierah — duly appointed to represent the said persons as to Carmela Cachia by power of attorney hereto annexed document marked 'C' and as to the other persons by power of attorney annexed to a deed of emphyteusis in the records of Notary John Tabone Adami of the eleventh May nineteen hundred and fifty-three.

Paul Woods, clerk, son of the late Joseph and of the late Teresa née Baldacchino born and residing at Valletta who is appearing on this deed in his own name and as attorney of his sisters Mary Rose wife of Vincent Martin residing at Gzira, Carmela Woods in religion sister Luisa Theresa a Sister of Charity, spinster, residing at Libya, appointed to represent them by a power of attorney annexed to a deed in the records of Notary Joseph Cachia of the twenty-eighth October nineteen hundred and fifty-eight (1958) — sisters Woods, of the late Joseph and the late Theresa née Baldacchino born in Valletta.

Valerio Valente, musician, son of Giorlando Valente, and of Maria Stella née Caruana, born in and residing at Valletta, who is appearing on this deed by virtue of the annexed document 'D' as substitute to Renato Valente, in Religion, Father Gabriel of the Carmelite Order, son of the aforementioned Giorlando and of Maria Stella née Caruana born in Valletta and residing at Cambridge, England, to represent Antonia *sive* Annetta wife of John Natoli, formerly widow of Edgar Baldacchino, daughter of the late Concetta née Frendo and of the late Alfred Caruana, born in

Sliema and residing in Detroit Michigan United States of America appointed by a power of attorney annexed to a deed in the records of Notary Joseph Cachia of the twenty-eighth October nineteen hundred and sixty-five — of the one part.

"B"  
Deed dated  
31st March, 1  
— continue

And of the other part, Alfred Joseph Baldacchino, Company Director, son of Walter and of Mary Alice née Greshon born and residing at Santa Vennera and,

John Mizzi, company Director, son of Spiridione Lorenzo and of Genoveffa née Moncada born in Cospicua and residing at Sliema both appearing on this deed (i) for and on behalf of and as Directors of "Regency Estates Ltd.", a Company registered in Malta (ii) in their own name and (iii) to represent the aforementioned Spiridione Lorenzo Mizzi, Company Director, son of the late Gio Maria and the late Concetta née Gatt born in Vittoriosa and residing in Sliema appointed to represent him by a special power of attorney hereto annexed document 'E' of today's date.

Emanuel Grech, in business son of the late Vincenzo and of the late Barbara Schembri, born and residing at Sliema.

And the Noble Hugh Sant Fournier, banker, son of the late Noble Charles and of Carmela née Abela Pulis born in Valletta and residing at Sliema who is appearing on this deed for and on behalf of the firm "B. Tagliaferro and Sons".

Known to me, the undersigned Notary.

By virtue of this deed the aforementioned Walter Baldacchino in his own name and as attorney of his brothers and sister as to five twenty fourths (5/24) undivided parts, the said Walter Baldacchino on behalf of Salvina Attard and Paul Woods *proprio et nomine* as to one twenty fourth (1/24) undivided part, Paul Grech *proprio et nomine* as to two tenths (2/10) undivided parts and Valerio Valente *nomine* as to one undivided fourth part (1/4), jointly and *in solidum* between them, hereby sell and transfer to "Regency Estates Ltd." on behalf of which appearers Alfred Joseph Baldacchino and John Mizzi in their aforementioned capacity of Directors of the said Company, accept, buy and acquire seven tenths (7/10) undivided parts of the temporary *utile dominium* for the remaining period of the emphyteusis of forty-five years reckoned from the first of December one thousand nine hundred and fifty two (1952) of the premises at number two hundred and fifty four (254) Kingsway Valletta shown outlined in "blue" on the four annexed plans marked "F", "G", "H", "I"

“B”  
 ed dated  
 March, 1966.  
 continued

subject, the whole tenement, to the annual temporary ground rent of nine hundred pounds (£900).

This sale and transfer is being made for the price and conditions hereunder:

1. It includes the right to take on lease the said premises at the termination of the emphyteusis, which right was conceded on the deed of emphyteusis in the records of Notary John Tabone Adami of the seventeenth May nineteen hundred and fifty-three; it also includes the goodwill mentioned in that deed as well as all other rights, titles, duties, undertakings and obligations arising out of the said deed including that originally assumed by the present vendors with a hypothec of their property up to the amount of ten thousand pounds as a guarantee to the fulfilment of all the conditions therein specified, which obligations and duties are now being assumed by Regency Estates Ltd. 10

2. This sale also includes the cession in favour of Regency Estates Ltd. of the right of lease of the adjoining property presently held by the vendors and by them sublet to third persons, namely the premises at number one hundred and thirty eight Saint Lucia Street Valletta as per two deeds one in the records of Notary George Borg Olivier of the sixth July one thousand nine hundred and forty three and the other in the records of Notary Victor Bisazza of the seventh March nineteen hundred fifty one and includes the sub-leases indicated in Document ‘J’ annexed. 20

3. For the price of sixteen thousand eight hundred pounds (£16,800), which is due as to five thousand pounds (£5,000) to the brothers and sister Baldacchino, one thousand pounds each; as to one thousand pounds to the brother and sisters Woods together; as to four thousand eight hundred pounds (£4,800) to Paul Grech *proprio et nomine*, and as to six thousand pounds to Antonia *sive* Annetta Natoli. 30

Regency Estates Ltd. is being hereby delegated by the vendors brothers and sister Baldacchino and brother and sisters Woods, to pay out of their share of said sale price, the sum of three hundred pounds (£300) (that is fifty pounds each from the share of the brother and sisters Woods) — to appearer Emanuel Grech — in full and final settlement of his credit against them and against the vendor Antonia *sive* Annetta Natoli for the amount of four hundred and ninety three pounds, six shillings and three pence and interest thereon, (the share of Annetta Natoli having already been paid by her to debtor) arising, this credit, out of a decision given by Her Majesty’s Commercial Court on the twenty second 40

June one thousand nine hundred and sixty five and guaranteed by a general hypothec entered in Volume I number five thousand five hundred and forty of that year 1965.

"B"  
Deed dated  
31st March, 1965  
— continues

10 The balance due to John Baldacchino which is nine hundred and fifty pounds, "Regency Estates Ltd." is being delegated by him to pay to Messrs "B. Tagliaferro and Sons" on account of his debt of two thousand pounds as to one hundred and eighty pounds for interest up to date and as to seven hundred and seventy pounds (£770) on account of the capital due to them by him for a loan of that amount as per deed in the records of Notary Edward Calleja Schembri of the fourteenth May one thousand nine hundred and forty seven and guaranteed by a general hypothec in Volume I number one thousand six hundred and ninety one (1691) of the same year 1947.

20 Out of the sum of three thousand eight hundred pounds (£3,800) due to Walter Baldacchino, Carmela Baldacchino, Joseph Baldacchino and Victor Baldacchino, appearer Walter Baldacchino *proprio et nomine* declares to receive from the buyers the sum of two hundred and twenty pounds (£220) and gives receipt for same.

Out of the sum of nine hundred and fifty pounds (£950), balance due to the brother and sisters Woods, Paul Woods *proprio et nomine* and Walter Baldacchino on behalf of Salvina Attard, declare to receive the sum of fifty five pounds (£55) from the buyers and give receipt.

Paul Grech *proprio et nomine* declares to receive from the buyers on account of the amount of four thousand eight hundred pounds (£4,800) due to him, the sum of five hundred pounds (£500) and gives receipt.

30 And finally Valerio Valente *nomine* delegates the buyers to deposit with Messrs. Mizzi Brothers Ltd. the sum of six hundred and twenty five pounds (£625) due to Annetta Natoli on account of her share of six thousand pounds which sum of six hundred and twenty five pounds (£625) is to be paid to her attorney on receipt of duly authenticated power of attorney.

Alfred Joseph Baldacchino and John Mizzi in their aforesaid capacity bind the said Company to pay the balance of said sale price amounting to fourteen thousand one hundred and fifty pounds (£14,150) as follows:—

40 As to one thousand six hundred and fifty pounds (£1,650) within six months from today.

"B"  
Deed dated  
t March, 1966.  
— continued

As to two thousand three hundred pounds (£2,300) within twelve months, from today.

As to two thousand three hundred pounds (£2,300) within eighteen months from today.

As to two thousand six hundred and thirty three pounds (£2,633) within twenty-four months from today.

As to two thousand six hundred and thirty three pounds (£2,633) within thirty months from today.

And as to two thousand six hundred and thirty four pounds (£2,634) within thirty six months from today.

All the vendors are to receive out of each of the above payments a sum in proportion to his share of the balance due with the exception of John Baldacchino whose share of said sale price, as already stated, is to be paid entirely in part settlement of his debts, on this deed.

4. Provided that if the said Regency Estates Ltd. transfers the said *utile dominium*, it shall be bound to pay the whole balance then due before effecting such sale.

5. All expenses in connection with this deed are to be borne by the said Company.

6. To guarantee the fulfilment by Regency Estates Ltd. of all the obligations laid down in the said deed of emphyteusis in the records of Notary John Tabone Adami of the 17th day of May 1953, which obligations are hereby being assumed by the said Company, as well as to the payments of fourteen thousand one hundred and fifty pounds (£14,150) balance of sale price due, appearers Alfred Joseph Baldacchino and John Mizzi in their capacity of Directors of the said Company hypothecate all the property present and future of the said Company and as a further guarantee, the said Alfred Joseph Baldacchino and John Mizzi in their own name and also on behalf of Spiridione Lorenzo Mizzi hereby bind themselves personally jointly and *in solidum* between them and with the said Spiridione Lorenzo Mizzi as well as jointly and *in solidum* with the said Company to all the obligations assumed by the said Company and to the payment of the balance of the sale price above mentioned, provided that the guarantee assumed by Alfred Joseph Baldacchino and by John Mizzi is backed by a general hypothec of their property jointly and *in solidum* between them and with the Company up to the sum of twenty five thousand pounds — whereas the guarantee assumed by Spiridione Lorenzo Mizzi is not backed by a general hypothec of his property.

7. In execution of the delegation made to the said Company,

appearers Alfred Joseph Baldacchino and John Mizzi, provided  
 a subrogation of rights is made in favour of their Company, here-  
 by pay to (i) appearer Emanuel Grech, the sum of three hun-  
 dred pounds in full and final settlement of the above mentioned  
 credit due to him as above stated (ii) and to appearer Hugh Sant  
 Fournier *nomine* the sum of nine hundred and fifty pounds (£950)  
 on account of the abovementioned credit of the said firm due to  
 it by vendor John Baldacchino as stated above, and in conse-  
 10 quence of these two payments, the said Emanuel Grech gives  
 receipt to payees for the amount paid to him and subrogates the  
 said Company up to the said amount of three hundred pounds in  
 his rights arising out of the said hypothecary note and finally gives  
 his consent for the reduction of said hypothecary note meaning  
 to leave it firm, valid and unimpaired as regards the subrogation  
 in favour of "Regency Estates Ltd." and to cancel same for the  
 difference, this having been paid directly by debatrix Antonia *sive*  
 Annetta Natoli on behalf of the original debtor Edgar Baldacchi-  
 no, and the said Hugh Sant Fournier on behalf of B. Tagliaferro  
 and Sons whilst giving receipt to payees for the amount paid to  
 20 him *nomine* subrogate the said "Regency Estates Ltd." up to the  
 amount of nine hundred and fifty pounds (£950) in their rights  
 of the said firm arising out of the said credit and in the relative  
 note of hypothecation number 1691 of 1947 already mentioned.  
 Moreover Hugh Sant Fournier *nomine* waives all hypothecary  
 rights deriving to him from the said hypothec number 1697 of  
 1947 as well as from that number six thousand eight hundred and  
 twenty four of the year one thousand nine hundred and sixty two  
 both against the vendor John Baldacchino and hypothec number  
 two hundred and four in Volume I of the year one thousand nine  
 30 hundred and fifty (1950) against vendor Walter Baldacchino —  
 all three in favour of the said firm "B. Tagliaferro and Sons" such  
 waiver of rights being solely in respect of the aforementioned pro-  
 perty transferred and sold in virtue of the present deed to Regency  
 Estates Ltd. and retaining said hypothecary rights, firm, valid, and  
 unimpaired on all the other property of the said John and Walter  
 Baldacchino.

For the purpose of Chapter seventy of the Revised Edition  
 of the Laws of Malta it is hereby declared that the temporary  
*utile dominium* sold and transferred by the present deed was  
 40 granted in emphyteusis by a deed in the records of Notary John  
 Tabone Adami of the 17th May 1953, already mentioned, as to  
 two tenths in favour of Paul Grech *proprio et nomine*, as to one

"B"  
 Deed dated  
 31st March, 19  
 — *continua*

half in favour of the late Edgar Baldacchino and as to one tenth in favour of Raffaele Said, one tenth in favour of Romeo Said and one tenth in favour of Giuseppe Said these last three tenths belonging to the brothers Said are not being included in the present sale.

The share of Edgar Baldacchino that is one half of the whole, on his death, which occurred on the seventh July nineteen hundred and fiftyseven passed as to one moiety (that is one fourth of the whole) to his wife being her share of the community of acquests, and the other half (that is one fourth of the whole) in virtue of a will in the records of Notary Giovanni Azzopardi of the twenty-eighth October nineteen hundred and thirty five was left, by the said Edgar Baldacchino, to his brothers and sister Baldacchino as to one fifth each and to his nephews and nieces Woods as to the remaining one fifth — subject however to the usufruct in favour of his wife Antonia *sive* Annetta now wife of John Natoli, which usufruct was in the records of Notary Joseph Cachia of the 28th October 1965 already mentioned, ceded and transferred to the vendors brothers and sister Baldacchino and brother and sisters Woods. Thus the share of Edgar Baldacchino came to be owned as to one fourth of the whole by the brothers and sister Baldacchino as to one fifth each, and the other one fifth by the brother and sisters Woods, whilst the other one fourth of the whole by the vendor Antonia *sive* Annetta Natoli. The succession of Edgar Baldacchino has been duly filed by notice number eight hundred and eighty-five (885) of the year one thousand nine hundred and fifty-nine and duty thereon paid on the second January nineteen hundred and sixty and for this reason the property sold and transferred by the present deed is not subject to duties of succession or donation.

The vendors guarantee the peaceful possession of the property sold in virtue of the present deed by a hypothec of their property present and future jointly and *in solidum* between them.

It is declared that Alfred Joseph Baldacchino and John Mizzi in their aforesaid capacity have been informed by their legal adviser of the existence of legal hypothecs against the vendors Walter and John Baldacchino and of the hypothec for *dotarium* against John Baldacchino, the other hypothecs being registered in favour of Messrs. B. Tagliaferro and Sons, and the parties hereto agree that the joint and *in solidum* responsibility of the vendors above mentioned shall not apply with regard to any claims arising out of these said hypothecs.

“B”  
Deed dated  
at March, 1966.  
— continued

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The vendors shall not be bound to erect the wall between the two premises formerly known as "Regent" and "Olympia" cinemas, and the dismantling of the roof as agreed by the parties on a private agreement of the twenty-first December nineteen hundred and sixty five. And the expenses already incurred in the erection of part of the said wall shall be borne by Regency Estates Ltd. in so far as these expenses should have been borne by the vendors.

"B"  
Deed dated  
31st March, 1966  
— *continues*

10 Since the number of documents annexed to the present deed is more than five a list marked 'X' is being made of same and annexed hereto.

Done, read and published the contents thereof having been duly explained to the parties in Malta in Valletta, Saint John's Square number hundred and six (T) in the presence of Doctor of Laws George Degaetano advocate, son of Paul residing in Sliema and Joseph Formosa son of the late Arthur residing at Valletta, a clerk.

20 (Signed) Hugh Sant Fournier  
Walter Baldacchino  
Paul Grech  
Paul Woods  
Valerio Valente  
J.M. Mizzi  
Alfred Joseph Baldacchino  
E.M. Grech  
Joseph Formosa  
George Degaetano  
Paul Pellegrini Petit,  
Notary Public, Malta.

30 A True Copy. Given this 18th day of July, 1966.

(Signed) Not. P. Pellegrini Petit.

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## Exhibit "C"

"C"  
Deed dated  
6 April, 1966.

## Deed dated 6th April, 1966

This sixth day of April, One thousand nine hundred and sixty six (1966).

Before me Paul Pullicino, Notary Public, Doctor of Laws, duly admitted and sworn, and in the presence of the undersigned qualified witnesses, have personally appeared:—

Joseph, in business and Raphael, in business, sons of the late Michele Said and the late Concetta née Busuttil, both born in Cospicua and residing in Sliema and Valletta respectively, the said Raphael Said is appearing hereon in his own name as well as in his capacity of general attorney of his brother Romeo Said, in business, son of the late Michele and the late Concetta née Busuttil, born at Cospicua and residing at Epsom Downs, Surrey, England, duly nominated in virtue of the annexed Power of attorney (Enclosure 'A') — of the one part; 10

And of the other part;

Alfred Joseph Baldacchino, Company Director, son of Walter and of Mary Alice née Greshon born and residing at Santa Venera, and Maurice Mizzi, a Company Director, son of Spiridione Lorenzo and of Genoveffa née Moncada, born in Valletta and residing at 'The Gardens' in Saint Julians, who are appearing on this deed for and on behalf of "Regency Estates Ltd.", a Company registered in Malta, duly authorised in virtue of a resolution of the Board of Directors of the said Company, a copy of which is hereto annexed (Enclosure 'B'). 20

The appearers are known to me Notary.

By virtue of this deed the appearer Raphael Said in his own name and in the name of his brother Romeo Said and the appearer Joseph Said, herein after also referred to as "the vendors", sell and transfer to the appearers Alfred Joseph Baldacchino and Maurice Mizzi, hereinafter referred to as "the Company". who on behalf of "Regency Estates Ltd." accept, purchase and acquire, three tenths (3/10ths) undivided parts of the temporary *utile dominium* for the remaining period of the emphyteusis of forty-five years reckoned from the first December one thousand nine hundred and fifty two (1952) of the premises at number two hundred and fifty four (254) Kingsway Valletta as shown outlined in blue 30

on four plans marked respectively 'F', 'G', 'H', 'I' annexed to a deed received by Notary Paul Pellegrini Petit on the thirty first day of March of this year 1966, subject the whole tenement to an annual temporary ground rent of nine hundred pounds (£900).

This sale is being made and accepted under the following conditions, namely:—

1. In consideration of the price of ten thousand five hundred pounds (£10,500) of which the Company hereby pays to the vendors who give receipt therefor, the sum of two thousand pounds (£2,000). The Company undertakes to pay the balance of the said price amounting to eight thousand five hundred pounds (£8,500) in five equal instalments of one thousand seven hundred pounds (£1,700) each at six monthly intervals the first instalment being due six months from this day, without any payment of interest.

2. This sale includes the right to take on lease the said premises at the termination of the current emphyteusis, which right was conceded in the deed of emphyteusis received by Notary Doctor John Tabone Adami on the seventeenth May one thousand nine hundred and fifty three (1953) and it also includes the goodwill mentioned in that deed as well as all other rights, titles, duties, undertakings and obligations arising out of the said deed, including that originally assumed by the present vendors with a hypothec of their property up to the amount of ten thousand pounds (£10,000) as a guarantee for the fulfilment of all the conditions therein specified, which obligations and duties are now being assumed by the Company.

3. This sale also includes the cession in favour of the Company of the right of lease of adjoining property presently held by the vendors and by them sublet to third parties, namely the premises at number one hundred and thirty eight (138) Saint Lucia Street, Valletta, as per two deeds one in the Records of Notary Doctor Giorgio Borg Olivier of the sixth July one thousand nine hundred and forty three (1943) and the other in the Records of Notary Victor Bisazza of the seventh March one thousand nine hundred and fifty one (1951) and this sale also includes the subleases indicated in the annexed list marked (Enclosure 'C').

4. In warranty of the fulfilment by the Company of all the obligations laid down in the said deed of emphyteusis in the Records of Notary John Tabone Adami of the 17th May 1953, which obligations are hereby being assumed by the Company, as well as in warranty of the payment of the balance of the sale price of £8,500, the Company hypothecates in favour of the vendors,

"C"  
Deed dated  
6th April, 1966  
— continued

"C"  
Deed dated  
1 April, 1966.  
— continued

who accept, all its present and future property. Furthermore the  
 appearer Alfred Joseph Baldacchino, in his own name, and Mau-  
 rice Mizzi in his capacity of general attorney of his brother John  
 Mizzi, a Company Director son of Spiridione Lorenzo and Geno-  
 veffa née Moncada born at Cospicua and residing at Sliema, nom-  
 inated in virtue of a Power of Attorney annexed to a deed re-  
 ceived by me on the fifth April of this year 1966 — in order  
 further to guarantee the said obligations and payment of balance  
 of price, hypothecate jointly between them and with the Com-  
 pany, all their personal property present and future in favour of  
 the vendors, who accept, up to the sum of five thousand pounds  
 (£5,000), saving the special privilege accorded to the vendors by  
 Law in respect of the said balance of price. 10

5 In warranty of the peaceful enjoyment of the undivided  
 share of property hereby sold, the vendors jointly and *in solidum*  
 between them hypothecate in favour of the Company, which ac-  
 cepts, all their present and future property.

6. The *laudemium* due to superior owners of the said tene-  
 ment as well as the fees and expenses of this deed shall be borne  
 by the Company. 20

7. All expenses already incurred in the construction of part  
 of the wall dividing the Capitol Cinema from the Regent, includ-  
 ing all professional fees in respect thereof and all the material  
 already transported to the site for the same purpose shall be paid  
 by the Company.

8. For the purposes of Chapter Seventy of the Laws of Malta  
 it is hereby declared that the said tenement was granted by title  
 of temporary emphyteusis to the vendors as to three tenths un-  
 divided parts and to third parties as to the remaining seven  
 tenths undivided parts in virtue of the said deed received by  
 Notary John Tabone Adami on the 17th May 1953. 30

Therefore I the said Notary declare that this transfer is not  
 subject to any of the duties laid down in the said Chapter 70.

There appears also on this deed Albert Mizzi, a Company  
 Director, son of Alfred, born in Valletta and residing at Saint  
 Julians, also known to me Notary, and in virtue of this deed said  
 Albert Mizzi renounces in favour of the Company to all his rights  
 deriving from the *convenium* entered into between himself and  
 the vendors in respect of the sale of the tenement at number 254  
 Kingsway Valletta, which renunciation is being accepted by the  
 vendors. 40

The parties hereto annex to this deed an obligation signed by

Spiridione Lorenzo Mizzi for purposes of safe keeping (Enclosure 'D').

This deed, the import whereof was explained to appearers in terms of Law was read and executed in Malta Valletta number two hundred and twenty six (226) Merchants Street, in the presence of the witnesses Annetto Vella, linotype expert, son of the late Paul Vella residing at Sliema and Rosa Darmanin, a spinster, daughter of the late Joseph residing at Sliema.

"C"  
Deed dated  
6th April, 1915  
— continue

10

(Signed) Joseph Said  
Raphael A. Said  
Alb. Mizzi  
M. Mizzi  
A.J. Baldacchino  
Annetto Vella  
R. Darmanin  
Paul Pullicino,  
Notary Public, Malta.

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'C'

List of Leases.

- 20 (a) Lease of one room in the basement in favour of Joseph Bonnici.  
(b) Lease of two rooms incorporated with Cumbo's Club  
(c) Lease of the Overseas Club, excluding three rooms forming part of the Regent Cinema at 249 Kingsway, Valletta, even though included in the same contract of lease. The annual rent derived from these three rooms belongs to the Regent Cinema lessees.

"C"  
Deed dated  
April, 1966.  
- continued

- (d) Lease of space in the Capitol's entrance lying under the staircase used as a bar, with the right of free access through the entrance of the Capitol and the right of the Carillon sign. All movable effects belonging to the vendors in the said Carillon Bar are being transferred as part of the sale incorporated in this deed.

(Signed) Joseph Said  
Raphael A. Said  
Alb. Mizzi  
M. Mizzi  
A.J. Baldacchino  
Not. Dr. P. Pullicino.

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'D'

I the undersigned, Spiridione Mizzi, do hereby guarantee as surety *in solidum* to fulfil the obligations assumed by Messrs. Alfred J. Baldacchino and John M. Mizzi, personally and on behalf of Regency Estates Ltd, in connection with the transfer of the emphyteusis of the Capitol Cinema at 254 Kingsway Valletta together with the leases of the adjoining properties as per preliminary agreement signed on the 12th March 1966 between Albert Mizzi on one hand and Joseph, Raphael and Romeo Said on the other, and as per deed of sale of said premises entered into this day between brothers Said and Regency Estates Ltd.

20

Such guarantee is a continuing suretyship to remain in force until all the said obligations are performed without any limitations of time, provided that the suretyship shall automatically expire and lapse if both the balance of the purchase price has been paid by Messrs. Alfred J. Baldacchino and John M. Mizzi, personally and on behalf of Regency Estates Ltd., and the superior owners

accept the guarantee of Messrs. A.J. Baldacchino and J.M. Mizzi  
in lieu of that accepted by Messrs. Said.

"C"  
Deed dated  
6th April, 19  
— *continue*

(Signed) S.J. Mizzi  
Not. Dr. P. Pullicino,  
witness to signature  
and to identity.

(Signed) Joseph Said  
Raphael A. Said  
Alb. Mizzi  
M. Mizzi  
A.J. Baldacchino  
Not. Dr. P. Pullicino.

10

Certified true copy. This 16th day of July, 1966.

(Signed) P. Pullicino.

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## Exhibit "D"

"D"  
Deed dated  
6th July, 1943.

## Deed dated 6th July, 1943

The sixth July one thousand  
nine hundred and forty three.  
6th July, 1943.

Before me Giorgio Borg Olivier, Doctor of Laws, Notary Public, and in the presence of the hereinafter mentioned witnesses personally appeared:—

Erik William Gollcher, son of Chevalier William born at Vittoriosa residing in Valletta, merchant, for and on behalf of Emma Gollcher his wife, daughter of the late Agostino Cassar Torregiani born and residing in Valletta as her attorney hereto appointed by an instrument annexed to this deed marked "A". 10

Edgar Baldacchino, son of the late Salvatore, born at Sliema residing in Valletta, merchant.

Paolo Grech, son of the late Giuseppe, born and residing at Sliema, merchant, in his capacity as attorney of Maria Dolores widow of Giuseppe Grech, daughter of the late Giorgio Cassar born at Casal Curmi residing at Sliema appointed by a deed in the acts of Notary Giovanni Carmelo Chapelle of the fourteenth November one thousand nine hundred and forty one (1941). 20

Raffaele Said son of Michele, born at Cospicua residing in Valletta, merchant, hereto appearing in his name and as the attorney of his said father Michele Said, son of the late Carmelo, born at Vittoriosa, residing at Cospicua, merchant, and of his brothers Giuseppe Said and Romeo Said, sons of the said Michele born and residing at Cospicua merchants verbally appointed.

Known to me the said Notary.

Whereas to the said Baldacchino and others who were holding on lease the building now demolished at number two hundred and fifty-four (No. 254) of Kingsway formerly Strada Reale Valletta and were using it as a theatre called "Capitol Theatre", had been also let, by the said Emma Gollcher, the adjacent building, now also demolished, situate on its western side and at number one hundred and thirty-eight (No. 138) of Saint Lucia Street formerly Strada Santa Lucia, part of which building was being used by them as exit to the said theatre. 30

And the said Emma Gollcher as owner of the said demolished building in Saint Lucia Street has agreed to let to the said other

appearers at their request, in consideration of an annual rent, and subject to the stipulation and conditions hereinafter contained, the site on which stood the said demolished building whereof the said part had been used as exit to the said Capitol Theatre.

"D"  
Deed dated  
6th July, 1943.  
— continued

Now, therefore, in pursuance of the said agreement in this behalf, the said Erik Gollcher in his said capacity grants on lease to the said Edgar Baldacchino, Paolo Grech in his said capacity, Raffaele Said in his name and in his said capacity, who agree to and accept jointly and severally, for a period of eight years, from the twenty fifth July one thousand nine hundred and forty-five (1945) or after the lapse of six months from the date on which an armistice shall be signed by Germany and Italy, whichever shall be the earlier date, the whole site on which stood the demolished building in Saint Lucia Street whereof the said portion was being held on lease and used as exit to the said Capitol Theatre.

1. The rent shall be fixed by an architect appointed by the parties hereto. The assessment of the rent made by the said architect shall be final and it shall be due and payable quarterly in advance from the day on which the present lease is to date.

2. The lessees are authorized to erect on the said site at their risk and expense any temporary building or structure to form part of the Capitol Theatre, which it is their intention to rebuild on the former site thereof already leased to them by a deed in the acts of Notary Rosario Frendo Randon Doctor of Laws of the twenty second November one thousand nine hundred and forty one (1941). To such purpose the lessees shall be allowed to join the said site and the buildings they shall erect thereon to other adjacent sites and buildings. Such junction, however, shall have to be carried out in such a way as to facilitate at the expiration of the said lease, the segregation of the site and buildings thereon erected and the return thereof to the owner.

3. When the present lease or any extension thereof shall be determined by time, law or other reason whatever, the lessees shall surrender the said site together with the building hereinafter referred to as the final building to be erected by the lessees and at their expense in accordance with plan and description hereto annexed marked B and C, under the direction of an architect to be appointed by the owner. All partition walls shall be reconstructed according to law by the lessees and at their expense.

4. Should it not be possible to erect the final building on the proposed plan, such plan shall have to be, by common consent, altered in such a way that the cost of the new plan shall be

"D"  
Deed dated  
6th July, 1943.  
— continued

approximately equal to that of the original plan and in case of disagreement the alteration to be effected shall be fixed by the competent court.

5. Notwithstanding what has been agreed above, the owner shall, at the termination of the lease, have the option to retake the site with the structure then existing.

6. Whatever war damage compensation shall be eventually paid by the Government shall have to be deposited in a local Bank chosen by the parties in the name of the owner and the lessees jointly, for the period of the lease and neither party shall be allowed to withdraw the same or any part thereof before the erection of the final building by the lessees, in which case as well as in the case in which clause five (5) is availed of the owner shall be bound to agree to its withdrawal and collection by the lessees

10

7. The interests paid by the Government on the amount of the said compensation shall belong one half to the owner, and the remaining part to the lessees.

8. The lessees shall not be bound to modify or improve the temporary structure referred to in clause two (2) in case the said compensation for war damage shall be withheld. In such case, however, at the termination of the lease, the lessees shall deliver the site with all improvements there existing without being entitled to compensation.

20

9. The above clause four (4) shall also be applicable in case the amount of war damage compensation shall not be sufficient to cover the cost of the final building, entirely, unless the owner shall agree to lay out the additional sum required for the erection thereof according to the said plan. The option, however, remains reserved to the owner in this case, to exempt the tenants from the obligation of erecting the final building: if this option shall be availed of war damage compensation and all interest and accessory rights shall belong to the owner. It is understood that this option is reserved to the owner only if the parties agree not to apply clause four (4) above by altering the original plan in such a manner as to reduce the cost thereof to the amount of the compensation.

30

10. The lessees are paying the sum of three hundred pounds sterling (£300) in our presence in consideration and for the preference given them by the owner for the grant on lease hereby made to them; and moreover bind themselves to pay from the twenty sixth instant to the twenty fifth July one thousand nine hundred and forty five (1945) or to the date on which shall elapse

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the said six months after the said armistice, whichever earlier, as compensation thirty-seven pounds sterling and ten shillings (£37. 10 0) quarterly in advance for the use they are being allowed to make of the said site from this day to the commencement of the said lease.

"D"  
Deed dated  
6th July, 1943.  
— *continued*

10 II In case at the expiration of the lease whether for the original period or for any subsequent renewal thereof the tenants shall not have built the final building, the owner shall have the option of withdrawing the compensation and exonerating the tenants from the obligation of erecting the final building unless the tenants shall complete the final building within six months after the expiration.

12. All costs and fees due for this deed and to the legal adviser and architect shall be borne equally by the lessor and the lessees.

20 Read and published in Malta Valletta, at number thirty three (No. 33) of Old Bakery Street and each part has been explained by me to the parties here present Professor Vittorio Caruana Doctor of Laws son of the late Professor Doctor Giovanni residing at Sliema, advocate, and Carmelo Pace, son of the late Remigio, residing at Valletta, clerk, duly qualified witnesses hereunder signed with me and the parties.

(Signed) Erik W. Gollcher  
Edg. Baldacchino  
Paul Grech  
Raffaele Said  
V. Caruana  
C. Pace  
30 Dr. Giorgio Borg Olivier,  
Notary Public of Malta.

A true Copy issued from my Acts this 27th May, 1950.

(Signed) Dr. Giorgio Borg Olivier,  
Notary Public of Malta.

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"E"  
Letter dated  
9th July, 1966.

## Exhibit "E"

Letter dated 9th July, 1966

REGENCY ESTATES LIMITED

*Directors:*

Alfred J. Baldacchino, D. Pol. Econ. (Oxon), F.R. Econ. S. —  
John M. Mizzi — Albert Mizzi.

249, Kingsway, Valletta — MALTA.

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Our Ref: L/G/1/66.

Date: 9. 7. 1966.

James Gollcher Esq.,  
(for heirs of Emma Gollcher),  
19, Zachary Street,  
Valletta.

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Dear Sir,

I beg to inform you that, in terms of two deeds dated 30th March 1966 and 6th April 1966 published by Not. P. Pellegrini Petit and Not. P. Pullicino respectively, this Company has acquired the right of sub-lease of the premises situated at No. 138 St. Lucia Street, Valletta, which right was granted to Messrs. Said, Grech and Baldacchino in terms of Clause 7 of a deed signed on 7th March 1951 and published by Not. V. Bisazza.

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Yours faithfully,  
(Signed) A.J. Baldacchino,  
*Chairman.*

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**Exhibit "F"**

**"F"**  
**Judicial**  
**letter dated**  
**21st July, 1966.**

**Judicial letter dated 21st July, 1966**

In Her Majesty's Commercial Court.

This 21st day of July, 1966

To Alfred J. Baldacchino in his capacity as Chairman and in representation of the company "Regency Estates Limited", 249, Kingsway, Valletta.

10 Emma the widow of Erik W. Gollcher (9, Victoria Avenue, Sliema), in reply to the letter which the company represented by you sent to James G. Gollcher, sender's son, on the 9th July, 1966, hereby notifies you in your aforesaid capacity for all intents and purposes of law that she does not acknowledge, nay she contests, that according to the public deed of the 7th March, 1951, in the records of Notary Victor Bisazza the lessees of the tenement therein mentioned, 138, St. Lucia Street, Valletta, had the right to assign the lease — which they did by two public deeds published on the 31st March, 1966, and on the 6th April, 1966, by Notary Paul Pellegrini Petit and by Notary Paul Pullicino respectively.

20 Wherefore the sender is instituting proceedings before the Rent Regulation Board in terms of section 10 (a) of Chapter 109 of the Laws of Malta to recover possession of the aforesaid tenement according to law at the termination of the lease, that is to say on the 6th March, 1967.

Moreover the sender calls upon you not to make any structural alteration in the aforesaid tenement.

This is to serve to put you in bad faith, and delay and negligence for all ends and purposes of the law.

With costs.

(Signed) René Cremona, Adv.  
 Rob. Dingli, L.P.

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**RESPONDENTS' EXHIBITS**

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**Judgment, Court of Cassation of Italy,  
27th May, 1925**

Judgment,  
Court of  
Cassation  
of Italy,  
27th May, 19

In the Name of His Majesty  
Vittorio Emanuele III  
By the Grace of God and the Will of the Nation  
King of Italy

The Court of Cassation of the Kingdom  
I Civil Section

10 With the intervention of H.E. Silvio Petrone, Gr. Uff.,  
President of the Section

and of the Counsellors

Comm. Gian Carlo Messa  
Comm. Antonio Jodice  
Comm. Pasquale Samperi  
Comm. Michele D'Aquino  
Comm. Giulio Ricci  
Comm. Ernesto Faleani

has pronounced the following Judgment in the cause between

20 MUSTER PAOLO, the son of the late Edoardo, residing in  
Palermo, and domiciled by choice in Rome, 340 Via Cavour, at  
the office of Roberto Gambino, Advocate, who together with Giu-  
seppe Messina, Advocate, represents and defends him in virtue of  
a special power of attorney of the 13th January 1925 rog. not.  
Napolitani

Applicant

*versus*

30 Ciriminna Maria Rosaria widow Compagno, and Battaglia  
Rosaria widow Ciriminna, residing in Palermo, and domiciled by  
choice in Rome Via Scipione 91 at the Office of Federico Zucco,  
Advocate, represented and defended by Ludovico Ziino and Giu-

seppe Luigi Biuso in virtue of a special power of attorney of the 14th March 1925 in the records of Notary Lima

### Respondents

Having seen the application for the annulment of the judgment given by the Civil Court of Palermo dated 24th September - 10th October 1924, notice whereof was given on the 18th October, 1924, and registered in Vol. 399 No. 4195.

Having heard the report made by Counsellor D'Aquino at the sitting of the 27th May 1925.

Having heard Advocates Gambino and Biuso.

10

Having heard the Public Ministry represented by the Substitute Attorney General, Comm. Bobba, who concluded that the application should be rejected.

### The Court

Having premised the fact that by a deed in the records of Notary La Placa of Palermo, of the 14th May, 1920, registered on the 22nd of the same month as n. 9155, Maria Rosaria Ciriminna, also as administratrix for her mother Rosaria Battaglia, granted on lease to Eugenio Oliveri a shop at n. 437 Via Macqueda up to the 31st August 1924. By an act of the 25th April of the said year Ciriminna gave Oliveri notice to quit on the ground that the lease had come to an end, summoning him before the "Pretore del I Mandamento" for legal proceedings. The suit being contested, Oliveri was a defaulter. On the other hand Paolo Muster intervened in the suit and, — pleading that although the shop had been taken on lease by Oliveri, it had been used for the business of a partnership between the said Oliveri, a certain Dogliani and himself and that, as a result of the withdrawal of the other two from the partnership, he was the only one left in its enjoyment, — opposed the notice to quit and prayed that the Pretore, in virtue of the act, whereby he had summoned Ciriminna before the Arbitration Commission, for the purpose of ensuring a renewal of the lease, do declare his own incompetence and remit the records to the said Commission. The Pretore by a judgment of the 7th July - 9th August 1922, rejected Muster's opposition, holding that he was a third party extraneous to the deed, and, in the default of the lessee, authorised the owner to take possession of the shop evicting anyone who might be occupying it. In virtue of the clause

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contained in the judgment itself Ciriminna enforced the judgment. By an act of the 25th August Muster entered an appeal, but the Court of Palermo by a judgment of the 24th September - 10th October rejected the grievance. The Court after having established the competence of the judicial authority to take cognisance of the case, on which point it is useless to dwell any longer as it was no longer a point at issue, arrived at its conclusion on the basis of two arguments. In the first place it premised that Muster could not have any standing different from that of the partnership, of which he was the successor. Now as Oliveri had contributed the lease to the partnership, the latter had become an assignee. But this assignment could not be set up against Ciriminna, because she had not been given notice thereof, nor in any event had it been shown that the lessor had received notice thereof. In the second place, on the basis of the clause prohibiting subletting, it interpreted the deed in the sense that assignment also was prohibited, and on this ground also it held that Muster could not claim any right against Ciriminna. Muster made an application for the annulment of the said judgment on two grounds notified on the 18th October, by an act of the 15th January of this year. On the first ground, alleging the violation of sect. 1559, 1573, 1777, C.C., 96 . . . (words illegible) . . . and 517 from n 1 to 7 C.P.C., he criticises the Court's two arguments. In respect of the first argument he maintains that in the case under review section 1579 was not applicable as here there was no assignment in the true sense. In respect of the second argument he excludes that the prohibition of assignment may be deduced from the prohibition of subletting. On the second ground alleging the violation of sect. 1339 and 157 C.C., as also of 517 C.P.C. from no. 1 to 7, he observes that the Court had failed to pronounce itself on the demand for the production of witnesses relating to the recognition by Ciriminna of Muster as the lessee.

Observes, that the application does not succeed so as to invalidate the judgment, which is founded on correct juridical criteria and which has exhaustively given the reasons for the decision.

The applicant himself does not contest that from the deed of lease itself no right arose in his favour directly.

He meant to avail himself of the legal renewal insofar as he found himself in the enjoyment of the shop, as it had been brought into the partnership by Oliveri and as the assets of the partnership were vested in him alone as a result of the withdrawal of the other partners.

Judgment,  
Court of  
Cassation  
of Italy,  
27th May, 19  
— *continues*

Having stated the foregoing, the Court appropriately pointed out that the legal right, invoked by Muster in support of his action, was that of assignment of the lease. It is, however, to be observed that the assignment, from the juridical point of view, could not be invoked against the lessor, because, as she had not been given notice thereof it had remained *res inter alios* in her regard.

Nor could Muster invoke the state of fact in his support because in virtue of the clause prohibiting subletting the state of fact took the form of an abuse.

The applicant tried, by the first ground, to take away weight from these arguments, maintaining that in order that the assignment in the case under review may be perfected in the present instance no notice was necessary as this was merely a matter of concentration of assets of the partnership in one person, and that the prohibition of subletting could not include that of assignment. 10

The contestation of this point is useful. The assignment did not take place at the moment of the withdrawal of the other partners but at the moment of the contribution of the lease to the partnership.

The reason then which makes the lessor include a clause prohibiting the sublease — the personal character which he wants to give to the contract — applies with the same force in the case of the prohibition of assignment. Indeed, it applies with the force of an *a fortiori* argument once it is certain that assignment, in substituting another person for the original lessee, implies something more than subletting, whereby the original lessee remains bound, and it is well known that where an *a fortiori* argument applies, an extensive interpretation is required. 20

That the second ground of the applicant is met by the paramount remark that no omission may be attributed to the Court insofar as no request was made for the production of evidence relating to the recognition by Ciriminna of Muster, as assignee of the lease. Moreover the Court, on the basis of what had resulted from the records, excluded that there had been such a recognition. 30

Costs to be borne by the party cast.

P. 2 M.

The Court rejects Paolo Muster's application for the annulment of the judgment given by the Court of Palermo, dated 24th September - 10th October 1924, and orders that the applicant is to forfeit the deposit, besides bearing the costs of this instance, taxed at lire 333.45, and counsel's fees amounting to one thousand two hundred lire. 40

Decided as aforesaid in Rome, by the Court of Cassation of the Kingdom, in Chambers, this 27th day of May, 1925.

Judgment,  
Court of  
Cassation  
of Italy,  
27th May, 1925  
-- *continue*

(Signed) S. Petrone  
G.C. Messa  
A. Jodice  
Samperi  
illegible  
G Ricci  
E. Faleani  
illegible

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Published at an extraordinary sitting of the First Civil Section of the thirtyfirst July 1925.

(words illegible)

State Central Archives  
Rome

General Protocol No. 1350/VII. 4. 1.

It is hereby certified that this photographic copy composed of 11 photographs and made in these Central Archives has been taken from the original kept here: Court of Cassation of the Kingdom — Civil Judgments — Year 1925 — volume 25 — judgment  
20 no. 2491 of the 31st July 1925 — and is issued to Dr. Paolo Velani who duly applied for it on the 29th April 1967.

Rome this 2nd day of May 1967.

Head of Section  
(Signature illegible)

Superintendent  
(Signature illegible)

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