

C 54.52

13, 1951

In the Privy Council.

9-1-1950

ON APPEAL

From the Court of Appeal, Malta.

BETWEEN

ANTONIO CARUANA & OTHERS

*Appellants (Plaintiffs)*

AND

JOSEPH DEBONO *nomine* & OTHERS

*Respondents (Defendants).*

UNIVERSITY OF LONDON  
W.C.1.  
17 JUL 1953  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

13, 1951

In the Privy Council.

**On Appeal from the Court of Appeal,  
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BETWEEN

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RECORD OF PROCEEDINGS

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Applications for extension of time for translation and preparation of Record; and Decrees thereon.
Contract dated 27th February, 1945.

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# DOCUMENTS

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In

H. M. COMMERCIAL COURT

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In the Privy Council.

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

BETWEEN

ANTONIO CARUANA & OTHERS

*Appellants (Plaintiffs)*

AND

JOSEPH DEBONO **nomine** & OTHERS

*Respondents (Defendants).*

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RECORD OF PROCEEDINGS

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**DOCUMENTS**

**Translation**

**No. 1.**

**Writ-of-Summons.**

**No. 1.**  
**Writ-of-Summons**

Writ-of-Summons No. 72/1948.

In H.M. Commercial Court.

This 7th February, 1948.

Filed by G. Galdes L.P., with one  
Exhibit.

(Signed) J. MICALLEF,  
D/Registrar.

**GEORGE VI**

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

By our Command, at the suit of Antonio Caruana, Michele  
Magro, for and on behalf of the Firm of Joseph Magro, Joseph  
Stellini, for and on behalf of the Firm of S. Stellini & Sons,  
Antonio Bonnici, Emmanuele Farrugia, John Tabone, Salvatore  
Mifsud, Carmelo Muscat, Paolo Micallef, Rosario Schembri, for

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

and on behalf of the Firm of Giovanni Schembri, Carmelo Loporto, for and on behalf of the Firm of Pace and Loporto, Antonio Vella, Michelangelo Sciberras, Paolo Farrugia, Carmelo Bellizzi, for and on behalf of the Firm of Carmelo Bellizzi & Co., Giuseppe Portelli, for and on behalf of the Firm of Edgar Portelli, Felice Cutajar, Giuseppe Debrincat, for and on behalf of the Firm of A. Debrincat and Sons, George Debattista, Joseph Gambin, Giuseppe Buhagiar, Joseph Grech, Angelo Briffa, for and on behalf of the Firm of Vincenzo Briffa — **You Shall Summon** — Joseph Debono, Philip Agius, John Calleja, Agostino Azzopardi, Antonio Cuschieri, Angelo Bonello and Domenico Cachia, respectively in their capacity as Chairman, Secretary and Directors of the Wholesale Foodstuffs Pool, to appear before this Court at the Sitting to be held on the Fourth March, 1948, at 9 a.m. 10

And there; — whereas the aforesaid Pool was constituted for the period of two years with effect from 24th January, 1944; — and whereas that period of two years expired on the 23rd January, 1946; — and whereas no extension thereof was made in terms of the contract constituting the Pool; — and whereas the Defendants claim that the Pool is still in being, and that, when the organization comes to an end, the Board of Directors has the power at once to wind up and liquidate the business;— every necessary declaration being prefaced and any expedient direction being given;— said Defendants to shew cause (1) why it should not be declared and adjudged that the Wholesale Foodstuffs Pool came to an end **ipso jure** on termination of the period for which it was set up: — and (2) why the Defendants should not proceed to effect the liquidation of the Pool. 20

With Costs. 30

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

You shall further give notice to the Defendants **proprio et nomine** that if they want to contest the claim they must, not later than two working days previous to the day fixed for the hearing of the cause, file a statement of defence according to law, and in default of such statement within the said period and of their appearance on the day, at the hour and place aforesaid, the said Court will proceed to deliver judgment according to justice on the action of the said Plaintiffs **proprio et nomine** on the said day, or any subsequent day, as the Court may direct. 40

And after service by delivery of a copy hereof to said Defendants **proprio et nomine**, or their agent according to law,

or upon your meeting with any obstacle in the said service, you shall forthwith report to this Court.

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

Given by our aforesaid Commercial Court.

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

This Tenth February, 1948.

(Signed) A. J. MONTANARO GAUCI.

No. 2.

No. 2.  
Plaintiffs'  
Declaration

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**Plaintiffs' Declaration.**

In H.M. Commercial Court.

Joseph Caruana & Others

vs.

Joseph Debono **nomine** & Others.

Plaintiffs' Declaration.

Respectfully sheweth:—

1. The Pool was constituted by virtue of an instrument under private signature which was enrolled in the Records of Notary Victor Bisazza on the 20th March, 1945.

20 2. At the end of the period of two years, no General Meeting was convened for the purpose of extending the life of the Pool in terms of clauses 11 and 14 of the instrument mentioned above.

3. That notwithstanding, the Defendants maintain that the Pool is still in being and claim payment of the profits in accordance with the conditions governing the Pool.

30 4. The Plaintiffs have therefore sued out the present Writ-of-Summons to obtain (1) a judicial declaration to the effect that the Pool has come to an end, and (2) an Order directing the Defendants to wind up the Pool.

Witnesses:—

The Plaintiffs — to give evidence in substantiation.

(Signed) V. CARUANA, Advocate,  
„ G. GALDES, Legal Procurator.



## No. 3.

## List of Exhibits.

In H.M. Commercial Court.

Antonio Caruana &amp; Others

vs.

Joseph Debono **nomine** & Others.

Exhibits produced together with the Writ-of-Summons.

Exhibit "A" — Copy of the instrument constituting the Pool, as published in the Government Gazette.

(Signed) V. CARUANA, Advocate,  
,, G. GALDES, Legal Procurator.

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## No. 4.

## Defendants' Statement of Defence &amp; sub-joined Declaration.

In H.M. Commercial Court.

Antonio Caruana &amp; Others

vs.

Joseph Debono **nomine** & Others.The Statement of Defence of the Defendants **nomine**.

Respectfully sheweth:—

20

The Wholesale Foodstuffs Pool is not a Commercial partnership in the strict juridical sense of the term, but an association **sui generis**, the setting up of which was enforced by the Civil Government. Consequently, once the Government is still in need of that association, the action brought by the Plaintiffs is premature.

Wherefore the claims should be dismissed with Costs.

(Signed) F. CREMONA, Advocate,  
,, GIUS. PACE BONELLO, Legal Procurator.The Declaration of the Defendants **nomine**.

30

Respectfully sheweth: —

Although, so far as appearances go, the Pool in question partakes of the nature of a Limited Liability Company, in actual fact it is but an association **sui generis** which was set up

and which had necessarily to be set up during the emergency — as in the case of all the other Pools.

The fact was established by the judgment given by H.M. Court of Appeal on the 18th November, 1946 in re “Fava v Bonnici”, affirming the judgment given by this Court and the view therein expressed that by no stretch of the imagination could the Pools be considered as Commercial partnerships subject to the provisions of the Commercial Laws relating to Commercial partnerships.

No. 4.  
Defendants’  
Statement of  
Defence &  
sub-joined  
Declaration  
—Continued.

- 10 The associations in question were imposed by the Government, and they differ to that extent from ordinary Commercial partnerships which are voluntarily entered into and which last so long as the *affectio societatis* endures; and once the Pool in question is still required by the Government, it cannot be wound up and liquidated.

(Signed) F. CREMONA, Advocate,  
,, GIUS. PACE BONELLO, Legal Procurator.

Witnesses:—

The parties — to give evidence bearing on the foregoing.

- 20 Eustratius Petrocochino, Food & Commerce Control Officer — to give evidence establishing the fact that the Government still requires the Wholesale Foodstuffs Pool.

(Signed) F. CREMONA, Advocate,  
,, GIUS. PACE BONELLO, Legal Procurator.

This Twenty-fifth February, 1948.

Filed by G. Pace Bonello L.P. without Exhibits.

(Signed) J. DINGLI,  
Dep. Registrar.

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**No. 5.**

- 30 **The Evidence of the Food & Commerce Control Officer.**

In H.M. Commercial Court.

No. 5.  
The Evidence of  
the Food &  
Commerce  
Control Officer

The Twenty-second June, 1948.

Eustratius Petrocochino, Food & Commerce Control Officer, states on oath:—

I should like to tender an apology for failing to appear at the last Sitting held by the Court. I am the Food & Commerce

No. 5.  
The Evidence of  
the Food &  
Commerce  
Control Officer  
—Continued.

Control Officer. The Wholesale Foodstuffs Pool is still in being. During the war, I was indirectly concerned in the Pool. In my capacity as F.C.C.O., I did not wish to have to deal with too large a number of traders at one and the same time — it being simpler to deal with a representative Commission. They therefore proceeded to organize Pools according to their own interests, though naturally it was on orders issued by the Government that the Pools were formed. In fact, we have just written to them, telling them what percentage to retain for themselves out of the profits, and what they owe. We wrote to them last about five or six months ago. The goods in question are rationed commodities and rationed commodities are steadily decreasing and very few are left — in fact, only those that are still stored in the warehouses. 10

#### Cross-Examination.

The Pools were set up following Government notification to the effect that the formation of a Pool was required in connection with the distribution of a given commodity.

The Pools were started in 1943, on the suggestion of a Mr. Nalder, who was then in Malta. All those who joined the Pool were to be paid a percentage of the profits. It was no concern of the Government whether or not a trader joined the Pool; and no one was obliged to join. It is not within my knowledge that the Wholesale Foodstuffs Pool was constituted for any determinate period. To-day, the conditions are the same, and the Government still requires the Pool. Any Member who wishes to leave the Pool is at liberty to do so. 20

Read over to the witness.

(Signed) J. N. CAMILLERI,  
Deputy Registrar. 30

3/7/48.

(Signed) E. PETROCOCHINO.

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## No. 6.

**The Evidence of the Plaintiff J. Stellini.**

No. 6.  
The Evidence of  
the Plaintiff  
J. Stellini

In H.M. Commercial Court.

Twenty-second June, 1948.

The Plaintiff, J. Stellini, states on oath:—

I represent the Firm of S. Stellini & Sons, who were members of the Wholesale Foodstuffs Pool. They continued sending us our Accounts up to two years ago; then they stopped sending them. The Directors of the Pool have not since then asked us  
10 for the payment of our quota. I made payments on account in respect only of those two years and it may well be found that they have received more than their due or that they have received less.

Read over to the witness.

(Signed) J. DINGLI,  
Dep. Registrar.

(Signed) JOSEPH STELLINI.

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## No. 7.

**The Evidence of the Plaintiff A. Caruana.**

No. 7.  
The Evidence of  
the Plaintiff  
A. Caruana

20 In H.M. Commercial Court.

The Twenty-second June, 1948.

The Plaintiff, Anthony Caruana, states on oath:—

I was a member of the Pool. I did not continue sending my Accounts after the lapse of the first two years. I sent in my Accounts only during the first two years.

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No. 8.  
The Evidence of  
the Plaintiff  
G. Debattista

**No. 8**

**The Evidence of the Plaintiff G. Debattista.**

The Twenty-second June, 1948.

The Plaintiff, G. Debattista, states on oath:—

I signed the contract constituting the Pool in question. I gave them no information as to the profits I made in the first two years, the reason being that I had signed the contract under protest.

(Signed) GEORGE DEBATTISTA.

Read over to the witness.

(Signed) J. DINGLI,  
Dep. Registrar.

13/7/48.

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No. 9.  
The Evidence of  
the Plaintiff  
M. Magro

**No. 9.**

**The Evidence of the Plaintiff M. Magro.**

In H.M. Commercial Court.

The Twenty-second June, 1948.

The Plaintiff, M. Magro, states on oath:—

I had been paying the quota in respect of the profits I made, but I did not pay the whole amount, for I wanted to hold back what was due to me.

After the end of the first two years, they never sent me any notices requesting payment. I think none of the other Plaintiffs in the case paid in any percentage of the profits after the end of the first two years, for the Pool, in terms of the contract drawn up between us, had come to an end. I spoke to several Members of the Pool and they all told me they had not paid in the percentage of the profits.

(Signed) MICHAEL MAGRO.

Read over to the witness.

(Signed) J. DINGLI,  
Dep. Registrar.

1/7/48.

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**The Evidence of the Defendant Filippo Agius.**

No. 10.  
The Evidence of  
the Defendant  
Filippo Agius

In H.M. Commercial Court.

The Twenty-second June, 1948.

Filippo Agius, sub-poenaed by the Plaintiffs, states on oath:—

After the first two years had come to an end, we held a General Meeting for the purpose of extending the life of the Pool from one year to another. The Meeting in question was held almost a year after the end of the first two-year period; and I promise to file the Minutes of that Meeting. The Plaintiffs in this case have not paid in the percentage of their profits. The Plaintiffs Antonio Galea, Michele Magro and Joseph Stellini have not paid. Salvatore Mifsud has never made any payments. Carmelo Muscat, Paolo Micallef, Rosario Schembri, Carmelo Loporto, Antonio Vella, Michelangelo Sciberras, Paolo Farrugia and Giuseppe Portelli made no payment after the lapse of the first two years. Filippo Cutajar has never paid. Debrincat has not paid for the last two years. Joseph Grech never paid anything. Vincenzo Briffa sent word with his Legal Adviser to say that he was unable to draw out money from the Bank on account of some dispute concerning minors. We had advised all the interested parties to attend the General Meeting, but the majority failed to attend. According to the rules, in the absence of a quorum, the Meeting is held on the following day, whatever the number of the members present; and that is what happened. I paid no attention to the Notice sent by them. I continued sending them the Accounts up to one year after the end of the first two years, for, according to the opinion of the Food Distribution Officer, they must continue to pay in the profits to the Pool.

(Signed) PHILIP AGIUS.

Read over to the witness.

(Signed) J. DINGLI,  
Dep. Registrar.

No. 11.

Judgment, H.M. Commercial Court.

HIS MAJESTY'S COMMERCIAL COURT

Judge:-

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

Sitting held on

Thursday, the Twenty-fifth November, 1948.

No. 18.

Writ-of-Summons No. 72/1948.

Antonio Caruana & Others 10  
vs.

Joseph Debono **nomine** & Others.

The Court,

Upon seeing the Writ-of-Summons, whereby the Plaintiffs, premising:— that the Wholesale Foodstuffs Pool was constituted for the period of two years with effect from the 24th January, 1944:— that that period of two years had expired on the 23rd January, 1946:— that no extension thereof was made in terms of the contract constituting the Pool; — and that the Defendants claim that the Pool is still in being, and that, when the organization comes to an end, the Board of Directors has the power at once to wind up and liquidate the business; — prayed that — every necessary declaration being prefaced and any expedient direction being given — it be declared and adjudged that the Wholesale Foodstuffs Pool came to an end **ipso jure** on termination of the period for which it was set up, and, further, that an Order be made against the Defendants directing them to proceed to effect the liquidation of the Pool. — With Costs. 20

Upon seeing Defendants' Statement of Defence, pleading: 30  
The Wholesale Foodstuffs Pool is not a Commercial partnership in the strict juridical sense of the term, but an association **sui generis**, the setting up of which was enforced by the Civil Government. Consequently, once the Government is still in need of that association, the action brought by the Plaintiffs is premature and should be dismissed with Costs.

The Court has heard the evidence of a number of witnesses, examined the acts in the Record and heard Counsel on both sides.

No. 11.  
Judgment, H.M.  
Commercial  
Court  
—Continued.

10 The document produced is of itself sufficient evidence that what the Plaintiffs and the Defendants have been calling a Commercial partnership (société) is not a Commercial partnership (société) within the juridical meaning of the term: It is a Pool and, as consistently held by the Courts in Malta, a Pool is not a Commercial partnership. A Pool consists of the  
20 amalgamation of a number of traders promoted by the Government with the object of facilitating the importation and distribution of rationed commodities in the abnormal conditions of the world markets. Those who joined the Pool did so because it suited them, and they are at liberty to quit as soon as the period agreed upon runs out. Nevertheless, once the Pool is still in being, and is still required by the Government, it does not fall to the Plaintiffs to demand the liquidation thereof — even though they themselves may not be obliged to extend the period of their own membership now that the  
30 contractual period has elapsed. The Pool is subject to the final decision of the Government that brought it about and must continue in being so long as the circumstances that justified its creation persist and endure. Just as the Pools were set up without the consent of the members, so they may not be wound up merely by the consent of the interested parties. Those who may wish to retire may do so, provided they are prepared to take the consequences. Therefore, the claim for the liquidation of the Pool is premature, and, as formulated, untenable.

On these grounds:

30 The Court

Dismisses Plaintiffs' claim, with costs — saving any action to which the Plaintiffs may be entitled when the Pool comes to an end, according to law and if according to law.

(Signed) A.S. FARRUGIA,  
Acting Dep. Registrar.

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No. 12.  
Plaintiffs' Note  
of Appeal

No. 12.

**Plaintiffs' Note of Appeal**

In H.M. Commercial Court.

Antonio Caruana & Others

vs.

Joseph Debono **nomine** & Others.

Plaintiffs' Note of Appeal.

The Plaintiffs appear and, deeming themselves aggrieved by the judgment given by this Honourable Court on the 25th November, 1948, humbly enter appeal therefrom to His Majesty's Court of Appeal. 10

(Signed) V. CARUANA, Advocate.

„ G. GALDES, Legal Procurator.

This Second December, 1948.

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

(Signed) A. GHIRLANDO,  
Dep. Registrar.

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In

H.M. COURT OF APPEAL

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## Plaintiffs' Petition.

In H.M. Court of Appeal.

Antonio Caruana & Others  
vs.  
Joseph Debono **nomine** & Others.

Plaintiffs' Petition.

Respectfully sheweth:—

10 By Writ-of-Summons filed in H.M. Commercial Court on  
the 7th February, 1948, the Plaintiffs, premising: that the  
Wholesale Foodstuffs Pool was constituted for the period of two  
years from 24th January, 1944:— that that period of two years  
had expired on the 23rd January, 1946; — that no extension  
thereof was made in terms of the contract constituting the  
Pool; — and that the Defendants claim that the Pool is still in  
being, and that, when the organization comes to an end, the  
Board of Directors has the power at once to wind up and liqui-  
date the business:— prayed that — every necessary declaration  
being prefaced and any expedient direction being given — it  
20 be declared and adjudged that the Wholesale Foodstuffs Pool  
came to an end **ipso jure** on termination of the period for which  
it was set up, and, further, that an Order be made against the  
Defendants directing them to proceed to effect the liquidation  
of the Pool. — With Costs.

H.M. Commercial Court, by judgment given on the 25th  
November, 1948 — holding that the claim is premature and,  
as formulated, untenable — dismissed Plaintiff's claim, with  
costs; — saving any action to which the Plaintiffs may be  
entitled when the Pool comes to an end, according to law and  
30 if according to law.

The Plaintiffs, deeming themselves aggrieved by that  
judgment, entered appeal therefrom to this Court by Minute  
dated 2nd December, 1948.

The grievance is manifest:

The Court, in stating that a pool, and not a Commercial  
partnership, had been set up by the contract between the con-  
tending parties, made what is an altogether gratuitous asser-  
tion. In fact, it is clearly established in that contract that the  
parties had agreed to form between them a Commercial part-

No. 13.  
 Plaintiffs'  
 Petition  
 —Continued.

nership; and the contract itself lacks none of the requisites that go to ensure the validity of a contract for a Commercial partnership. Further, the Court, in stating that it has been consistently held that a pool is not a Commercial partnership, obviously misconstrued the judgments referred to. Those judgments concerned the question whether the external and internal requisites of a Commercial partnership were necessary for the validity and existence of a Pool — to which the Courts returned a negative answer. But the issue in the present case is totally different. Here, in fact, the point at issue is whether there is any legal obstacle that impedes the constitution of a pool by means of a partnership deed — and certainly there is none. In other words, the judgment referred to held that the requisites for the validity of a Commercial partnership are not necessary for the existence of a pool, whilst in the case at issue, the Court, regardless of the principle of the inviolability of contracts, chose to set aside the partnership contract drawn up between the parties concerned — and to do so even when the contract itself had not been impugned. Nor is it quite correct to state that the pool is required by the Government. The Government is in need of the Distributors — not the Pool. The pools were not formed on orders issued by the Government. Indeed there is no law or regulation whereby the Government ordered the formation of any pool. At the time when trade was placed under certain restrictions, and the Government had appointed Distributors for certain essential commodities, the pools were set up to ensure fairness towards those traders who had not been appointed Distributors — thus enabling the former to take a share of the trading profits. The pools were formed for the benefit of those traders, and not for the benefit of the Government or of the people of the Island. Again, it is incorrect to state that the pools came into being without the consent of the shareholders. After all, irrespective of the fact as to whether it was a pool or a Commercial partnership or any other form of business undertaking that had been set up by virtue of the contract entered into, that contract is still the contract drawn up between the parties concerned, and it is therein clearly established that the stipulated period should end on the 23rd January, 1946. There is nothing unlawful in that agreement, and the Court, notwithstanding the inexact assertions above referred to, felt that that agreement was valid and admitted that the Plaintiffs could not be obliged to extend the contractual period of their own membership of and adherence to the pool. Once that is the case, the Plaintiffs had every right to obtain a judicial declaration that the Wholesale

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Foodstuffs Pool, formed on the 24th January, 1944, had come to an end — and, once it had come to an end, to demand the liquidation thereof. They would otherwise be unable to take the share of the profits due to them. The Plaintiffs are not trying to put obstacles in the way of anyone wishing to form a pool or joining one — or setting up another pool. Their claim is in respect of that particular pool or partnership constituted between the parties on the 24th January, 1944. If it is a fact that anyone who wishes to retire from a pool may do so at the end of the contractual period, then the pool should be considered as having come to an end — and the parties concerned entitled to demand the liquidation of the undertaking. Again, if the pools are not Commercial partnerships, they are certainly associations, so that, by analogy, they come to be dealt with under the laws governing Commercial partnerships: Any substantial alteration in the contract gives the dissenting members the right to demand the dissolution and the liquidation of the association. (Vide Judgment, H.M. Commercial Court — Coll. of Judgments, Voll. XXV, p. 11a, page 729. — This judgment was reversed on Appeal, but on other grounds).

The Court held that the claim is premature. If that were so, then the Court, rather than dismissing the claim, should have non-suited the Defendants.

Wherefore, producing the undermentioned surety for the costs of the appeal, making reference to the evidence adduced, and reserving the right to produce all further evidence admissible at law, the Petitioners pray that the judgment given by H.M. Commercial Court on the 25th November, 1948 be reversed and that their claims be allowed — with the Costs both of the First and of this Second Instance.

(Signed) V. CARUANA, Advocate.  
„ E. BUGEJA, Legal Procurator.

The 9th December, 1948.

Filed by E. Bugeja L.P. without Exhibits.

(Signed) S. BUGEJA,  
Dep. Registrar.

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No. 14.  
Surety Bond

No. 14.

**Surety Bond.**

Professor Victor Caruana LL.D., son of Professor Giovanni Caruana LL.D., deceased, and Giovanna née Galizia, born in Valletta, residing at Sliema, appears and stands joint surety with the Appellants for the costs of this Appeal, hypothecating the whole of his present and future property and renouncing every benefit accorded by law.

(Signed) V. CARUANA, Advocate.

Professor Victor Caruana has affixed his signature hereto in my presence. 10

This 9th December, 1948.

(Signed) A. GHIRLANDO,  
Dep. Registrar.

No. 15  
Defendants'  
Answer

No. 15.

**Defendants' Answer.**

In H.M. Court of Appeal.

Antonio Caruana & Others

vs.

Joseph Debono **nomine** & Others. 20

Defendants' Answer.

Respectfully sheweth:—

The judgment appealed from is fair and just and should be affirmed with the costs both of the First and Second Instance against the Plaintiff Appellants.

(Signed) F. CREMONA, Advocate.

„ G. PACE BONELLO, Legal Procurator.

This 30th December, 1948.

Filed by G. Pace Bonello L.P. without Exhibits.

(Signed) S. BUGEJA, 30  
Dep. Registrar.

**The Further Evidence of The Food & Commerce Control Officer.**

No. 16.  
The Further  
Evidence of The  
Food &  
Commerce  
Control Officer

In H.M. Court of Appeal.

The Fourth April, 1949.

Eustratius Petrocochino, Food & Commerce Control Officer, sub-poenaed by the Defendants, states on oath:—

The Wholesalers Pool was established in the following circumstances:—

10 Up to a certain time — I think, up to 1942 — there was a large number of Distributors.

When Mr. Nalder came to Malta, he decided that, in order to be able to exercise a greater measure of control, the Distributors should form a Pool, and that he would then appoint a small number of Distributors from amongst the Members of the Pool — stating that he did not wish to have to deal with so many people, numbering over a hundred.

20 It is within my knowledge that the margin of profit was established and that the Distributors had to give part of the profits to the pool — that is to say, the Distributor, out of his profits, had to pay one-half to the pool, about 45% or 55% — now it is 25%.

The Distributors appointed by Mr. Nalder retained 55% of the gross profits to cover expenses and perhaps something was left over for their own pocket; the balance was paid into the Pool.

30 The Distributors had to be Members of the Wholesalers Pool. Any profits they made out of the allocation of 55% were in the nature of extra profits, for the allocation of 55% was not supposed to be in respect of the profits, but it was decided upon as coverage for expenses. The profit percentage was established at 45% and it was paid into the Pool.

**Cross-Examination**

The Distributors, so far as I know, were appointed after the Pool was formed. I am unable to say exactly when they were appointed, but it is hardly conceivable that they were appointed before the formation of the Pool.

Pools were formed in respect of other branches of trade. The traders concerned made their own arrangements as regards the constitution of and the conditions governing the Pool. The Government never interfered.

The Government — that is to say, Mr. Nalder — established the percentage.

As I have already stated, Mr. Nalder said: "I do not wish to have to deal with so many people — a hundred or more. I want 20 or 30". Mr. Nalder told them: "You form the Pool and I will appoint the Distributors from amongst the members forming the Pool". 10

The Pools were autonomous. The Government's only concern in the matter was that it did not wish to have to deal with too many people. The Pools appointed Committees and the Government dealt with those Committees.

There were many cases in which traders were left out of the Pools; and many cases were brought before these Courts by traders who have been left out.

The Pools had no powers to appoint Distributors and they had no right to establish the percentage payable by the Distributors to the Pools. 20

The Pools made their own arrangements as regards the number of shares to be held by individual members. The Government established the profit percentage.

To the question put by Prof. Caruana, as to whether in the circumstances in which the Government was placed at the time, it was possible for anyone to continue to act as Distributor without continuing to be a Member of the Pool — I reply that it was impossible. The case is inconceivable. It was impossible for anyone to be a Distributor without being a Member of the Pool. 30

I am referring to the time at which the Pools were formed, but the same arrangements have prevailed throughout the life of the Pools.

To the question put by Prof. Caruana, asking me why I state that the same arrangements have obtained throughout the life of the Pools, I reply: because no arrangements to the contrary were ever made. In fact, when, lately, about six months ago, we selected and appointed new Distributors, we wrote to them to say that the appointment was being made subject to the same conditions, that is to say, that they had to 40



continue to be Members of the Pool and to pay in to the Pool the established percentage.

No. 16.  
The Further  
Evidence of The  
Food &  
Commerce  
Control Officer  
—Continued.

As to whether it is within my knowledge that the Pool was formed for a period of two years, I reply that I got to know it because I read about it or perhaps because they sent me a copy of the instrument. I am not saying positively that they sent me a copy, but I have some idea that they did — I mean to say, the matter about the two-year period just happened to come to my knowledge.

10 Naturally, it was not for me to tell them that that was invalid.

In fact, at the end of two years, those who wished to resign gave me one month in which to appoint others in their stead and I proceeded to make other appointments.

This happened at the end of two years — not before.

20 One of those who resigned was Francesco Borg of St. Julian — he was the last to resign. There was another who had a business down at the Marina, but whose name now escapes me. Carmelo Abela, for instance, was another member who resigned. There were more than three resignations. They told me that they did not wish to continue to handle the distribution.

However, they continued to be Members of the Pool. I then appointed other Distributors, making the selection from amongst other Members of the Pool.

(Signed) E. PETROCOCHINO.

Read over to the witness.

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

30

**No. 17.**

**Plaintiffs' Application and Decree thereon.**

No. 17.  
Plaintiffs'  
Application and  
Decree thereon

In H.M. Court of Appeal.

Antonio Caruana & Others

vs.

Joseph Debono **nomine** & Others.

Plaintiffs' Application.

Respectfully sheweth:—

40 The Applicants, having regard to the importance of the issue at stake, and the amount involved, consider it necessary to file a Note of Submissions,

No. 17.  
Plaintiffs'  
Application and  
Decree thereon  
—Continued.

Wherefore Applicants respectfully pray that this Court may be pleased to postpone the judgment to be given in the case and to grant them leave to file the aforesaid Note of Submissions, subject to all such directions thereanent as may be deemed opportune.

(Signed) V. CARUANA, Advocate.  
„ BORIS DARMANIN, Legal Procurator.

This 3rd May, 1949.

Filed by Boris Darmanin L.P. with a Note of Submissions.

(Signed) J.N. CAMILLERI, 10  
Dep. Registrar.

### HIS MAJESTY'S COURT OF APPEAL

The Court,

Having seen the Application.

Reserves giving directions thereanent at the Sitting to be held on the 5th May, 1949.

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

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### No. 18.

No. 18.  
Plaintiffs' Note  
of Submissions

### Plaintiffs' Note of Submissions.

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In H.M. Court of Appeal.

Antonio Caruana & Others  
vs.  
Joseph Debono & Others.

Plaintiffs' Note of Submissions.

Respectfully sheweth:—

1. The only claim before the Court is for a judicial declaration to the effect that the Wholesale Foodstuffs Pool ended **ipso jure** at the end of the period of two years for which it had been set up in the instrument dated 24th February, 1945. 30

2. In terms of the agreement entered into between the parties, it was open to a General Meeting of Shareholders to extend the period in question for further successive periods of.

one year. As established in evidence, however, no General Meeting was held for the purpose and, consequently, no extension was made of the life of the Pool.

No. 18.  
Plaintiffs' Note  
of Submissions  
—Continued.

3. The foregoing is enough to justify Plaintiffs' claim. Obviously, in the case at issue, the difference between a pool and a Commercial partnership is entirely beyond the point, time being a common factor in both instances — as indeed in all cases involving contracts running subject to successive extensions.

10 4. In para: 14 of the instrument constituting the Pool, the parties envisaged **another** reason for winding up the Pool before the end of the period agreed upon, namely, the issue of instructions by the competent authorities **for the termination of the Pool**. That goes to establish that it was the will of the parties that the period of duration should be of two years, or other period established by them, and that they ruled out the possibility of continuing the Pool beyond the period agreed upon by reason of any instructions issued by the competent authorities. Otherwise, just as they envisaged a premature dis-  
20 solution as the result of instructions to that end, they would have envisaged also and made provision for the continuation of the Pool in obedience to instructions for the continuation thereof.

In actual fact, it is not in the evidence that any instructions were ever issued by the competent authorities for the continuation of the Pool beyond the period of two years.

5. That being established, such questions as those raised by the Defendants — i.e., whether the Plaintiffs are bound to continue their Membership of the Pool, or whether the Government still requires the Pool — are all **extraneous** to the case at  
30 issue. In fact, the present case concerns only the Pool as constituted by the instrument mentioned above. The one and only issue that interests the Plaintiffs at the present stage is whether or not the Pool has ended **ipso jure**. Whether the Plaintiffs should become members of another Pool, possibly subject to different conditions, with a different arrangement as to the percentage payable, a different distribution of shares and with some of the present Defendants left out — that is a question which has nothing to do with the merits of the present case and which may be considered only after the claims of the  
40 Plaintiffs have been allowed.

Nor is it relevant to the issue at stake to consider whether or not the Government still requires the Pool. What is important

No. 18.  
Plaintiffs' Note  
of Submissions  
—Continued.

is not what the Government requires, but what laws, regulations or other instructions actually lay down. Not even a bare allegation, let alone any proof, has been forthcoming as to the existence of any such laws, regulations or other instructions.

In actual fact, the Government does not require, and indeed has never required, the Pools — but only the Distributors. Further, the Government has never sought to dictate the conditions under which the Pools were to be formed. It was left to the parties concerned to settle matters between them and to the Courts to decide where the parties concerned failed to agree (Vide judgment, H.M. Court of Appeal, 10th April, 1946, in re "Gasas v. Anastasi and Others — and many other cases) — evidence, this, that the members of the Pool were to be trusted to look after their own interests and that they never stood in need of anyone's tutelage. If those who joined the Pool in question had failed to agree as to the period of duration, they would no doubt have sought the decision of the Government and abided by that decision. But they agreed, for they foresaw that in two years' time conditions would be such as to permit those who were not appointed Distributors to carry on trade in other commodities and to make their own profits therefrom — as in fact they are doing now without being dependant upon the profits of the Pool. After all, it has been established that, in appointing new Distributors, the percentage laid down was much lower than that of 45% established in connection with the pool set up by the instrument mentioned above — which goes to show that the Government and the Pool have realised that 45% is no longer a reasonable percentage to pay now that various commodities have been de-rationed and that it is possible freely to import various goods which could not be imported in 1944. And the fact indirectly confirms the end of the Wholesale Food-stuffs Pool — saving where necessary the formation of another Pool under different conditions.

(Signed) V. CARUANA, Advocate.

„ BORIS DARMANIN,  
Legal Procurator.

## No. 19.

## Defendants' Minute.

No. 19.  
Defendants'  
Minute

In H.M. Court of Appeal.

Antonio Caruana & Others  
vs.  
Joseph Debono & Others.

Defendants' Minute.

The Defendants produce a Note of Submissions in answer to that filed by the Plaintiff Appellants.

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(Signed) F. CREMONA, Advocate.  
" G. PACE BONELLO,  
Legal Procurator.

The Twelfth May, 1949.

Filed by G. Pace Bonello L.P. with a Note of Submissions.

(Signed) S. BUGEJA,  
Dep. Registrar.

## No. 20.

## Defendants' Note of Submissions.

No. 20.  
Defendants' Note  
of Submissions

In H.M. Court of Appeal.

20

Antonio Caruana & Others  
vs.  
Joseph Debono & Others.

Defendants' Note of Submissions.

Respectfully sheweth:—

1. The Plaintiffs have felt the necessity of producing a Note of Submissions setting forth the arguments verbally submitted to this Court through their Counsel in support of their contentions against the judgment appealed from.

30 2. In their Note of Submissions, as in their verbal pleadings, they seek to limit discussion on their claims in a way that completely ignores the substrata of the question at issue — deriving to it from the *sui generis* character of the Pools that were formed during the war for the sake of necessity and otherwise than voluntarily.

No. 20,  
Defendants' Note  
of Submissions  
—Continued.

3. It is an incontrovertible fact, supported by the evidence produced, that the Wholesale Foodstuffs Pool was formed in order to meet Government requirements and that the necessity for the Pool still exists to this day. The evidence given by Eustratius Petrocochino, and the fact that, in March, 1948, the Government, in view of the altered circumstances, found it necessary to reduce the quota of the gross profits payable to the Pool by the Distributors, goes to prove it beyond doubt. Further, in submitting the issue to the decision of this Court, one cannot, unless one is acting in bad faith, ignore the conditions under which the Pool was formed — especially the conditions concerning the Distributors as Members of the Pool. 10

In fact, it has been established that a Distributor, as such, must be a Member of the Pool, and that, if he resigns his appointment as Distributor — as he is of course entitled to do after giving due notice to the Government — he ceases to be a Member of the Pool unless the fact that he is a Wholesaler entitles him to stay and to retain his membership thereof.

4. It is all too obvious that Plaintiffs, all of whom are Distributors, have brought the present action, not so much because they wish to secure a judicial declaration that the Pool has ended **ipso jure**, as because they would like to be relieved of the obligation of paying the percentage due by them to the Pool. Apart from the fact that the obligation holds good and endures **independently** of any constituting instrument — as rightly held by this Court on the 18th November, 1946 in re “Fava v. Bonnici” — it is a settled point that the Pool in question can never be considered as a Commercial partnership. (Société). 20

In fact, as this Court observed in the judgment above referred to — “it would be absurd in a partnership if the members were to be imposed by the Government and if they were to be associated together otherwise than of their own free will and choice — for in that case there would be no such thing as the **affectio societatis**.” 30

5. It clearly follows, therefore, that the provisions of the law relating to the termination of Commercial partnerships are inapplicable.

6. The Defendants maintain that the Court should regard the contract in question as a contract **sui generis**, and not as a contract of a Commercial partnership — even though it has been so called for practical purposes; juridically, it is not a con- 40

tract of a Commercial partnership, and, discarding mere appearances, the Court should look at it in its real and intimate character.

No. 20.  
Defendants' Note  
of Submissions  
—Continued.

10 The contract in question, therefore, should continue to operate until the purposes for which it was entered into persist and endure. Such was the intention of the parties who signed it — the Plaintiffs included. That does not mean that para: 14 lacks design and scope: but the true purport of that clause is that anyone who wished to leave could have done so at the end of the period of two years — and not that those who wished to go should compel the others to go too and dissolve the Pool, regardless of the fact that the necessity for the Pool still exists.

20 7. Further, no one disputes Plaintiffs' right to leave the Pool. If they leave the Pool, however, they must inevitably relinquish also their appointment as Distributors. It is absurd that they should insist upon retaining their appointment as Distributors — and they still hold their appointment to this day — without being at the same time Members of the Pool. Such a claim on their part clearly demonstrates their bad faith, and no claim which rests on bad faith, and rests on bad faith so patently, is admissible at law.

30 8. The fact that the rules governing Commercial partnerships are inapplicable means that the contract in question was open to extension in any lawful manner, e.g. tacitly by the Members forming the Pool. Actually, the Defendants maintain that the Plaintiffs themselves had agreed to a tacit extension of the contract. In fact, once they continued to hold their appointment as Distributors after the 23rd. January, 1946, they showed clearly enough that it was their wish to continue to be Members of the Pool.

Their position *vis-à-vis* the claim set out in the Writ-of-Summons is prejudiced to that extent: As stated, bad faith on their part is established by their own actions.

40 9. It follows therefore that the judgment appealed from is fair and just and should be upheld on the ground that Plaintiffs' claims — incidentally, it is not one claim, as alleged by the Plaintiffs in their Note of Submissions, but two, namely, the dissolution of the Pool and the liquidation thereof — are premature and consequently untenable at the present moment when the Pool is still in being and must go on until the purposes for which it was set up continue to subsist. As for the Plaintiffs, they are at liberty to leave the Pool if they so wish, provided

No. 20.  
Defendants' Note  
of Submissions  
—Continued.

always that, in leaving the Pool, they will relinquish also their appointment as Distributors — for, as shown above, and as confirmed by the evidence of Eustratius Petrocochino, they must continue to be considered Members of the Pool so long as they continue to hold their appointment as Distributors.

(Signed) F. CREMONA, Advocate.  
„ G. PACE BONELLO,  
Legal Procurator.

No. 21.  
Judgment, H.M.  
Court of Appeal

**No. 21.**  
**Judgment, H.M. Court of Appeal.**

10

(Commercial Hall)

Judges:—

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

Sitting held on  
the Sixteenth May, 1949.

**No. 6**

Writ-of-Summons No. 72/1948.

Antonio Caruana & Others 20

vs.

Joseph Debono **nomine** & Others.

The Court,

Upon seeing the Writ-of-Summons, whereby the Plaintiffs, premising:— That the Wholesale Foodstuffs Pool was constituted for the period of two years with effect from 24th January, 1944:— that that period of two years had expired on the 23rd. January, 1946:— that no extension thereof was made in terms of the contract constituting the Pool:— and that the Defendants claim that the Pool is still in being, and that, when the organization comes to an end, the Board of Directors has the power at once to wind up and liquidate the business:— prayed that — every necessary declaration being prefaced and any expedient direction being given — it be declared and adjudged that the Wholesale Foodstuffs Pool came to an end **ipso jure** on termination of the period for which it was set up, and, further, that

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an Order be made against the Defendants directing them to proceed to effect the liquidation of the Pool — with costs.

No. 21:  
Judgment, H.M.  
Court of Appeal  
—Continued.

Upon seeing Defendants' Statement of Defence, pleading: The Wholesale Foodstuffs Pool is not a Commercial partnership in the strict juridical sense of the term, but an association *sui generis*, the setting up of which was enforced by the Civil Government. Consequently, once the Government is still in need of that association, the action brought by the Plaintiffs is premature and should be dismissed with Costs.

- 10 Upon seeing the Judgment given by H.M. Commercial Court on the 25th. November, 1948, dismissing Plaintiffs' claims with Costs — saving any action to which the Plaintiffs may be entitled when the organization comes to an end, according to law and if according to law.

That Court having considered:—

- 20 As consistently held by the local Courts, the Pool is not a Commercial partnership within the strict juridical meaning of the term, consisting as it does of the amalgamation of a number of traders promoted by the Government with the object of facilitating the importation and distribution of rationed commodities in the abnormal conditions of the world markets. Those who joined the Pool did so because it suited them, and they are at liberty to quit as soon as the period agreed upon runs out — but they may not demand the liquidation of the Pool, for the Pool is required by the Government and therefore it is not for the parties interested therein to dissolve it and bring it to an end. Once the period agreed upon has expired, however, they are under no obligation to remain in the Pool.
- 30 The Pools were set up in pursuance of orders issued by the Government and they may not therefore be brought to an end merely by the consent of the interested parties. Those who may wish to retire may do so, provided they are prepared to bear the consequences.

Therefore, the claim for liquidation is premature, and, as formulated, untenable.

Upon seeing, <sup>Plaintiffs' Note of Appeal, and their Petition,</sup> ~~the Answer filed by the Defendants,~~ praying that that judgment be reversed, with costs, and that their claims be allowed, with costs.

- 40 Upon seeing the Answer filed by the Defendants, praying that the judgment be affirmed, with costs.

Upon seeing all the acts in the Record.

No. 21.  
 Judgment, H.M.  
 Court of Appeal  
 —Continued.

Upon seeing the Submissions filed by the parties.

Having heard Counsel on both sides.

Considering:

As rightly held by the Court of First Instance, and as held in the various judgments given by this Court affirming those given by the Court below, the Pools that were formed during the war cannot be considered as true Commercial partnerships within the meaning of the Commercial laws. That apart, the Appellants maintain that, once they joined the Pool of their own accord, and once the period of two years for which they joined the Pool had run out, and no extension thereof had been made — in other words, once the agreement entered into, as per contract filed in the Record, had expired — they have the right to demand the liquidation of an organization that had ended. If the Pool had come into being in the way suggested by the Appellants, their argument would have been acceptable. The Appellants, however, have overlooked what is a most important factor both as regards the creation and the termination of the Pools — namely, the intervention made by the Government which, in the abnormal circumstances then prevailing, had every interest to urge the formation of the Pools, as clearly established by the evidence of Eustratius Petrocochino, who then held the post of Food and Commerce Control Officer, and who is well versed in all matters concerning the Pools. 10

That witness stated that the establishment of the Pools was required by Government so as to facilitate control, and it was the Government itself that had to appoint the Distributors — making the selection, however, from amongst the Members of the Pool. He stated that that is exactly what had been done in the past, and that, whenever a Distributor resigned, the Government appointed another Member of the Pool in his stead. The system had been followed to the present day: the Pools are still in being and the Distributors are still appointed by Government. 20

Once that is so, and once the Government had decided at the outset that Distributors should retain a certain percentage of the profits (55% to the Distributors, and 45% to the Pools, to be shared between all the Members of the Pool, including the Distributors themselves — a rate of percentage that has since been altered to meet altered circumstances — the Pool cannot be wound up and dissolved without the authorization of the Government. In fact, once the competent authorities, notwithstanding the lapse of so much time, consider that a cer- 30 40

tain degree of control is still necessary, and that the Pools must be kept on for the sake of that limited amount of control, the parties concerned may not, **marite proprio**, claim the right to dissolve the association independently of Government authorization. The Appellants maintain that all concerned were set free on the expiration of the contractual period of two years. As stated above, however, a principle of so absolute a character must be reconciled with the interests of the public in so far as the continued existence of the Pools is concerned. Any Distributor who wished to resign his appointment at the end of the contractual period of two years was at liberty to do so, and he was at liberty also to resign his membership of the Pool: and then, having done so, it devolved upon him to bring his claims against the Pool, **si et quatenus**.

No. 21.  
Judgment, H.M.  
Court of Appeal  
—Continued.

Considering:

However, **rebus sic stantibus**, once the Pool is still there, and is still required by the Government to meet present-day exigencies, and once the Appellants have continued to hold their appointment as Distributors, and are still Members of the Pool, it is beyond them to bring the present action which, in that sense, is premature — for in order to be able to advance any claims they may have **vis-a-vis** the Pool, they must first relinquish, not only their appointment as Distributors, but also their Membership of the Pool.

On these grounds and, in so far as compatible, on the grounds set out in the judgment given by the Court below:

The Court,

Adjudges, declaring that the present action is premature and therefore non-suiting the Defendants — and in that sense, in so far as the claims were dismissed by the Court below, allows Plaintiffs' appeal.

As to Costs, each party shall bear its own Costs in both the First and this Second Instance — Registry fees to be paid by the Appellants.

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

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No. 22.  
Plaintiffs'  
Petition for leave  
to appeal to  
H.M. Privy  
Council

**Plaintiffs' Petition for leave to appeal to H.M. Privy Council.**

In H.M. Court of Appeal.

Writ-of-Summons No. 72/1948.

Antonio Caruana, Michele Magro, for  
and on behalf of the firm of Joseph  
Magro, Joseph Stellini, for and on  
behalf of the firm S. Stellini & Sons,  
Antonio Bonnici, Emmanuele Far-  
rugia, John Tabone, Salvatore Mifsud, 10  
Carmelo Muscat, Paolo Micallef,  
Rosario Schembri, for and on behalf of  
the Firm of Giovanni Schembri,  
Carmelo Loporto, for and on behalf of  
the Firm of Pace & Loporto, Antonio  
Vella, Michelangelo Sciberras, Paolo  
Farrugia, Carmelo Bellizzi, for and on  
behalf of the Firm of Carmelo Bellizzi  
& Co., Giuseppe Portelli, for and on 20  
behalf of the Firm of Edgar Portelli,  
Felice Cutajar, Giuseppe Debrincat,  
for and on behalf of the Firm of A.  
Debrincat & Sons, George Debattista,  
Joseph Gambin, Giuseppe Buhagiar,  
Joseph Grech, Angelo Briffa, for and  
on behalf of the Firm of Vincenzo  
Briffa; and, by Decree dated 21st. June,  
1949, Joseph & Wilfred Stellini vice  
their father Joseph Stellini, deceased.

vs.

Joseph Debono, Philip Agius, John  
Calleja, Agostino Azzopardi, Antonio  
Cuschieri, Angelo Bonello and  
Domenico Cachia, respectively in their  
capacity as Chairman, Secretary and  
Directors of the Wholesale Foodstuffs  
Pool.

Plaintiffs' Petition.

Respectfully sheweth:—

By Writ-of-Summons filed in H.M. Commercial Court on 40  
the 7th. February, 1949, the Plaintiffs, premising:— Whereas

the aforesaid Pool was constituted for the period of two years with effect from 24th January, 1944:— and whereas that period of two years expired on the 23rd. January, 1946:— and whereas no extension thereof was made in terms of the contract constituting the Pool:— and whereas the Defendants' claim that the Pool is still in being, and that, when the organization comes to an end, the Board of Directors has the power at once to wind up and liquidate the business:— every necessary declaration being prefaced and any expedient direction being given:—

10 said Defendants to shew cause (1) why it should not be declared and adjudged that the Wholesale Foodstuffs Pool came to an end *ipso jure* on termination of the period for which it was set up:— and (2) why the Defendants should not proceed to effect the liquidation of the Pool.

The Defendants, in their Statement of Defence, pleaded:— The Wholesale Foodstuffs Pool is not a Commercial partnership in the strict juridical sense of the term, but an association *sui generis*, the setting up of which was enforced by the Civil Government. Consequently, once the Government is still in need

20 of that association, the action brought by the Plaintiffs is premature and should be dismissed with Costs.

H.M. Commercial Court, by judgment given on the 25th. November, 1948, holding that the claim is premature and, as formulated, untenable — dismissed Plaintiffs' claim, with costs:— saving any action to which the Plaintiffs may be entitled when the Pool comes to an end, according to law and if according to law.

The Plaintiffs, deeming themselves aggrieved by that judgment, entered appeal therefrom to this Honourable Court by

30 Minute filed on the 2nd. December, 1948.

This Honourable Court, by judgment given on the 16th. May, 1949, declared the action premature and non-suited the Defendants — and in that sense, in so far as the claims were dismissed by the Court below, allowed Plaintiffs' appeal: and ordered each party to bear its own Costs in both the First and Second Instance — Registry fees to be paid by the Appellants.

The Plaintiffs deem themselves aggrieved by that judgment and wish to enter appeal therefrom to His Majesty's Privy Council.

40 Wherefore the Plaintiffs humbly pray that this Honourable Court may be pleased to grant them leave to appeal from the aforesaid judgment, given on the 16th. May, 1949, to His

No. 22.  
Plaintiffs'  
Petition for leave  
to appeal to  
H.M. Privy  
Council  
—Continued.

No. 22,  
Plaintiffs'  
Petition for leave  
to appeal to  
H.M. Privy  
Council  
—Continued.

Majesty's Privy Council, thereby to seek the reversal of that judgment both as regards the merits and the order as to costs — their claims being allowed.

(Signed) V. CARUANA, Advocate.  
" G. GALDES,  
Legal Procurator.

This 3rd. June, 1949.

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

(Signed) V. PANDOLFINO,  
Dep. Registrar. 10

No. 23.  
Defendants'  
Answer

**No. 23**

**Defendants' Answer.**

In H.M. Court of Appeal.

Antonio Caruana & Others

vs.

Joseph Debono **nomine** & Others.

Defendants' Answer.

Respectfully sheweth:—

In the petition filed on the 3rd. June, 1949, the Plaintiffs omitted to mention the grounds whereon they are seeking leave to appeal to H.M. Privy Council from the judgment given by this Honourable Court on the 16th. May 1949, as required by law. 20

The Defendants therefore reserve making further submissions thereanent after the Plaintiffs shall have stated the grounds aforesaid.

(Signed) F. CREMONA, Advocate.  
" G. PACE BONELLO,  
Legal Procurator.

This 11th. June, 1949. 30

Filed by G. Pace Bonello L.P. without Exhibits.

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

**Procés Verbaux.**

In H.M. Court of Appeal.

14th. June, 1949.

Prof. Caruana, appearing for the Plaintiff Appellants, declares that leave to appeal to the Judicial Committee is being sought as of right by reason of the value of the matter involved in the dispute.

10 Prof. Cremona, for the Defendants, made submissions on Plaintiffs' Petition for leave to appeal.

Hearing adjourned to 20th. June, 1949.

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20th. June, 1949.

The Court heard the evidence of Philip Agius.

Case adjourned to 27th. June 1949, for Judgment.

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**The Further Evidence of the Defendant Filippo Agius.**

In H.M. Court of Appeal.

20th. June, 1949.

The Defendant, Filippo Agius, states on oath:—

20 I produce a Statement respecting the Year 1946.

**Cross-Examination**

The Statement is in respect of one single year. As regards the year 1947, the profits for the first six months are the same. The quota was then increased from 55% to 70% and therefore the profits for the next six months are less.

The Plaintiffs hold appointment as Distributors.

Statements for the next succeeding years are also available.

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No. 26.  
Decree Granting  
Conditional  
Leave

No. 26.

**Decree Granting Conditional Leave.**

HIS MAJESTY'S COURT OF APPEAL  
(Commercial Hall)

Judges:—

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

Sitting held on  
Monday, the Twenty-seventh June, 1949. 10

No. 21

Writ-of-Summons No. 72/1948.

Antonio Caruana & Others

vs.

Joseph Debono **nomine** & Others.

The Court,

Upon seeing Plaintiffs' Petition, praying that they be granted leave to appeal to the Judicial Committee of His Majesty's Privy Council from the judgment given by this Court on the 16th. May, 1949. 20

Upon seeing Defendants' Answer, submitting that the Plaintiffs have omitted to mention the grounds whereon they are seeking leave to appeal, as required by law, and that, therefore, they will make their submissions thereanent after that the Plaintiffs shall have stated the grounds aforesaid.

Having heard one witness and having seen the statement produced.

Having heard Counsel on both sides.

Considering:

According to the procès verbal recorded at the Sitting held on the 14th. June, 1949, Appellants' Counsel declared that leave to appeal is being sought as of right by reason of the value of the matter involved in the dispute. 30

The Respondents submitted that no appeal lies to H.M. Privy Council except from a final judgment of this Court, that the judgment given on the 16th. May, 1949 is not a final judg-



ment, and that, therefore, Plaintiffs' Petition for leave to appeal as of right is inadmissible.

No. 26.  
Decree Granting  
Conditional  
Leave

Considering:

In the Writ-of-Summons filed in H.M. Commercial Court, the Plaintiffs prayed that it be declared and adjudged that the Wholesale Foodstuffs Pool terminated **ipso jure** at the end of the period for which it had been formed and that an Order be made directing the Defendants to effect the liquidation of the Pool.

10 By judgment given on the 25th. November, 1948, H.M. Commercial Court — holding that the claim is premature and, as formulated, untenable — dismissed the claims. — Without prejudice to any action to which the Plaintiffs may be entitled when the Pool comes to an end, according to law and if according to law.

This Court, by judgment given on the 16th. May, 1949, held that the action is premature and non-suited the Defendants.

20 Therefore, Plaintiffs' claims for a judicial declaration that the Wholesale Foodstuffs Pool had terminated by effluxion of time, and for an Order directing the Defendants to effect the liquidation of the Pool, were dismissed by this Court — on the ground that the Pool had not yet come to an end — and consequently the Defendants were relieved **ab observantia judicii**. As regards the claims as formulated in the Writ-of-Summons, the judgment is final in so far as it bears upon the rights with which the Plaintiffs claim to be vested at the present day — without prejudice however to such rights as the Plaintiffs may have in the future. Bentwitch state: "No order, judgment, or other proceeding can be final, which does not at once affect the status of the parties for whichever side the decision may be given, so that if it is given for the plaintiff it is conclusive against the defendant, and if it is given for the defendant, it is conclusive against the plaintiff." (n) Where in an action for account the Court, at the request of the plaintiff, selected one item, and in respect thereof, after hearing the evidence, made an order that the action be dismissed, it was held that an appeal might be taken therefrom as a final order (Macdonald vs. Belcher, 1904 — a.c. 429).

30

40 In such cases, it is incumbent upon the Court to ascertain the nature of the claim and to determine whether the Defendant has succeeded in resisting that claim. In the light of the principles quoted above, it is beyond doubt that the present Defendants

No. 26.  
Decree Granting  
Conditional  
Leave  
—Continued.

have succeeded in resisting both the claim for a judicial declaration that the Pool has come to an end and that for the liquidation thereof at the present moment.

Considering:

As regards the value of the matter involved in the dispute.

The statement filed at the Sitting held on the 20th June, 1949, shows **prima facie** that the value in dispute may exceed £500: "The proper measure of value for determining the question is, in the case of plaintiff appellant, the amount for which the defendant has successfully resisted a decree in the Lower Courts" (op. cit. p. 142). In this case, the appellants are fifteen in number. Again, Bentwich states: "Several suits in which separate judgments have been given cannot be consolidated for the purpose of permitting an appeal by making the aggregate amount exceed the appealable amount: though in the aggregate the sums claimed were over the amount, leave to appeal was granted on the parties undertaking to abide by the decision in the first appeal." 10

The Defendant Respondents maintain that the Statement produced fails to establish that the amount involved is of £500 or upwards. This Court is not in a position to determine whether the Statement in question may or may not be accepted, seeing that the matter bears upon the merits of the second claim, and that, as held on the 9th. May, 1949, in re "Darmanin v Micallef," and in the other judgment referred to, it is not possible for this Court to go into that question at the present stage. 20

In view of the uncertainty as to the amount actually involved — which appears **prima facie** to be £500, but which cannot be determined **aliunde** — this Court, following its usual practice, will require the sworn declaration of the Appellants. 30

On these grounds:

The Court,

Dismissing the pleas set up by the Defendant Respondents:—

Gives the Appellants twenty days within which to declare on their oath that the liquidation of the Pool involves the sum of £500 or more in respect of each Appellant, and, provided that they shall make such sworn declaration, allows the petition and grants them conditional leave to appeal from the judgment given by this Court on the 16th May, 1949, to His Majesty in His Privy Council, subject to their entering into good and sufficient security, in terms of section 4 of the Order-in- 40

Council of 1909, within one month from the date on which they shall make their declaration on oath aforesaid, in a sum of Two Hundred Pounds (£200), and, further, gives the Appellants three months, to run as above directed, within which to procure the preparation and the translation of the Record and the transmission thereof to the Judicial Committee of H. M. Privy Council.

No. 26.  
Decree Granting  
Conditional  
Leave.  
—Continued.

Costs hereof reserved to the final Order.

10 Where, however, the Appellants fail to make the above declaration on oath, the Petition shall stand dismissed, with Costs against the Appellants.

(Signed) J. N. CAMILLERI.  
Dep. Registrar.

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**No. 27.**

**Schedule of Deposit.**

No. 27.  
Schedule of  
Deposit.

In H.M. Court of Appeal.

20

Antonio Caruana, Michele Magro, for and on behalf of Messrs. Joseph Magro, Joseph Stellini, for and on behalf of Messrs S. Stellini & Sons, Antonio Bonnici, Emmanuele Farrugia, John Tabone, Salvatore Mifsud, Paolo Micallef, Rosario Schembri, for and on behalf of Messrs. Giovanni Schembri, Michelangelo Sciberras, Giuseppe Portelli, for and on behalf of Messrs. Edgar Portelli, Giuseppe Debrincat, for and on behalf of Messrs. A. Debrincat & Sons, George Debattista, Joseph Gambin, Giuseppe Buhagiar, Joseph Grech, Carmelo Muscat, and Carmelo Bellizzi, for and on behalf of Messrs. Carmelo Bellizzi & Co.

30

vs.

Joseph Debono, Philip Agius, John Calleja, Agostino Azzopardi, Antonio Cuschieri, Angelo Bonello and Duminku Cachia, respectively in their

capacity as Chairman, Secretary and Director of the Wholesale Foodstuffs Pool.

Schedule of Deposit of the Plaintiff Appellants.

Respectfully sheweth:—

By judgment given on the 27th June, 1949, this Honourable Court granted the Plaintiff Appellants conditional leave to appeal from the judgment given on the 16th May, 1949, to His Majesty in His Privy Council, giving them the period of twenty days within which to declare on their oath that the liquidation of the Pool involves a sum of £500 or more in respect of each Appellant, and the period of one month, reckoned from the date on which they shall make their declaration on oath as aforesaid, within which to enter into good and sufficient security, in a sum of £200, in terms of section 4 of the Order-in-Council of 1909. 10

The Plaintiff Appellants have made the aforesaid declaration on oath within the period specified.

Wherefore the Plaintiff Appellants hereby make deposit of the aforesaid sum of Two Hundred Pounds.

(Signed) V. CARUANA, Advocate. 20  
" G. GALDES,  
Legal Procurator.

This Twenty-seventh July, 1949.

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

(Signed) J. CAMILLERI CACOPARDO.  
Dep. Registrar.

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**Minute Approving Translation.**

In H.M. Court of Appeal

Antonio Caruana & Others  
v.  
Joseph Debono & Others

The Minute of the contending parties.

10 Whereby they declare that they agree to the translation of  
the Record, a copy of which translation has been lodged this day  
in the Registry of these Courts.

(Signed) for the Plaintiff Appellants:—

" V. CARUANA, Advocate.

" G. GALDES, L.P.

(Signed) for the Defendant Respondents:—

" J. PULLICINO, Advocate.

" G. PACE BONELLO, L.P.

This Sixteenth November, 1949.

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

20 **Appellants' Application for Final Leave**

In H.M. Court of Appeal

Antonio Caruana & Others  
v.  
Joseph Debono & Others

The Application of Plaintiff Appellants.

Respectfully sheweth:—

By Decree given on the 27th June, 1949, this Court granted  
the Plaintiff Appellants conditional leave to appeal to the  
Judicial Committee of His Majesty's Privy Council from the  
judgment given by this Court on the 16th May, 1949.

The Appellants have fulfilled all the conditions required and  
have completed the translation of the Record.

No. 29.  
Appellants'  
Application for  
Final Leave  
—Continued.

Wherefore the Appellants respectfully pray that this Court may be pleased to grant them final leave to appeal to His Majesty in His Privy Council.

(Signed) V. CARUANA, Advocate.  
,, G. GALDES, Legal Procurator.

This Sixteenth November, 1949.

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

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

No. 30.  
Decree granting  
Final Leave

No. 30.

10

**Decree granting Final Leave**

HIS MAJESTY'S COURT OF APPEAL

Judges:-

His Honour Sir George Borg M.B.E., LL.D., President  
The Honourable Mr. Justice L.A. Camilleri LL.D.  
The Honourable Mr. Justice W. Harding B.Litt., LL.D.

Sitting held on Friday, the  
Sixteenth December, 1949.

No. 26.  
Writ-of-Summons No. 72/1948.

20

Antonio Caruana & Others  
v.  
Joseph Debono & Others

The Court,

Upon seeing the Application of the Plaintiff Appellants, submitting that the translation of the Record has been completed and praying for final leave to appeal to the Judicial Committee of His Majesty's Privy Council.

Upon seeing the Decree given by this Court on the 27th June, 1949, whereby the Appellants were granted conditional leave to appeal to His Majesty's Privy Council from the judgment given by this Court on the 16th May, 1949 — costs reserved to the final Order.

30

Upon seeing the Minute whereby the parties declared that they agree to the translation made of the Record of the case.

Allows the Application and grants the Plaintiff Appellants final leave to appeal to the Judicial Committee of His Majesty's Privy Council from the aforesaid judgment of this Court.

No. 30.  
Decree granting  
Final Leave  
—Continued.

The Costs in respect of the present Decree, and of the Decree granting conditional leave, to be borne by the Plaintiff Appellants, saving recovery thereof, or part thereof, from the Respondents, as may be ordered by the Judicial Committee of His Majesty's Privy Council.

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

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**EXHIBITS**

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**Exhibit A.****Contract dated 27th February, 1945.**Exhibit A.  
Contract dated  
27th February  
1945.

By Minute filed to-day in His Majesty's Commercial Court, Prof. F. Cremona LL.D. has produced the following document for publication in accordance with, and for the purposes of, the Commercial Laws.

By virtue of the present instrument under private signature, the following, namely:—

Joseph Calleja, trader, son of the late Carmelo, born and residing at Qormi, in his capacity as sole proprietor of the Firm "Buttigieg & Calleja"; George Zerafa, trader, son of the late Massimo, born and residing at Qormi, as sole proprietor of the Firm "George Zerafa"; — Vincenzo Caruana, trader, son of the late Giuseppe, born and residing at Naxxar, as sole proprietor of the Firm "Vincenzo Caruana"; — Salvatore Borg, trader, son of the late Serafino, born and residing at Gzira, appearing as a party hereto as co-proprietor and representative of the Firm "Borg Glus. & Debono Alf."; — Giuseppe Zammit, trader, son of the late Antonio, born and residing in Valetta, as sole proprietor of the Firm "Giuseppe Zammit"; Lorenzo Axisa, trader, son of the late Salvatore, born and residing at Tarxien, as sole proprietor of the Firm "Lorenzo Axisa"; Emmanuele Camilleri trader, son of the late Salvatore, born at Qormi, residing at Santa Venera, as sole proprietor of the Firm "Emmanuele Camilleri"; — Joseph Pisani, trader, son of the late Louls, born at Cospicua, residing at Birkirkara, as co-proprietor and representative of the Firm of "L. Pisani & Sons"; Giuseppe Chetcuti, trader, son of Giacchino, born and residing at Musta, as sole proprietor of the Firm "Giuseppe Chetcuti"; — Carmelo Said, trader, son of the late Giuseppe, born and residing at Musta, as sole proprietor of the Firm of "Carmelo Said"; Giuseppe Micallef, trader, son of the late Paolo, born at Zebbug, residing at Musta, as sole proprietor of the Firm "Giuseppe Micallef"; — Filippo Galea, trader, son of Filippo, born and residing at Zebbug, as sole proprietor of the firm "Filippo Galea"; — Nicola Clantar, trader, son of the late Carmelo, born and residing at Zebbug, as sole proprietor of the Firm "Nicola Clantar"; — Antonio Said, trader, son of the late Francesco, born and residing in Valetta, as sole proprietor of the Firm "Antonio Said"; — Anthony Cassar, trader, son of the late Giovanni, born at Qormi, residing at Sliema, as co-proprietor and representative of the Firm "A. & G. Cassar Bros."; — Michele Zammit, trader, son of the late Giuseppe, born at Xghara, Gozo, residing at Calcara, as sole proprietor of the Firm "Michele Zammit"; — Enrico Saliba, trader, son of the late Andrea, born and residing at Musta, as sole proprietor of the Firm "Enrico Saliba"; — Filippo Gatt, trader, son of the late Carmelo, born and residing at Zebbug, as sole proprietor of the Firm "Filippo Gatt"; — Emmanuele Sultana, trader, son of Liberato, born at Xghara, Gozo, residing in Valetta, as sole proprietor of the Firm "Emmanuele Sultana"; — Pio Pisani, trader, son of the late Carmelo, born at Cospicua, residing at Floriana, as sole proprietor of the Firm "Pio Pisani & Co"; — Luigi Attard, trader, son of the late Carmelo, born at Senglea, residing at Gzira, Sliema, as co-proprietor and representative of the Firm "Attard Bros." — Giuseppe Sammut, trader, son of the late Michele, born and residing at Naxxar, as sole proprietor of the Firm "Giuseppe Sammut"; — Richard Troisi, trader, son of the late Paolo, born at Msida, residing at Sliema, as co-proprietor and representative of the Firm

Exhibit A.  
Contract dated  
27th February  
1945.  
—Continued.

"Troisi and Scicluna"; — Gerald Attard, trader, son of the late Joseph, born and residing at Floriana, as sole proprietor of the Firm "Gerald Attard"; — Antonio Cachia, trader, son of the late Fortunato, born at Kalkara, residing at Birkirkara, as co-proprietor and representative of the Firm "Cachia & Grima"; — Paolo Azzopardi, trader, son of the late Michele, born and residing at Rabat, as sole proprietor of the Firm "Paolo Azzopardi"; — Carmelo Zammit, trader, son of the late Antonio, born and residing at Zebbug, as sole proprietor of the Firm "Carmelo Zammit"; — James Cachia, trader, son of the late Michelangelo, born at Imqabba, residing at Tarxien, as sole proprietor of the Firm "James Cachia"; — Antonio Magro, trader, son of the late Michele, born and residing at Zabbar, as sole proprietor of the Firm "Antonio Magro"; — Paolo Micallef, trader, son of the late Daniele, born and residing at Rabat, as sole proprietor of the Firm "Paolo Micallef"; — Onorato Vella, trader, son of Salvatore, born and residing at Naxxar, as sole proprietor of the Firm "Onorato Vella"; — Beniamino Bonnici, trader, son of the late Filippo, born and residing at Zebbug, as sole proprietor of the Firm "Beniamino Bonnici"; — Domenico Attard, trader, son of the late Francesco, born in Valetta, residing at Qormi, as sole proprietor of the Firm "Domenico Attard"; Francis Bonello, trader, son of the late Giuseppe, born at Xghara, Gozo, and residing in Valetta, as sole proprietor of the Firm "Francis Bonello"; — Massimo Cassar, trader, son of the late Giovanni, born and residing at Qormi, as sole proprietor of the Firm "Massimo Cassar"; — Giuseppe Borg, trader, son of the late Felice, born and residing at Birkirkara, as co-proprietor and representative of the Firm "Giuseppe Borg & Sons"; Joseph Debattista Debono, trader, son of Riccardo, born at Qormi, residing at Msida, as sole proprietor of the Firm "Giuseppe Debattista Debono"; Francesco Caruana, trader, son of the late Spiridione, born and residing in Valetta, as sole proprietor of the Firm "Frank Caruana"; Michele Bartolo, trader, son of the late Giovanni, born at Xghara, Gozo, and residing in Valetta, as sole proprietor of the Firm "M. Bartolo & Sons"; Carmelo Borg, trader, son of Giuseppe, born and residing at Birkirkara, as sole proprietor of the Firm "Carmelo Borg ta' Giuzepp iz-Zundajru"; Giorgio Rapa, trader, son of the late Giuseppe, born and residing at Floriana, as sole proprietor of the Firm "Giorgio Rapa"; — Michele Pace, trader, son of the late Antonio, born and residing at Zebbug, as sole proprietor of the Firm "Michele Pace"; — Diego Borg, trader, son of Carmelo, born and residing at Siggiewi, as sole proprietor of the Firm "Diego Borg"; — Domenico Debrincat, trader, son of the late Antonio, born at Floriana, residing at Sliema, as sole proprietor of the Firm "Domenico Debrincat"; Marianna, widow of Giuseppe Busuttill, daughter of the late Michele Muscat, born and residing at Mosta, in her own name, and as Tutrix of her minor children Maria Concetta, Giovanna and Marianna, children of the said Giuseppe, born: Marianna and Giovanna in Valetta, and Maria Concetta at Mosta, all residing at Mosta, appointed by Decree given by His Majesty's Civil Court, Second Hall, on the thirtieth March, 1940 — the said Marianna Busuttill, as co-proprietor of one undivided moiety of the Firm "Giuseppe Busuttill" and Maria Concetta, Giovanna and Marianna as co-proprietors of the other undivided moiety of the said Firm of "Giuseppe Busuttill"; Carmelo Camilleri, trader, son of Gio Battista, born at Zurrieq, residing at Qormi, as sole proprietor of the Firm "Carmelo Camilleri"; John Vella, trader, son of the late Francesco, born and residing at Melleha, as co-proprietor and representative of the Firm "Vella & Vella"; — Pinu (Filippo) Gauci, trader, son of Carmelo, born and residing at Zebbug, as sole proprietor of the Firm "Pinu Gauci"; — Emmanuele Busuttill, trader, son of the late Francesco, born and residing at Safi, as sole proprietor of the Firm "Emmanuele Busuttill & Co." — Carmelo Gauci, trader, son of the late Mario, born and residing at Zebbug, as sole proprietor of the Firm "Carmelo Gauci"; — Gerald

Mifsud, trader, son of the late Paolo, born & residing at Zejtun, as sole proprietor of the Firm "Gerald Mifsud"; — Calcedonio Micallef, trader, son of the late Giovanni, born and residing at Zebbug, as sole proprietor of the Firm "Calcedonio Micallef"; — Felice Cutajar, trader, son of Francesco, born and residing at Zebbug, as sole proprietor of the Firm "Felice Cutajar"; Angelo Cutajar, trader, son of the late Paolo, born at Siggiewi and residing at Zebbug, as sole proprietor of the Firm "Angelo Cutajar"; Carmelo Cauchi, trader, son of Giuseppe, born and residing at Hamrun, as sole proprietor of the Firm "Giuseppe Pisanì fu Carmelo" — Giuseppe Debattista Farrugia, trader, son of Paolo, born in Msida, residing at Gzira, Sliema, as sole proprietor of the Firm "Joseph Debattista Farrugia, Gzira"; — Spiru Debono, trader, son of Giorgio, born at Qormi, residing at Msida, as sole proprietor of the Firm "Spiru Debono" — Clemente Tayar, trader, son of the late Jacob, born and residing in Valletta, as sole proprietor of the Firm "Clemente Tayar" — Eucaristo Zammit, trader, son of Michele, born at Xaghra, Gozo, and residing in Valetta, as sole proprietor of the Firm "Eucaristo Zammit"; — Maria wife of Teodosio Cilla, daughter of the late Filippo Agius, born and residing in Zebbug as special attorney for her husband, Teodosio Cilla trader, son of the late Antonio, born and residing at Zebbug, as sole proprietor of the Firm "Teodosio Cilla" appointed by power-of-attorney dated 24th February, 1945, conserved by, and to be enrolled in the records of, Notary Victor Bizazza;—John Bajada, trader, son of the late Salvatore, born and residing in Valletta, as co-proprietor and representative of the Firm "A. Bajada & Sons" — Phillip Agius, trader, son of Lorenzo, born at Msida, residing at Sliema, as sole proprietor of the Firm "Phillip Agius & Co." — Antonio Cassar, trader, son of the late Domenico, born and residing in Valetta, as co-proprietor and representative of the Firm "Domenico Cassar" — Carmelo Falzon, trader, son of the late Giuseppe, born and residing in Siggiewi, as sole proprietor of the Firm "Carmelo Falzon" — Lorenzo Caruana, trader, son of the late Giuseppe, born at Floriana, residing at Zebbug, as sole proprietor of the Firm "Lorenzo Caruana" — Angelo Agius, trader, son of the late Giuseppe, born and residing at Zebbug, as sole proprietor of the Firm "Angelo Agius" — Carmelo Coleiro, trader, son of the late Paolo, born at Qormi, residing at Mosta as sole proprietor of the Firm "Carmelo Coleiro". Agostino Ellul, trader, son of the late Lorenzo, born and residing in Floriana, as co-proprietor and representative of the Firm "Lorenzo Ellul" — Filippo Buhagiar, trader, son of the late Rosario, born and residing at Zebbug, as sole proprietor of the Firm "Filippo Buhagiar" — Emmanuel Schembri, trader, son of the late Giovanni, born and residing at Qormi, as sole proprietor of the Firm "Emmanuele Schembri" — Giovanni Aquilina, trader, son of the late Raffaele, born and residing in Valetta, as sole proprietor of the Firm "Giovanni Aquilina" — Oscar Cuschieri, trader, son of Vincent, born in Valletta, residing at St. Julian's, as co-proprietor and representative of the Firm "V. Cuschieri & Sons" — Cristino Formosa, trader, son of the late Giuseppe, born at Rabat, Mdina, residing at Hamrun, as sole proprietor of the Firm "Cristino Formosa" — Nazzareno Ciantar, trader, son of the late Giuseppe, born and residing at Rabat, Mdina, as sole proprietor of the Firm "Nazzareno Ciantar" — Joseph Spiteri, trader, son of the late Carmelo, born at Cospicua, residing in Valletta, as sole proprietor of the Firm "Joseph Spiteri (Izzuzu)" — Giuseppe Debrincat, trader, son of the late Antonio, born at Floriana, residing in Valletta, as co-proprietor and representative of the Firm "Antonio Debrincat e Figli" — Vincenzo Briffa, trader, son of Costantino, born and residing at Birkirkara, as sole proprietor of the Firm "Vincenzo Briffa" — Carmelo Mercieca, trader, son of the late Paolo, born and residing at Cospicua, as sole proprietor of the Firm "Carmelo Mercieca" — Antonio Mallia, trader, son of Pietro, born and residing at Siggiewi, as sole proprietor of the Firm "Antonio Mallia" —

Exhibit A,  
Contract dated  
27th February  
1945,  
—Continued.

Exhibit A.  
Contract dated  
27th February  
1945.  
—Continued.

Antonio Cuschieri, trader, son of the late Enrico, born in Valletta, residing at Msida, as sole proprietor of the Firm "Antonio Cuschieri" — Joseph Calleja, trader, son of Lawrence, born at Cospicua, residing at Sliema, as co-proprietor and representative of the Firm "Lawrence Calleja & Sons" — Publio Stellini, trader, son of Salvatore, born in Valletta, residing at Birkirkara, as co-proprietor and representative of the Firm "S. Stellini & Sons"—Carmelo Agius, trader, son of the late Joseph, born and residing at Zebbug, as sole proprietor of the Firm "Carmelo Agius" — John Mizzi, trader, son of the late George, born and residing at Qormi, as sole proprietor of the Firm "John Mizzi" — Agostino Azzopardi, trader, son of the late Michelangelo born at Qormi, residing at Hamrun, as sole proprietor of the Firm "Agostino Azzopardi" — Generoso Gatt, trader, son of the late Angelo, born and residing at Zejtun as sole proprietor of the Firm "Generoso Gatt" — Carmelo Vassallo, trader, son of Emmanuele, born and residing at Zebbug, as sole proprietor of the Firm "Carmelo Vassallo" — Antonio Camilleri, trader, son of the late Giuseppe, as co-proprietor and representative of the Firm "Giuseppe Camilleri" — the said Antonio Camilleri born and residing at Hamrun — Edgar Portelli, trader, son of the late Antonio, born in Valletta, residing at Hamrun, as sole proprietor of the Firm "Edgar Portelli" — Carmelo Debono, trader, son of the late Ignazio, born and residing at Zebbug, as sole proprietor of the Firm "Carmelo Debono" — Vittorio Xerri, trader, son of the late Paolo, born at Naxxar, residing at Mosta, as sole proprietor of the Firm "Vittorio Xerri" — Emmanuele Jatroudakis, trader, son of the late Paul, born in Valletta, residing at Sliema, as Director of the Firm "P. A. Jatroudakis" — Gio Maria Sammut, trader, son of the late Carmelo, born and residing at Zebbug, as sole proprietor of the Firm "G. M. Sammut" — Carmelo Busuttli trader, son of the late John, born at Ghaxaq, residing at Hamrun, as sole proprietor of the Firm "Carmelo Busuttli" — Antonio Debono, trader, son of the late Ignazio, born and residing at Zebbug, as special attorney (appointed by instrument under private signature dated 26th February, 1945, which is in the keeping of Notary Victor Bisazza and which is to be enrolled in his Records) of Giuseppe Gatt, trader, son of the late Carmelo, born and residing at Zebbug, and this as sole proprietor of the Firm "Giuseppe Gatt" — Joseph Calleja, trader, son of the late John, born at Birkirkara, residing at St. Julian's, as co-proprietor and representative of the Firm "Debattista & Calleja" — Rosa, wife of Carmelo Chetcuti, daughter of the late Carmelo Vella, born at Mellieha, residing at Mosta, assisted by her said husband, Carmelo Chetcuti, trader, son of the late Carmelo, born and residing at Mosta, and this as sole proprietor of the Firm "Rosa Chetcuti" — Paolo Barbara, trader, son of Giuseppe, born at Floriana, residing in Valletta, as sole proprietor of the Firm "Giuseppe Pisanì" — Giuseppe Tabone, trader, son of the late John, born and residing in Valletta, as sole proprietor of the Firm "Michele Tabone" — Joseph Mellak, trader, son of Salvatore, born at Musta, residing in Valletta, as co-proprietor and representative of the Firm "Mellak Bros," — Francesco Pace, trader, son of the late Raffaele, born in Valletta, residing at Sliema, as co-proprietor and representative of the Firm "Pace e Loporto" — Carmela, widow of Spiru Dimech, daughter of the late Giuseppe Saliba, born at Ghajn Silem, Gozo, residing in Valletta, as usufructuary neiress of the Firm "Spiru Dimech & Sons" as per Testament in the Records of Notary Giuseppe Cauchi, dated 1st May, 1943 — Angelo Bonello, trader, son of the late Publio, born in Valletta, residing at Birkirkara, as sole proprietor of the Firm "Bonello's General Stores" — John Tabone, trader, son of the late Francesco, born in Valletta, residing at Sliema, as sole proprietor of the Firm "John Tabone" — Rosario Schembri, trader, son of the late Giovanni, born and residing at Qormi as co-proprietor and representative of the Firm "Giovanni Schembri" — Jack Chircop, trader, son of the late Carmelo, born and residing at Hamrun, as sole proprietor of the Firm "Jack Chircop" — Giuseppe Baldacchino, trader, son

of Filippo, born at Zebbug, residing at Attard, as sole proprietor of the Firm "J. A. Baldacchino" — Salvatore Borg, trader, son of the late Vincenzo, born at Birkirkara, residing at Marsa, as sole proprietor of the Firm "Salvatore Borg, Marsa" — John Pace, trader, son of the Antonio, born at Qrendi, residing at Qormi, as sole proprietor of the Firm "John Pace" — John Spiteri, trader, son of the late Carmelo, born and residing at Birkirkara, as sole proprietor of the Firm "John Spiteri" — Aurelio Grima, clerk, son of the late Giuseppe, born and residing at Birkirkara, appearing as general attorney of Francesco and Gio Maria, brothers Grima, traders, sons of the late Antonio, born and residing at Birkirkara, as sole proprietors of the Firm "Grima Bros." appointed by power of attorney in the Records of Notary Carmelo Giuseppe Vella, dated 19th October 1943 — Angelo Vella, trader, son of the late Salvatore, born in Valletta, residing at Birkirkara, appearing as co-proprietor and representative of the Firm "Giuseppe Spiteri" appearing as special attorney of Paul Spiteri, trader, son of the late Joseph, born in Valletta, residing at Gzira, as sole proprietor of the Firm "Paul Spiteri" appointed by instrument under private signature dated 26th February, 1945, which is in the keeping of Notary Victor Bisazza and which is to be enrolled in his Records — Giuseppe D'Amato, trader, son of the late Emmanuele, born at Sfax, residing at Paula, as sole proprietor of the Firm "Giuseppe D'Amato" — Giuseppe Debono, trader, son of the late Carmelo, born at Qormi, residing at Paula, as sole proprietor of the Firm "G. Debono" — Giuseppe Attard, trader, son of the late Antonio, born in Valletta, residing at Silema, as co-proprietor and representative of the Firm "Camilleri & Attard" — Paolo Caruana, trader, son of the late Paolo, born and residing at Zebbug, as sole proprietor of the Firm "Paolo Caruana" — Joseph Buhagiar, trader, son of the late Rocco, born at Zebbug, residing at Rabat, as sole proprietor of the Firm "Joseph Buhagiar" — Vincenzo Debono, trader, son of the late Carmelo, born at Tarxien, residing at Paula, as sole proprietor of the Firm "Alpion Stores" — Giorgio Debono, trader, son of the late Carmelo, born at Qormi, residing at Marsa, as sole proprietor of the Firm "Giorgio Debono" — Joseph Xerri, trader, son of Andrea, born and residing at Naxxar, as special attorney of his father Andrea Xerri, trader, son of the late Paolo, born and residing at Naxxar, as sole proprietor of the Firm "Andrea Xerri", appointed by power-of-attorney dated 26th February, 1945, conserved by, and to be enrolled in the records of Notary Victor Bisazza. — Nazzareno Chircop, trader, son of the late Luigi, born and residing at Zebbug, as sole proprietor of the Firm "Nazzareno Chircop" — Nicola Buhagiar, trader, son of the late Giovanni, born at Zebbug, residing at Hamrun, as sole proprietor of the Firm "Nicola Buhagiar" — Carmelo Curmi, trader, son of Giovanni, born and residing at Valletta, as co-proprietor and representative of the Firm "Vella & Curmi" — Emmanuele Vella, trader, son of Antonio, born and residing at Hamrun, as sole proprietor of the Firm "Emmanuele Vella" — Carmelo Xuereb, trader, son of the late Giovanni, born and residing at Birkirkara as sole proprietor of the Firm "Carmelo Xuereb" — Edgar Vincenti Depasquale, clerk, son of the late Annetto, born and residing at Qormi, as special attorney of his brother Augustine Joseph Depasquale, trader, son of the late Annetto, born and residing at Qormi, as sole proprietor of the Firm "A. G. Depasquale", appointed by power-of-attorney dated 26th February, 1945, conserved by, and to be enrolled in the Records of Notary Victor Bisazza; — John Tabone, trader, son of the late Giovanni, born in Valletta, residing at Balzan, as sole proprietor of the Firm "Giovanni Tabone & Co." — Amadeo Wismayer, trader, son of the late Giuseppe, born at Cospicua, residing in Siggiewi, as sole proprietor of the Firm "Amadeo Wismayer" — Carmelo Barbara, trader, son of the late Consiglio, born at Tarxien, residing at Paula, as co-proprietor and representative of the Firm "Pace & Barbara" — Renald

Exhibit A.  
Contract dated  
27th February  
1945.  
—Continued.

Exhibit A.  
Contract dated  
27th February  
1945.

—Continued.

Zahra, trader, son of Carmelo, born at Floriana, residing at Marsa, as co-proprietor and representative of the Firm "Carmelo Zahra" — Emmanuele Farrugia, trader, son of the late Carmelo, born and residing at Zurrleq, as co-proprietor and representative of the Firm "Emmanuele Farrugia" — John Hill, trader son of the late Benigno, born at Vittoriosa, residing at Balzan, as representative of the Firm "Francesco Borg" — Frank Borg, trader, son of the late Francesco, born at Balzan, residing at Sliema, as sole proprietor of the Firm "Frank Borg" — Antonio Bonnici, trader, son of unknown father, born and residing at Zejtun, as sole proprietor of the Firm "Antonio Bonnici" — Giuseppe Camilleri, trader, son of the late Luigi, born and residing at Zejtun, as sole proprietor of the Firm "Giuseppe Camilleri" — Carmelo Vassallo, trader, son of the late Gio Maria, born and residing at Siggiewi, as sole proprietor of the Firm "Carmelo Vassallo" — Giuseppe Grech, trader, son of Leone, born and residing at Mosta, as co-proprietor and representative of the Firm "Joseph Grech" — Michael Seychell, trader, son of the late Lorenzo, born and residing at Marsaxlokk, as sole proprietor of the Firm "Michael Seychell" — Salvatore Mifsud, trader, son of Antonio, born at Ghaxaq, residing at Birzebbugia, as sole proprietor of the Firm "Salvatore Mifsud" — Joseph Gambin, trader, son of the late Paolo, born in Valletta, residing at Birkirkara, as sole proprietor of the Firm "Joseph Gambin" — John Calleja, trader, son of Lawrence, born at Cospicua, residing in Valletta, as sole proprietor of the Firm "John Calleja & Co." "The Colonial Agency" — William Galea, trader, son of the late Paolo, born at Cospicua, residing at Zabbar, as sole proprietor of the Firm "William Galea" — Emmanuele Attard, trader, son of the late Carmelo, born at Mosta, residing at Zebbiegh, as sole proprietor of the Firm "Emmanuele Attard" — Antonio Caruana, trader, son of Alfonso, born at Vittoriosa, residing at Paula, as sole proprietor of the Firm "Antonio Caruana" — Carmelo Bellizzi, trader, son of the late Salvatore, born in Valetta, residing at Balzan, as co-proprietor and representative of the Firm "Carmelo Bellizzi & Co". — Carmelo Muscat, trader, son of the late Vincenzo, born and residing at Naxxar, as sole proprietor of the Firm "Carmelo Muscat" — Carmelo Abela, trader, son of Giuseppe, born at Zabbar and residing in Valletta as sole proprietor of the Firm "Carmelo Abela" — Michael Magro, trader, son of Giuseppe, born and residing at Zabbar, representing the Firm "Giuseppe Magro" — Paolo Farrugia, trader, son of Felice, born and residing at Qrendi, as sole proprietor of the Firm "Paolo Farrugia" — Giorgio Vella, trader, son of the late Carmelo, born in Valletta, residing at Sliema, as co-proprietor and representative of the Firm "Carmelo Vella & Sons" — Antonio Cachia, trader, son of the late Domenico, born at Qormi, residing at Sliema, as sole proprietor of Firm "Antonio Cachia" — Carmelo Coppini, trader, son of the late Paolo, born in Valletta, residing at St. Julian's, as sole proprietor of the Firm "Paolo Coppini — Michelangelo Sciberras, trader, son of Giuseppe, born at Qrendi, residing at Zurrleq, as sole proprietor of the Firm "Michelangelo Sciberras" — Giorgio Debattista, trader, son of Paolo, born and residing at Msida, as sole proprietor of the Firm "George Debattista" — Lorenzo Said, trader, son of the late Angelo, born at Floriana, residing at Sliema, as sole proprietor of the Firm "Matteo Tabone & Sons" — Attilio Enrico Sammut, trader, son of the late Enrico, born in Valletta, residing at Sliema, as sole proprietor of the Firm "Attilio E. Sammut"; and Carmelo Calleja trader, son of the late Carmelo, born and residing at Marsa, as sole proprietor of the Firm "Carmelo Calleja";

are forming and constituting between them a Limited Liability Company with the object of sharing between them, according to quotas herein established, the percentage of gross profits payable to the Company by the Distributors appointed or who may

be appointed by the Competent Authorities — which percentage shall be that mentioned in letter dated 23rd November, 1943 (Number 6551/42) sent by the Assistant to the Lieutenant Governor to the Honorary Secretary of the Chamber of Commerce, copy whereof, marked "A", is being attached to and forms an integral part of the present instrument, or any other percentage which the Competent Authorities may fix from time to time.

Exhibit A.  
Contract dated  
27th February  
1945.  
—Continued.

The Company is being formed subject to the following conditions:—

1. The Company shall be styled "The Wholesale Foodstuffs Pool, Ltd."
2. The subscribed capital is declared to be of £1,904. 0. 0, divided into 1, 904 shares of £1 each and held by the parties as hereinafter stated:—

#### Omissis

The shareholders bind themselves to pay up the whole or part of their shares as and when called upon so to do by the Board of Directors.

The shares are non-transferable.

3. The business of the Company shall be conducted by the Board of Directors which, composed of seven members, shall hold office for one year. Each Director must be a shareholder or a duly authorised representative of a shareholder.

At the first meeting of the Board, a Chairman, a Treasurer and a Secretary shall be elected from the members composing the Board.

Four Members of the Board shall constitute a quorum.

4. The Board of Directors is empowered:—
  - a) To represent the Company in all judicial and extra-judicial proceedings, to appear in and sign all Documents of whatever nature, and to bind the Company towards third parties and the latter towards the former in all matters that are not reserved for decision at the General Meeting of Shareholders.
  - b) To call upon the shareholders to pay the whole or part of the capital subscribed.
  - c) To convene a General Meeting of Shareholders.

Exhibit A.  
Contract dated  
27th February  
1945.  
—Continued.

d) To employ the required personnel, fix the salaries and conditions of employment and pay the salaries agreed upon.

e) And, generally, to conduct all business which has not been expressly reserved herein to the General Meeting of Shareholders.

5. All questions arising at the meetings of the Board of Directors shall be determined by a majority of votes. In the event of parity of votes, the Chairman, besides his own vote, shall have the Casting Vote.

6. All cheques, receipts and other documents shall be signed by two of the Directors, one of whom shall be the Chairman or the Treasurer.

Correspondence shall be signed by the Secretary.

7. The Company's bank shall be that of Messrs. B. Tagliarferro & Sons, or any other bank that the Directors may choose from time to time.

8. The Board of Directors shall convene a General Meeting of Shareholders at least once every six months.

The Board of Directors shall convene a General Meeting within 10 days of the receipt of a written request to that effect signed by at least 20 Shareholders. The matter to be brought up for discussion is to be stated in the request to convene a General Meeting.

9. The Secretary of the Board of Directors shall advise each shareholder, in writing, three days beforehand, of the holding of a General Meeting. The Notice shall state the place, time and day of the General Meeting, as well as the Agenda for discussion.

No other business shall be discussed at General Meetings except that stated in the Agenda; no business shall be discussed in the absence of a quorum.

Not less than half the number of shareholders, plus one, shall form a quorum at General Meetings.

At General Meetings, shareholders may be represented by an attorney. It is not necessary for an attorney to be a shareholder and an attorney may not represent more than one shareholder at one and the same time.

The power of attorney must be drawn up in writing and



must be handed in to the Chairman at the opening of the Meeting.

Exhibit A.  
Contract dated  
27th February  
1945.  
—Continued.

In the absence of a quorum half-an-hour after the time fixed for the General Meeting, the Meeting shall be postponed to the next working day at the same time and place; and if, on that day, there is no quorum half-an-hour after the appointed time, the shareholders present shall form a quorum. It is agreed, however, that in no circumstances shall a General Meeting be held unless there are at least twenty-one shareholders present.

10. The Chairman of the Board of Directors shall preside at General Meetings. In his absence, one of the other Directors present shall be appointed Chairman.

The Secretary of the Board shall act as Secretary to the General Meeting.

11. The General Meeting shall have the power:—

- a) To appoint the Board of Directors each year and to appoint a Director in the stead of another who is absent.
- b) To authorise an increase or a decrease of the subscribed capital of the Company.
- c) To extend the life of the Company in accordance with clause 14 of the present Agreement.
- d) To amend or cancel any condition herein set forth or to make any other addition thereto in accordance with clause 13 of the present agreement.
- e) To appoint two Auditors to audit the books of the Company and to fix the remuneration payable to the Auditors.
- f) To fix the remuneration payable to the Directors of the Company.
- g) And to decide upon all matters brought before it by the Board of Directors.

Nevertheless, no decision taken at a General Meeting may annul any act made previously by the Board of Directors — where any such act would have been valid if no such decision were taken.

12. In so far as it may not be incompatible with the conditions herein set forth, resolutions proposed at General Meetings shall be deemed to have been passed when approved by the majority of the shareholders present.

Exhibit A.  
Contract dated  
27th February  
1945.  
—Continued.

True Copy of a similar document entered in my Records on  
the Twentieth March, 1945.

This 5th April, 1945.

(Signed) V. BISAZZA, Notary.

Registry of His Majesty's Superior Courts, this 13th day of  
April, 1945.

(Signed) J. DINGLI,  
Deputy Registrar.

Exhibit B.  
Statement filed  
20th June, 1949.

**Exhibit B.**

Statement filed 20th June, 1949.

**WHOLESALE FOODSTUFFS POOL**

Amount due for the year 1946

	£	s	d
Abela Carmelo ... ..	—	—	—
Agius Carmelo ... ..	—	—	—
Attard Emmanuele ... ..	—	—	—
Bellizzi Carmelo ... ..	297	9	1
Bonnici Anthony ... ..	1006	17	4
Borg Frank ... ..	—	—	—
Briffa Vincent ... ..	716	14	4
Buhagiar Joseph ... ..	582	8	8
Caruana Anthony ... ..	1533	6	11
Caruana Paul ... ..	—	—	—
Coppini Paul ... ..	—	—	—
Cutajar Felice June 1946 ... ..	138	8	2
Debattista George ... ..	756	0	1
Debrincat & Sons ... ..	405	13	5
Farrugia Emmanuele ... ..	437	16	1
Farrugia Paul ... ..	161	2	4
Galea William ... ..	—	—	—
Gambin Joseph ... ..	272	4	0
Grech Joseph ... ..	611	19	2
Magro Joseph ... ..	916	7	6
Micallef Paul ... ..	582	14	9
Mifsud Saviour ... ..	398	15	1
Muscat Carmelo ... ..	447	0	10

	£	s	d
Pace & Loporto ... ..	1986	7	1
Portelli Edgar ... ..	885	18	4
Schembri John ... ..	1483	8	11
Sciberras M.A. ... ..	274	8	2
Seychell Michael ... ..	—	—	—
Stellini & Sons ... ..	758	12	7
Tabone John ... ..	264	11	11
Vassallo Carmelo ... ..	—	—	—
Vella & Curmi ... ..	—	—	—
Vella John ... ..	—	—	—

Exhibit B.  
Statement filed  
20th June, 1949.  
—Continued.

#### RESTAURANTS

Attard Bros. ....	—	—	—
Camilleri & Attard ... ..	—	—	—
Chetcuti Joseph ... ..	—	—	—
Cuschieri V. & Sons ... ..	—	—	—
Cachia & Grima ... ..	—	—	—
Pisani P. & Co. ... ..	—	—	—
Vella C. & Sons ... ..	—	—	—
Mallia Anthony ... ..	—	—	—