

In the Privy Council

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

BETWEEN

MARIA FELICIA CREMONA AND ANOTHER

Respondents (Plaintiffs).

AND

MICHAEL ABELA AND OTHERS

Appellants (Defendants).

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

RECORD OF PROCEEDINGS

68244

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DESCRIPTION

Sub-paenas, certificates of service, Case Notices. Proces verbal recording adjournments, etc.
Application and relative Court Decree authorizing the translator to withdraw the record of proceedings from the Registry.

P.S.

The references in the original Record of proceedings to the pages of the said Record have been altered to refer to the pages of this printed Record.

DOCUMENTS

In

H. M's. CIVIL COURT — FIRST HALL

In the Privy Council

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

BETWEEN

MARIA FELICIA CREMONA AND ANOTHER
Respondents (Plaintiffs).

AND

MICHAEL ABELA AND OTHERS
Appellants (Defendants).

RECORD OF PROCEEDINGS

DOCUMENTS

Translation

No. 1.

Writ-of-Summons.

No. 1
Writ-of-Summons

In Her Majesty's Civil Court
First Hall.

Filed by the plaintiff together with four
exhibits.

This the eleventh day of April, 1959.

(Signed) J. DEBONO, Dep. Registrar.

ELIZABETH II

By the Grace of God of the United Kingdom
of Great Britain and Northern Ireland
and of Her Other Realms and Territories Queen,
Head of the Commonwealth,
Defender of the Faith.

To Nazareno Aquilina, Marshal of Our Superior Courts for the
Island of Malta.

By Our Command, at the suit of Maria Felicia wife of
Joseph Cremona, who is absent from these Islands, as sole
heiress of her father Joseph Abela, as well as at the suit of

No. 1
Writ-of-Summons
—Continued.

Giuseppa widow of the said Abela, as an interested party in the community of conjugal acquests **You Shall Summon** Michael, Anthony and Mary brothers and sister Abela, to appear before this Court at the sitting of May 18, 1959 at 9 a.m. and there — every necessary declaration and direction being first given — whereas the said Joseph Abela, by a deed in the records of Notary Joseph Gatt of April 17, 1952 (Exhibit A), had declared that he was selling to defendants the Villa known as “Maria Teresa”, in the course of its construction, situated at Rdm Irxew, in the limits of St. Paul’s Bay, for the price of eight hundred pounds — which was not paid on the deed — subject to the payment of a sub-ground-rent of eleven pounds per annum; and whereas this was a fictitious sale as would be proved during the hearing of the case; **said defendants to shew cause** why the aforementioned deed should not, for this reason, be rescinded under the directions which this Court may give, in view of the said rescission. 10

With costs against defendants whom you shall summon so that a reference to their oath may be made.

You shall further give the said defendants notice that if they wish 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 that, in default of their so doing within the said time and of their appearance on the day and at the time and place aforesaid, the said Court will proceed to deliver judgment according to justice on the action of the said plaintiffs on the said day or on any subsequent day as the Court may direct. 20

And after service by delivery of a copy hereof to the said defendants or their agents, according to Law, or upon your meeting with any obstacle in the said service, you shall forthwith report to this Our Court. 30

Given by Our aforesaid Civil Court, First Hall.

Witness Our faithful and well beloved the Honourable Mr. Justice A. Magri, B.Litt., Doctor of Laws, Judge of Our said Court.

This the fourteenth (14) day of April, 1959.

(Signed) A. MAGRI.

Plaintiffs' Declaration

In the First Hall of Her Majesty's Civil Court.

Maria Felicia Cremona and others

vs.

Michael Abela and others

The declaration of plaintiffs:

Respectfully sheweth:—

10 That the deceased Joseph Abela, who lived apart from his family and used to reside with the defendants, by a deed in the records of Notary Joseph Gatt of April 17, 1952 (Exhibit A) transferred to the defendants, under the appearance of a sale and for a fictitious sale-price of £800 which was not paid, Villa "Maria Teresa", described in the deed as being then in the course of construction, in St. Paul's Bay, Rdum Irxew, on the site which the said Joseph Abela had earlier acquired on perpetual emphyteusis, by a deed in the same records dated January 24, 1951 (Exhibit B), subject to the payment of eleven pounds ground-rent per year.

20 This transfer is fictitious both because the construction of the Villa had been completed in 1951 and the sale-price was fictitiously declared to have been compensated, as well as because Joseph Abela had spent £1253 for its foundations and walls, £265 for the formation of its concrete terraces, £146 for the pavement with cement tiles, £338. 18s. 0d. for woodwork, besides £42 being the price of three vestibule-doors subsequently added and the cost for painting, white-washing, ironwork and other things — and this apart from the value of the site which varies from £200 to £320 being the amounts which the said Abela
30 had himself received on the occasion of two transfers, made in the same period, of two sites in the same area subject to the same ground-rent and having the same area; and also because, even after the said transfer, the said Abela remained in occupation of a portion of the Villa and leased the remaining two portions to two families; and, even after the said transfer, instituted judicial proceedings as owner of the said Villa — all this besides other reasons which will result during the hearing of the case.

40 Witnesses:—

1. The parties to confirm what has been declared above.
2. Edwin England Sant Fournier A. & C.E.

No. 2
Plaintiffs'
Declaration
—Continued.

3. Louis Naudi A. & C.E.
4. Francesco Cassar.
5. Joseph Pavia.
6. Reverend Antonio Abela — all these to give evidence as to the facts, values and circumstances referred to in the declaration.

Saving other witnesses for the same purpose.

(Signed) F.N. BUTTIGIEG, Advocate.

No. 3
List of Exhibits

No. 3.

List of Exhibits.

- A** — Copy of the deed of transfer of April 17, 1952.
- B** — Copy of the deed of January 24, 1951.
- C** — Copy of the summons issued at the instance of Joseph Abela against Carmelo Lorenzo Zammit in the case withdrawn in the Commercial Court on February 11, 1955.

Plaintiffs make reference to the record of proceedings of this last-mentioned case and reserve the right to produce extracts from the deeds entered into between Joseph Abela and Emanuel Giudice in the records of Notary A. Galea of December 22, 1951 and between Joseph Abela and Arturo Burlò in the records of Notary J. Gatt of December 20, 1951 where payments of £320 and £200 by way of premium were respectively made.

- D** — Copy of an application filed by plaintiff in the case "Abela vs. Zammit" withdrawn in the Commercial Court on February 11, 1955.

(Signed) F.N. BUTTIGIEG, Advocate.

10

20

30

No. 4.No. 4
Plaintiffs' Minute**Plaintiffs' Minute.**

In the First Hall of Her Majesty's Civil Court.
Writ No. 294/1959 M.

Maria Felicia Cremona and another
vs.
Michael Abela and others

The Plaintiffs' Minute.
Respectfully sheweth:—

10 That, in order to substantiate their allegation in the declaration annexed to the summons relative to the value of the emphyteutical site on which the Villa was built which was fictitiously transferred to the defendants (without any consideration for the emphyteutical site besides the ground-rent of £11 to which the site was already subject) they file the following exhibits:

20 **E** — extract from the deed of March 3, 1951 in the records of Notary Joseph Gatt in virtue of which Joseph Abela acquired, on identical emphyteutical terms, an area of 140 square canes in the same locality, subject to the payment of £11 ground-rent per annum, without any other consideration;

F — copy of a deed in the records of Notary Antonio Galea of December 22, 1951 wherewith he re-sold the same property at the same ground-rent of £11 besides the **price** of £320 which he received.

(Signed) F.N. BUTTIGIEG, Advocate.

„ P. SALIBA, Legal Procurator.

30 The eleventh (11) day of May, 1959.
Filed by P. Saliba, L.P., with two exhibits.

(Signed) A. TONNA, D/Registrar.

No. 5.No. 5
Statement
of Defence**Statement of Defence**

In the First Hall of Her Majesty's Civil Court.
Writ No. 294/1959 M.

Maria Felicia Cremona and another
vs.
Michael Abela and others

40 The Statement of Defence of the Defendants Michael, Antonio and Mary, brothers and sister Abela.

No. 5
Statement
of Defence
—Continued.

Respectfully plead:—

1. Preliminarily, the expiration of the period of limitation.
2. On the merits and without prejudice, the untenability of the Plaintiffs' claim.

Saving other pleas.

(Signed) R. FARRUGIA, Advocate.

„ C. VASSALLO, Legal Procurator.

The twenty-first (21) day of April, 1959.

Filed by C. Vassallo, L.P. without exhibits.

(Signed) S. SANT'ANGELO, D/Registrar. 10

The Declaration of Defendants.

Respectfully sheweth:—

That the demand of Plaintiffs (on the allegation that the sale is fictitious) amounts to a demand for the rescission of an obligation without consideration and it is, therefore, barred on the expiration of two years (sections 1266 and 1267 of Chapter 23).

That, without prejudice, the allegations of Plaintiffs are untenable.

(Signed) R. FARRUGIA, Advocate. 20

„ C. VASSALLO, Legal Procurator.

Witnesses:—

1. The Defendants to give evidence in substantiation of their declaration.

2. The Plaintiffs so that a reference to their oath may be made.

3. All the witnesses mentioned by the Plaintiffs as well as John Coleiro, architect Dominic Mintoff, Gerald Abela, the contractors who worked on the property in question, the suppliers of the material used in its construction and the Heads of the Government Departments who issued the necessary licences — all of whom to substantiate the facts set out in the Declaration. 30

(Signed) R. FARRUGIA, Advocate.

„ C. VASSALLO, Legal Procurator.

No. 6.
Court's Minute

No. 6
Court's Minute

The 18th. day of May, 1959.

Dr. R. Farrugia, for the Defendants, declares that the period of limitation applicable to the case and raised in issue by him, is that of two years referred to in sections 1266 and 1267 of the Civil Code.

10 Dr. F.N. Buttigieg, for the Plaintiffs, submits that the cause is based on simulation and, therefore, the prescriptive period applicable is that of thirty years.

The Court,

Adjourns the hearing till the 8th. June 1959 for discussion on the preliminary plea raised.

(Signed) M. PETROCOCHINO, D/Registrar.

No. 7.

Preliminary Judgment, H.M. Civil Court

No. 7
Preliminary
Judgment
H.M. Civil Court

HER MAJESTY'S CIVIL COURT — FIRST HALL

Judge:

The Honourable Mr. Justice Alb. Magri, B.Litt., LL.D.

20 Sitting held on Friday, the twenty-sixth day of June, 1959.

No. 30.
Writ No. 294/1959.

Maria Felicia wife of Joseph Cremona, absent from these Islands, sole heiress of her father Joseph Abela, and Giuseppa widow of the said Abela as an interested party in the community of conjugal acquests.

30 vs.
Michael, Antonio and Mary, brothers and sister Abela.

The Court,

Upon seeing the Writ-of-Summons, whereby the Plaintiffs, after premising that Joseph Abela, by a deed in the records of Notary Joseph Gatt of April 17, 1952 (Exhibit A) had declared

that he was selling to Defendants the Villa known as “Maria Teresa”, in the course of its construction, situated at Rdum Irxew in the limits of St. Paul’s Bay, for the price of eight hundred pounds, which was not paid on the deed, subject such Villa to the payment of a sub-ground rent of eleven pounds per annum, and that this was a fictitious sale as would be proved during the hearing of the case — PRAYED that, for this reason, the said deed be rescinded under the directions which this Court might give in view of the said rescission. With costs against Defendants.

10

Upon seeing the Statement of Defence of the Defendants in which they pleaded 1) preliminarily, the expiration of the period of limitation; 2) on the merits and without prejudice, the untenability of the Plaintiffs’ claim.

Upon seeing the Minute of May 19, 1959 (fol. 7) wherein the Defendants declared that the prescription invoked by them was that of two years contemplated in sections 1266 and 1267 of the Civil Code, and where the Plaintiffs submitted that the cause is based on simulation and the prescriptive period applicable is, therefore, that of thirty (30) years;

20

Upon seeing the record of proceedings;

Having heard Counsel on both sides;

Having considered regarding the prescription raised in issue:

Although the Plaintiffs are demanding the **rescission** of the deed aforementioned, they have based their demand on the ground that the sale made by that deed was **fictitious** and, according to the said Minute at fol. 7, they are exercising the action for simulation.

As appears from their Declaration at fol. 6, and as they have maintained during the oral hearing, the Defendants maintain that the premise that the deed is fictitious amounts to a demand for the rescission of an obligation **without consideration**, and, therefore, the relative suit is barred on the expiration of the prescriptive period of two years contemplated in sections 1266 and 1267 abovementioned.

30

It is worth noting that the action for rescission or for nullity presupposes the existence of an obligation which could be annulled but is juridically existant, though defective by reason of the absence of an essential element (section 1255 Civil Code); in fact, according to section 1188g of the same Code, rescission

40

is one of the ways in which obligations are extinguished (“si estinguono” according to section 851 of Ordinance VII of 1868); and as, logically, nothing can be extinguished which did not have an existence, it follows that those obligations which are juridically **inexistent** are not subject to rescission for the purposes of the aforementioned section 1255 (Law Reports Vol. XXV I p. 511 and Vol. XXXIV I p. 79). Now an action for simulation always presupposes an act which is **inexistent** either absolutely or relatively (Law Reports Vol. XXXVI II p. 550 and the jurisprudence there quoted).

It is not correct to hold, as the Defendants maintain, that we are here dealing with an obligation **without consideration** and, therefore, subject to the two years’ prescription mentioned in section 1266 (2) of the Civil Code, because, as Butera comments, “a simulated act is not one which is null for defect of cause, because in the simulated act the cause is not lacking but is to be found in the fact that the parties, spontaneously, for various reasons, hide, under the appearances (of a contract), a mere nothing or disguise quite a different bargain” (“Simulation of Juridical Obligations” — para. 12).

Likewise inadmissible is the distinction made by the Defendants in the oral hearing, in the sense that the prescriptive period may be of thirty years vis-a-vis third parties, but is of two years for the contracting parties or those claiming under them: in fact, once the action for simulation is open also to the parties who took part in the simulated act (Law Reports Vol. XXIX I p. 837) and is based on reasons of an **objective** nature, it is not lawful to create distinctions according to the various movers of the action.

It is now settled case-law that the prescription applicable to an action for simulation is that of thirty years (Law Reports Vol. XXXVI II p. 550), and this period has not yet expired since the publication of the deed impugned.

On these grounds:

DISALLOWS the plea of prescription raised by the Defendants, with costs against them; and

As it is necessary in this cause to appoint a legal referee to verify and report whether the Plaintiffs’ demand is tenable or not and to make his observations on the matter at issue,

APPOINTS for this purpose and, provisionally, at the expense of the Plaintiffs, Advocate Dr. Fortunato Mizzi and gives him all the powers which are usually given to referees,

No. 7
Preliminary
Judgment
H.M. Civil Court
—Continued.

including that of hearing witnesses and administer the oath to them: the referee is to hold the first sitting on July 4, 1959 at 10 a.m. and other sittings as needed and is to file his report (together with a typewritten copy of the minutes of the sittings held by him) not later than the 26th October 1959 till which day the case is adjourned.

Costs reserved.

(Signed) M. PETROCOCHINO, D/Registrar.

No. 8.

No. 8
Minutes of
Sittings held
by the
Legal Referee

Minutes of Sittings held by the Legal Referee.

10

In the First Hall of Her Majesty's Civil Court.

Writ No. 294/1959 M.

Maria Felicia Cremona and another
vs.

Michael Abela and others

Sitting held on this the fourth of July, 1959 at 10 a.m. in one of the halls of the Superior Courts in the presence of Dr. Filippo Nicolò Buttigieg for the Plaintiffs, and of the Defendants assisted by Dr. Riccardo Farrugia.

Joseph Pavia, in trade, son of the late Joseph, residing in Birkirkara, called by the Plaintiffs, states on oath:—

20

I was acquainted with the deceased Joseph Abela and I know that he had built a Villa in St. Paul's Bay in "Rdum Irxew". The said Joseph Abela had let to me part of the Villa, another part he let to my brother Anotnio, who is married to his sister, and he kept the remaining part for himself. The Villa has a large garden which Abela kept for himself. I have never had a rent-book and Abela did not give me or my brother any receipt for the rent received. We did pay him rent, however. In the beginning, the three parts (of the Villa) were not divided; later they were segregated. On the same occasion, Abela constructed a verandah. Abela remained in occupation of the part of the Villa which he had reserved for himself until he died. I am not aware that he had transferred the Villa to a third party. My brother and I kept paying rent to Abela. In the beginning, the rent was eleven pounds (£11) each. Later, my brother and I spontaneously increased the rent more than once, until we reached the figure of twenty two pounds (£22) per year each.

30

Joseph Abela's brothers never mentioned to us that they had a share in the Villa. We were the first tenants of the premises and we are still there.

No. 8
Minutes of
Sittings held
by the
Legal Referee
—Continued

Cross-Examination

10 We paid the first six months' rent which fell due after Joseph Abela's death to Defendant Mary Abela. Later, I became aware that the widow and the daughter of Joseph Abela were claiming that the Villa was theirs and I, therefore, lodged in Court, in the interest of both the Plaintiffs and the Defendants, the rent for the succeeding six months.

When Joseph Abela died, my brother and I bought rent-books and my brother himself wrote the receipts for preceding periods when Abela was still alive and, if I am not mistaken, signed himself "Michele Abela". Michele Abela is one of the Defendants and a brother of the deceased Joseph Abela. The receipt, in each rent-book, for the rent paid to Defendant Mary Abela was written on the same rent-book. My brother wrote the receipts but I do not know who signed them. Later on, I will produce the said rent-books.

20 We spontaneously prepared the receipts which covered some periods during which Joseph Abela was still alive so that the Plaintiffs would not think that we did not pay rent. My brother was used to make our receipts in the name of Michael Abela for rent received by Joseph Abela.

Read over to witness.

(Signed) JOSEPH PAVIA.

„ FORTUNATO MIZZI, Advocate.

30 Edwin England Sant'Fournier, Architect and Civil Engineer, son of the late Alfred, residing in Sliema called by the Plaintiffs, says on oath:—

Architect and Civil Engineer Louis Mifsud, who was my partner, died in 1952. I was acquainted with Joseph Abela who had instructed me to build a Villa for him in St. Paul's Bay in "Irdum Irxew", Xemxija. The Building Control Board's permit was issued in June 1950 and its number is 2974/1313/50. The works were under my direction and that of Architect Louis Mifsud. During the course of the construction of the Villa, a difference of opinion arose regarding the roofing in respect of which a suit was instituted, the relative Summons being that

No. 8
Minutes of
Sittings held
by the
Legal Referee
—Continued.

exhibited at fol. 93 of the record of these proceedings. Another difference of opinion arose regarding the woodworks with Francesco Cassar which resulted in another Court action: as far as I remember, this suit was instituted by Cassar.

When the Villa was constructed, we measured these works: a concrete roofing of the value of two hundred and sixty five pounds (£265); stone to the value of one thousand two hundred and fifty three pounds (£1253); concrete works (not carried out by Zammit) to the value of one hundred and forty six pounds (£146) and woodworks to the value of three hundred and thirty eight pounds eighteen shillings (£338 18s. 0d). This valuation was made between 1951 and 1952 but I cannot remember exactly when. 10

Cross-Examination

The valuation does not cover all items. I do not know why. When the said valuation was made, the garages under the road facing the Villa were not yet built.

Read over to witness.

(Signed) E. ENGLAND SANT FOURNIER.
,, FORTUNATO MIZZI, Advocate. 20

Joseph Pavia, recalled by the Plaintiffs, states on oath:—

After the death of Joseph Abela, Defendant Michael Abela, who was then in my motor-car together with my brother Antonio and Father Antonio Abela, a cousin of the Defendants, requested me to ask Father Abela whether he (Michael Abela) would be committing perjury were he to say under oath that the Villa was his. Father Abela told him to seek the advice of a higher authority. This was on the same day on which a Warrant of Description was executed in the said Villa.

Read over to witness. 30

(Signed) JOSEPH PAVIA.
,, FORTUNATO MIZZI, Advocate.

Plaintiffs declare that, for the moment, they have no further evidence to produce, saving what follows:—

Dr. Buttigieg makes reference to the cause "Francesco Cassar vs. Joseph Abela" withdrawn in the First Hall of Her

Majesty's Civil Court on November 19, 1954 and introduced by Writ-of-Summons number 262/1952 filed on March 26, 1952 and this to show that the wood-works were already in their place months before the publication of the deed which is being impugned in the present cause.

10 He makes further reference to the cause "Joseph Abela vs. Carmelo Lorenzo Zammit" withdrawn in Her Majesty's Commercial Court on February 11, 1955 and this to prove that the terrace flooring had been completed much before the date of the said deed of sale and that, notwithstanding the sale of the Villa, Joseph Abela continued to declare that the Villa was his.

He also declares that in the said deed no mention is made of the value of the site besides the ground-rent of eleven pounds (£11) per year while, in the deed at fol. 98 of the record, dated the 22nd. December, 1951, the deceased Joseph Abela had transferred, at a premium of three hundred and fifty pounds (£350), to Giuseppe Giudice a site of the same area and subject to the same rate of ground-rent, which is situated behind the said Villa.

20 Defendant Michael Abela, called by the Plaintiffs, states on oath:—

30 After the publication of the deed in question, I ordered some wood-work at my expense, including the four vestibule doors which exist in the Villa. I do not know who was the carpenter, but the latter was commissioned to make them by Joseph Abela. I have no idea how much I spent. I also made in the Villa and at my expense some railings. I do not remember who was the blacksmith; the latter was also commissioned for the work by Joseph Abela. I do not remember how much I spent for the railings.

I once was in the motor-car of witness Pavia and there was also Father Abela; I do not know how the conversation turned on the Villa; I do remember however, that Father Abela told me that if I had not paid any money for the Villa, I would be committing perjury were I to say that the Villa was mine. He added, however, that if I had paid some money, I would not be making a false oath were I to swear that the Villa was mine. The conversation was about money.

Read over to witness.

40

(Signed) M. ABELA.

,, FORTUNATO MIZZI, Advocate.

II

No. 8
Minutes of
Sittings held
by the
Legal Referee
—Continued.

Sitting held this the 9th. July, 1959 at 10 a.m. in one of the halls of the Superior Courts, in the presence of Advocate Dr. Filippo Nicolò Buttigieg for the Plaintiffs and of the Defendants assisted by Advocate Dr. Riccardo Farrugia.

Dr. Filippo Nicolò Buttigieg is filing “animo ritirandi” the two rent-books referred to in the evidence of Giuseppe Pavia — these rent-books are being marked Exhibits AA and BB.

Defendant Antonio Abela, at his own request, states on oath:—

10

I and the other two defendants are brothers of the deceased Joseph Abela and we used to live with him till he died.

We had a partnership between us styled “Abela Brothers” for harbour work and as Joseph Abela had not given us our share of the profits, we had agreed that Joseph Abela was to transfer to us the said Villa for the price of eight hundred pounds (£800) on the understanding that he was to take this amount out of our share of the funds which were in his possession.

We had agreed that the eight hundred pounds (£800) were to be regarded as our share of the common funds which he had in his possession up to that day.

20

My sister, the Defendant Mary, had no share in the partnership; as, however, we were on excellent terms with her, we thought we should include her with us.

I did not appear on the deed because I was not able to and Michael appeared in my name and on behalf of Mary. When the deed was published, the Villa was not yet completely built.

After the Villa had been completed, it was in part let to the brothers Pavia and the remaining part occupied by us four brothers and sister

30

During the life-time of my brother Giuseppe, there were occasions when Antonio Pavia made out receipts for the rent of the “boat-houses” which are situated in front of the Villa. I do not know whether he used to sign them himself.

After the publication of the deed which is being impugned, works in the Villa continued. This was at the expense of my brother Michael, at least this is what he used to tell me,

Cross-Examination

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by the
Legal Referee
—Continued

My brother Felice and my other brother Gerardu, the first of whom is abroad, were not partners in the partnership "Abela Brothers".

Following the publication of the deed which is being impugned, my brother Joseph went abroad — I do not know why.

10 Michael, besides being a partner with us, had no other work. Michael possessed money and used to keep it in a drawer. At times he had money in the Bank.

I now remember that, besides the work he shared with us, Michael worked, on occasions, on his own as a weigher. He never touched a penny out of the money which we used to earn as partners. The money he had saved came from his private earnings. In the past, that is during World War I, Michael used to work at the Dockyard.

20 When our uncle Publio Debono died, he left us a legacy of his tools as stevedore. He had left his tools to me and all my brothers, including Felice and Gerardu. Only Joseph, Michael and myself, however, used to work with these tools. The work used to be carried out in the name of Joseph. During the last war, the said tools were destroyed by war action, and, with the compensation paid by the War Damage Commission, we bought new tools for different harbour-works.

I have been working at the Dockyard for ten years. I have on occasions, during these last ten years, stayed away from my work in order to help my brothers Joseph and Michael in their work.

30 I have always had a shop and I used to close my shop, which was at Marsa, when my assistance was needed in the said work. I used to help, while I was in my shop, by fixing 'compensation stamps' on the workers' cards.

Work in the harbour area used to be carried out principally by Joseph and Michael. I used to help when they were pressed with work.

Since the last war, Michael was often sick and was always under medical treatment. Even since the last war, Michael kept working, but he used to avoid strenuous work.

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I do not know whether Joseph used to keep books relative to his work. Though Michael used to work as a weigher, he had no licence to do this work.

Re-Examination

Even before the death of my uncle Pubblio Debono, I worked, on occasions, with him in the harbour area.

Following the publication of the deed in issue, we had temporarily to vacate the Villa because of some defects in the roofing.

Replies to Questions by the Legal Referee

10

I am aware that a suit had been instituted because of these defects in the roofing. The suit was instituted by Joseph. It was we (the Defendants) who had told him to do so.

The brothers Pavia used to give or send the rent for the part of the Villa let to them to my brother Joseph who kept it for himself.

Although, as I stated, I used to live with my brother Joseph, I do not know how much the Villa was costing him while it was being built.

Replies to further questions by Dr. Buttigieg in Cross-Examination

20

I think that the 'boat-houses' which are under the road facing the Villa were built on a site which had been transferred to us by the deed which is being impugned.

These 'boat-houses' were built after the publication of the said deed at my expense and that of my brother Michael under the direction of Architect Domenic Mintoff.

I am filing twenty-four documents relative to works which were carried out in the Villa after the publication of the deed in question — these documents, which are being marked from CC to ZZ and from A¹ to A²⁰ were in the possession of my brother Michael. The relative payments were made by Defendant Michael.

30

Defendant Michael and I had acquired another site adjacent to the Villa from Architects England Sant Fournier and Mifsud and we built seven 'boat-houses' under the road facing this site.

We transferred the site, except for the 'boat-houses', to a third party. The 'boat-houses' were constructed with Michael's funds.

Read over to witness.

(Signed) A. ABELA.

„ FORTUNATO MIZZI, Advocate.

No. 8
Minutes of
Sittings held
by the
Legal Referee
—Continued

Defendant Michael Abela, at his own request, states on oath:—

10 The 'boat-houses', whether those in front of the said Villa or those in front of another site which my brother Antonio and I had bought, were built at my expense after the publication of the deed which is being impugned.

We Defendants used to live with Joseph Abela and, when the Villa was built, we went to reside together in a part thereof. Some time later, a defect developed in the roofing of the Villa and we had to vacate it for a time. Joseph undertook to speak to the mason and, later, took him to Court.

20 Regarding the deed in question, I discussed matters with Joseph and it was I who appeared on the same deed in my name and on behalf of my brother and sister, the other Defendants. The sale-price of eight hundred pounds (£800) was determined by Joseph and I told him that I would give him no money because he had our money. He agreed to get paid out of these funds. To be exact, Joseph offered to sell the premises to me, but I suggested that he should include my brother Antonio with me. When we came to sign the deed, I suggested that the premises be acquired also by my sister Mary who used to live with and take care of us and charged us no rent.

30 Up to the death of Joseph, the receipts for the rent received for the 'boat-houses' used to be prepared for me by Antonio or Joseph Pavia and they themselves used to sign the receipts with my name. I do not know how to write and can sign my name with difficulty.

Cross-Examination

I have got the receipts for the rent of the 'boat-houses' and I think they are among the documents which have been filed today by my brother.

I took the money needed for the construction of the 'boat-houses' from the cash I had at home and from my account with Barclays Bank. I saved this money from my earnings from the

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Dockyard during First World War, from my earnings from the work I used to do with my uncle Pubblio and from my extra work as weigher during the partnership with my brother Joseph. The latter never gave me any money out of the funds of the partnership.

My brother Joseph looked after the construction works of the 'boat-houses' because, as he was familiar with this kind of work, we used to leave matters in his hands.

Joseph was still living with us when he died. He died in hospital after a few days he had been there. All we found was ten pounds (£10) in cash and a bank-book showing a balance of some fourteen pounds (£14). As regards immovable property, he left, as far as I know, two or three emphyteutical sites, besides a share in a property left by Pubblio Debono, our uncle, which is subject to the usufruct of my sister Mary.

10

Replies to Question by the Legal Referee

The suit regarding the Villa's roofing was instituted by my brother Giuseppe because we used to leave everything in his hands.

The rent for the part of the Villa let to the brothers Pavia, used to be given by them either to me or to my brother Joseph or to somebody else and these used then to hand the money to me. I used to make out a receipt to the brothers Pavia for the rent paid by them, even during the lifetime of my brother Joseph. On occasions, I asked them to make out the receipt themselves and sometimes I asked somebody else.

20

Read over to witness who declares that, though he tried to sign his name, he could not succeed to do so.

(Signed) FORTUNATO MIZZI, Advocate.

Defendant Mary Abela, at her own request, states on oath:

30

I did not appear on the deed nor did I pay any share of the sale-price. I did not even know that the acquisition was to be made in my name. I came to know that some days after the publication of the deed. They gave me a copy of the deed and I read it. I ratified the deed; indeed, I was very pleased that they thought of me. They explained to me that they had done so to compensate me for keeping them in my house and taking care of them without my ever taking any money from them — not even for rent or for water and electricity consumption.

The receipts for the rent of the 'boat-houses' and of the part of the Villa occupied by the brothers Pavia were regularly made out by Antonio Pavia, who is the husband of my sister Tessie Pavia, on behalf of Michael Abela.

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—Continued

Cross-Examination

10 When Joseph died, we found in a box which I opened and which had a secret lock which he had divulged only to me, the sum of ten pounds (£10), a bank book of the National Bank of Malta showing a balance of some fourteen pounds (£14) and three booklets of Lombard Bank showing a balance of about one thousand seven hundred pounds (£1,700) in the name of Joseph, Michael and Antonio Abela. The box was opened in the presence of Joseph and Antonio Pavia.

Read over to witness.

(Signed) MARY ABELA.

„ FORTUNATO MIZZI, Advocate.

No. 9.

Legal Referee's Report

No. 9
Legal Referee's
Report

In the First Hall of Her Majesty's Civil Court.

20 Writ No. 294/1959 M.

Maria Felicia wife of Joseph Cremona
absent from these Islands and another
vs.

Michael Abela and others

The report of Advocate Dr. Fortunato Mizzi.

Respectfully sheweth:—

30 By the above-mentioned Writ-of-Summons filed on April, 11, 1959, the Plaintiffs, — after premising that Joseph Abela, by a deed in the records of Notary Joseph Gatt of April 17, 1952 (Exhibit A) had declared that he was selling to Defendants the Villa known as "Maria Teresa", in the course of its construction, situated at Rdum Irxew in the limits of St. Paul's Bay, for the price of eight-hundred pounds (which was not paid on the deed) subject to the payment of a sub-ground rent of eleven pounds

per annum, and that this was a fictitious sale as would be proved during the hearing of the case — prayed that, for this reason, the said deed be rescinded under the directions which this Honourable Court might give in view of the said rescission.

By a statement of Defence filed on April 21, 1959, Defendants raised a preliminary plea of prescription and, on the merits and without prejudice, the untenability of the Plaintiffs' demand.

In a Minute registered at the sitting held on May 18, 1959, the Defendants, through their Counsel, declared that the prescription applicable and invoked by them was that of two years referred to in sections 1266 and 1267 of the Civil Code and the Plaintiffs, through their Counsel, submitted that their demand was based on simulation and the prescription applicable was, therefore, that of thirty years. 10

In its judgment of June 26, 1959, this Honourable Court, after disallowing the plea of prescription raised by the Defendants, appointed the undersigned as legal referee to verify and report whether the plaintiffs' demand was tenable or not and to make his observations on the matter at issue. 20

In order the better to carry out the reference, the undersigned held two sittings to collect the necessary evidence and, now that he has examined the record of this cause and those of the two other causes to which reference has been made by the Plaintiffs, namely that in the names "Francesco Cassar vs. Joseph Abela" instituted by Writ-of-Summons number 262 of March 26, 1952 and disposed of by this Court on November 19, 1954, and that in the names "Joseph Abela vs. Carmelo L. Zammit proprio et nomine et" instituted by Writ-of-Summons number 538 of September 30, 1952 and withdrawn in Her Majesty's Commercial Court on February 11, 1955, he is in a position to submit the following:— 30

In the present suit, the plaintiffs are claiming that the deed published by Notary Joseph Gatt on April 17, 1952 (Exhibit 'A' filed together with the Summons) whereby Joseph Abela had sold to his brothers and sister (the Defendants) the perpetual utile dominium of Villa "Maria Teresa" in Rdum Irxew, in the limits of St. Paul's Bay, is fictitious and should, therefore, be rescinded. Plaintiff Maria Felicia, wife of Joseph Cremona, is suing as the daughter and sole heiress of the said Joseph Abela and the other Plaintiff, Giuseppa Abela, as the widow of the said Joseph Abela and, therefore, as an interested party in the Com- 40

munity of Conjugal Acquests already existing between her and her said husband.

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As pointed out in the said preliminary judgment delivered by this Court on June 26, 1959, "although the Plaintiffs are demanding the **rescission** of the deed aforementioned, they have based their demand on the ground that the sale made by that deed was **fictitious** and, according to the said minute at fol. 7, they are exercising the action for simulation."

40 It is settled among law-writers and in case-law that simulation may be either absolute or relative. As this Court stated in the cause "Professor Antonio Genova vs. Dr. Giorgio Borg nomine et" disposed of on January 24, 1922 (Law Reports Vol. XXV II 13) "Roman jurisprudence distinguished the contract which was absolutely simulated — 'colorem habens substantiam vero nullam' (L. 55 Dig. de contrahenda emptione XVIII I) — from an agreement vitiated by a relative simulation — 'colorem habens substantiam vero alteram' (LL.36, 38 Dig. de contrahenda emptione XVIII I). One meets with the first case when the parties did not want, in point of fact, to conclude any
30 juridical transaction, and the second case, when the parties wanted to contract a juridical bond different from that emerging from the wording of the deed itself. It is clear that in the first hypothesis (in which the parties did not want to conclude between them any juridical bond but they merely wanted to pretend they did), the deed is entirely null and can have no binding force (v. Giorgi, "Theory of Obligations", 1908, Vol. IV No. 160). "As to relative simulation", it was stated in the judgment given by this Court on November 16, 1898 in re "Grech-vs-Zammit" (Law Reports Vol. XVI II 334), "the deed is
20 valid if, though the subject-matter and the title of the deed may be simulated, the contracting parties did intend to conclude an agreement which is not prohibited by Law". The said distinction is followed in numerous judgments of our Courts (v. Law Reports Vol. XXII I 252; Vol. XXIII II 226 and 433; Vol. XXV II 13; Vol. XXVII II 308; Vol. XXVII III 544; Vol. XXIX I 570; Vol. XXIX II 558; Vol. XXX I 927 and Vol. XXXI I 686).

10 The wording of the writ-of summons and of the declaration attached thereto as well as the evidence produced in support of what is alleged in the said summons and declaration leave no doubt, in the humble submission of the undersigned, that the Plaintiffs are claiming that the contract of sale in issue is affected by absolute simulation.

Before passing on to examine the evidence in reference to this claim of Plaintiffs, the undersigned feels he should first submit what are the principles which regulate the matter in issue.

It is settled case-law and among law-writers that the action of simulation may be exercised not only by third parties having a juridical interest to obtain a declaration of nullity of a contract in view of absolute simulation, but also by the contracting parties themselves and their heirs. As was held, however, in the above-quoted judgment given by this Court on November 16, 1898 in re "Grech-vs-Zammit" (Law Reports Vol. XVI II 332), the heirs may not challenge the acts of their authors "except by availing themselves of an action which would have been competent to their authors and which can yet be exercised". 10

In the judgment of February 25, 1934, given in re "Giovanni Coleiro et-vs-Margherita Coleiro et" by this Court (Law Reports Vol. XXVIII II 554) and confirmed on appeal on November 2, 1934, it was stated as follows: "It is admitted that, in an action for simulation or in an 'actio revocatoria' or 'Pauliana', there is, at law, no presumption of fraud, even when one is dealing with a gratuitous title, but he who alleges fraud has the burden of proving it: 'nullitas actus in dubio non praesumitur sed validus reputatur donec de contrario constet'. This rule must be applied even more rigidly when it is a question of declaring inexistent public deeds which are supported by the presumption of truth and good faith, and against such deeds, in particular, the evidence must be specific, detailed, indicating the reason and the need for simulating, and the presumptions must be based on facts which are grave, precise and concordant (Appeal Court's judgment, April 29, 1925, in re 'Micallef vs. Prof. Dr. Carmelo Sammut')". In the judgment of Her Majesty's Court of Appeal of October 13, 1933, in re "Bugeja vs. Busuttil" (unpublished) it was laid down that in order to prove a fraudulent simulation "it is enough to bring up presumptions and conjectures, provided these are grave, precise and conclusive, and are not contradicted by other presumptions and 'indicia'." The said Court of Appeal in the case "The Hon. James A. Galizia noe vs. Giuseppa Cuschieri" disposed of on February 22, 1932 (Law Reports Vol. XXVIII I 233) held that in an action of simulation "one must always look at the juridical effects which the parties wanted to obtain by their stipulation" (see also Appeal judgment 27.3.1936 in re "Seychell vs. Seychell" Law Reports Vol. XXIX I 570; Appeal judgment 27.1.1937 in re "Barbara vs. Borg" Law Reports Vol. XXIX I 1837; and Appeal judgment 13.12.1943 in re "Emanuele Borg vs. Raffaella Barbara 20 30 40

et", Law Reports Vol. XXXI I 661, where it was stated that "the strangeness of the facts is not enough to lead to the conclusion that the parties wanted to simulate").

Also bearing on the present suit is the judgment given by the said Court of Appeal on June 7, 1929 in re "Father Giuseppe Portelli noe et —vs.— Carmelo Farrugia et" (Law Reports Vol. XXVII I 402) wherein it was stated that, in order to invalidate a transfer of ownership of immovable property, the unilateral declaration of one only of the contending parties is not enough.

10 Having premised this much, the undersigned will now examine and evaluate the evidence in the light of the legal principles above submitted.

By the deed aforementioned in the records of Notary Joseph Gatt of April 17, 1952 (Exhibit A at fol. 89), Joseph Abela sold to his brothers and sister (the Defendants) "the small Villa, which is not yet completed, which is being built on the site which forms a divided part of the lands 'Ta Irxew' or 'Rdum Xemxija', in the neighbourhood of Xemxija, limits of St. Paul's Bay", for the price of eight hundred pounds (£800) which he
20 declared to have had already received from his said brothers and sister.

Most probably, the Plaintiffs claim that this price was not only unpaid but was never intended that it should be paid: in fact, though they do not state this clearly and explicitly enough, one cannot otherwise explain their demand based, as it is, on the alleged absolute simulation of the deed in question. No direct evidence, however, was brought on this point and it looks as if the Plaintiffs are basing their demand exclusively on the fact that the price was derisory and on the allegation that Joseph
30 Abela continued to appear as the owner of the said Villa even after he was supposed to have transferred it to the Defendants and received its price.

The Plaintiffs laid great stress on the fact that the price was ridiculously low. They, in fact, claim that had Joseph Abela taken in consideration the cost of construction of the Villa, which they say had been completed in 1951, and the value of the site allegedly transferred, he would not have logically agreed to accept, as a fair price, anything less than £2,244. 18s. 0d. (v. Declaration annexed to the writ-of-summons). In point of fact,
40 the evidence points unmistakably to the fact that the price of eight hundred pounds was considerably low. The Villa, if not completed, was probably already occupied when the transfer, which is being contested, took place. This appears from the

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application filed by the said Joseph Abela on September 30, 1952 in the records of the cause "Joseph Abela —vs— Carmelo L. Zammit et" withdrawn in Her Majesty's Commercial Court on February 11, 1955, to which reference was made by the Plaintiffs, from which one can infer that, on the day on which the application was filed, the said Villa had already been occupied for a time (fol. 95). Most probably, therefore, when the said transfer took place, the expenses mentioned by Architect and Civil Engineer Edwin England Sant Fournier in his evidence given before the undersigned at the sitting held on July 4, 1959 and which amount in all to two thousand and two pounds eighteen shilling (£2,002 18s. 0d.) had already been incurred. To these expenses, as the plaintiffs rightly maintain, one must add, for a fair valuation of the premises transferred, the value of the site itself, as was done on the occasion of another transfer (made, at a time proximate to the transfer in question, by the said Joseph Abela in favour of third parties) of a site in the same locality and having approximately the same area.

10

This notwithstanding, the argument which the Plaintiffs want to draw in their favour from the fact that the price was derisory, is not clear enough. In the hypothesis that the price was not paid — as it should not have been paid if the sale, as the Plaintiffs claim, were altogether fictitious — the question whether it was fictitious or not can have no importance. Nor does it appear that the fact that the price is derisory can, as a rule, serve as an indication of the total simulation of the contract of sale, because one can with difficulty imagine that whoever wants, for his own reasons, to create the mere shadow of a similar contract, should then make manifest this simulation by fixing a price considerably inferior to what is just and fair. On the contrary, in the absence of special circumstances, the derisory nature of the price, rather than favouring should be considered as militating against the theory of the absolute simulation of the deed of sale. If, on the other hand, the said price was really paid, then the fact that it was derisory could give place to some other action, including that of the relative simulation of the deed in question, but not to that exercised by the plaintiffs which presumes that the contract was wholly in-existent.

20

30

It is, therefore, of the greatest importance to establish, on the evidence heard, whether the said price was paid and, in the affirmative, under what circumstances and by whom.

40

Defendants Michael and Antonio Abela declared in their evidence that they had been entitled to obtain from their brother

Joseph their share of the profits of the partnership for harbour works styled "Abela Brothers" and, when the matter of the transfer of the Villa in question was brought up, they agreed that the said Joseph Abela should get paid out of the common funds which he had in his possession. As was explained by Defendant Michael Abela who, it appears, had the more active part in these dealings, the proposal of the sale was originally made only to him. It was he who, at first, suggested that his brother Antonio should be associated with him in the purchase and, later, when the contract was to be signed, suggested further that he should include also his sister Mary. The price of eight hundred pounds (£800) was fixed by Joseph Abela (fol. 17).

It does seem agreed between the contending parties that — as was testified by defendant Antonio Abela — Publio Debono had left in legacy to his nephews — the Defendants Michael and Antonio Abela and their brothers — his tools which he used as a stevedore. Only these Defendants and their brother Joseph Abela, however, used to work with these tools. These tools were destroyed by war action and, later, new tools were bought for different work, though within the harbour area, out of the compensation paid by the War Damage Commission (fol. 15).

Of the three Abela brothers above-mentioned, the two who worked more with those tools were Michael and Joseph. Antonio Abela, as he himself stated, had been employed at the Dockyard for ten years, during which time he had only occasionally missed his work in order to give a helping hand to his said brothers. Previously, he had a shop at Marsa which he used to close in order to help his said brothers only when the latter were pressed with work. On other days he helped his brothers by fixing the stamps required by the Workmen Compensation Act on to the workers' card while he himself continued to look after his shop. Michael Abela was also a weigher and, since the last war, though he kept attending to the work of the said partnership, has been avoiding strenuous work for reasons of health (fol. 15).

Defendant Mary Abela had no share in her brothers' partnership. Michael Abela had suggested that the transfer of the Villa should be made also in her name because she used to live with them, take care of them and never charged them for rent (fol. 17). This Defendant, as she herself confirmed on oath, was not aware that the Villa was going to be transferred also to her. She became aware of this the same day the deed was published but after its publication. She did not pay any share of the price. She ratified the deed and she was even very pleased that her brothers had thought of her (fol. 18).

It is agreed between the parties that the defendants used to live with their brother Joseph Abela until he died. According to what is stated in the Declaration annexed to the writ-of-summons, Joseph Abela lived apart from his wife and daughter.

As stated, the Plaintiffs have brought forward, in opposition to the defendants' contention — apart from the question relative to the derisory nature of the price which has already been examined — the fact that Joseph Abela kept on appearing and acting as the owner of the said Villa even after this was supposed to have been transferred. In this regard, they produced as witness Joseph Pavia and made reference to a number of judicial acts. 10

Witness Joseph Pavia states that Joseph Abela, while keeping for himself a part of the said Villa, let the remaining part to him and his brother Antonio Pavia separately. In the beginning these three parts of the Villa were not segregated one from the other and were then segregated later on when the verandah was also built. Though, as this witness further states, he and his brother Antonio (who is married to the sister of Joseph Abela and of the other Defendants) used to pay rent regularly, the said Joseph Abela never made any receipt to them. After Joseph Abela's demise and in order that the Plaintiffs would not think that they were not paying any rent, Antonio Pavia — who used to write the receipts for rents received by Joseph Abela on behalf of Michael Abela — wrote out himself and — as appears clearly from the exhibits AA and BB — signed "Michael Abela" the receipts for rents paid for certain periods during which Joseph Abela was still alive. The brothers Pavia paid the rent for the first six months following the death of Joseph Abela to the Defendant Mary Abela and the relative receipts were written and signed as the previous ones and on the same rent-book by Antonio Pavia. Later, the said brothers Pavia became aware that the Plaintiffs were claiming that the Villa was theirs and they, therefore, lodged the rent for the next six months in Court. 20 30

Witness Joseph Pavia does not say when the leases above-mentioned were made in his and his brother Antonio's favour, but, merely, that they were the first tenants of the Villa and that this was still let to them. As has already been stated, the plaintiffs hold that the Villa had been completed in 1951, that is, months before the deed which is being contested was published. From the application above quoted, which Joseph Abela had filed in the records of the cause in the names "Joseph Abela 40

—vs— Carmelo L. Zammit et' withdrawn in Her Majesty's Commercial Court on February 11, 1955, as clarified by the testimony of the said Joseph Pavia, it looks as if the Villa, even though not completed, had, as stated, already been let to the brothers Pavia at a time proximate to the publication of the deed. It may be, therefore, that the leases in favour of the brothers Pavia had been made by Joseph Abela because, till then, he was still the owner of the Villa.

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—Continued

10 According to defendant Michael Abela, he and his brothers and sister (the Defendants) used to leave everything in the hands of the said Joseph Abela (fol. 18). It follows that, even if the said leases had been made by Joseph Abela after the transfer in question, this would not have proved clearly and unequivocally that he had let the Villa to the brothers Pavia because he knew the transfer was fictitious and because he still considered himself the owner of the Villa.

20 According to Defendant Michael Abela (loc. cit), the brothers Pavia used to pay the rent to him or to hand it to Joseph Abela or somebody else for transmission to Michael Abela. He also states that, even when his brother Joseph Abela was still alive, he used to give out receipts for this rent to the brothers Pavia either by asking them to write the receipts themselves or by asking somebody else to do this for him (loc. cit). Even if, however, the evidence of this Defendant was not to be believed in view of the testimony on this point of Joseph Pavia, the fact remains that the receipts made out by Antonio Pavia after the death of Joseph Abela, both for the period preceeding and that succeeding the death of Joseph Abela, were not signed in the latter's name but in Michael Abela's name
30 (Exhibits AA and BB). It was also proved that the receipts for the rent of the 'boat-houses' situated under the road facing the Villa and which Defendants claim had been built on a portion of the site transferred to them by the deed in question (fol. 16) had been prepared by the said Antonio Pavia or his brother Joseph and signed in Michael Abela's name (v. the testimony of Joseph Pavia at fol. 11, that of Michael Abela at fol. 17 and that of Mary Abela at fol. 19). Any 'indicium', therefore, which may be deduced from the testimony of Joseph Pavia in favour of the Plaintiffs' contention, is contradicted or, at least, blurred
40 by these circumstances.

As an additional argument that Joseph Abela had continued to appear as the proprietor of the Villa even after it was supposed to have been transferred by him to the Defendants, the Plaintiffs filed a copy of the writ-of-summons in the cause

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—Continued.

“Joseph Abela —vs— Carmelo L. Zammit pro et noe et” filed before Her Majesty’s Commercial Court on September 30, 1952, that is, months after the publication of the deed of sale in contestation (Exhibit C at fol. 93) and they made reference to the other records of the said cause which was withdrawn on February 11, 1955 (fol. 13). In this cause, Joseph Abela had sued the contractor commissioned with the construction of the terrace-flooring of the Villa in view of some defects which had developed in the said flooring.

Both the Defendant Antonio (fol. 16) and the Defendant Michael (fol. 18), brothers Abela, were aware that this cause had been instituted by their brother Joseph Abela at a time when the Villa was supposed to have been already theirs. Antonio Abela stated that they (the Defendants) themselves had told him to institute proceedings and Michael Abela added that the cause had been instituted by Joseph Abela because they used to leave everything in his hands. 10

There is no doubt that the contract of work in question had been given out by Joseph Abela before he had transferred the Villa to Defendants. The fact that Joseph Abela had sued the contractor after the transfer of the Villa would have possibly been a strong argument that he kept appearing as the owner of the Villa, if it were clear in law that that action was only competent to him in this quality. In the humble submission of the undersigned, however, there can only be a doubt on this point. It is true that the said action could have been directly instituted by the Defendants themselves, as the owners of the Villa, as provided in Section 1732 of the Civil Code (Appeal case judgment 11.3.1903 “Grixti — vs — Scicluna et” Law Reports Vol. XVIII I 90). But the latter were also entitled to exercise against their brother Joseph Abela the **actio redhibitoria** or that **æstimatoria** as provided in Sections 1474 and 1477 of the said Code. It appears, therefore, as if Joseph Abela had not only an interest but the right — as the person who had given out the work in question — to sue the contractor without waiting to be himself sued by his brothers just as, in the latter case, he would have been entitled to turn against him (the contractor) by means of separate action or else demand that he be joined in the suit. 20 30

In an application, however, filed on September 30, 1952 in the records of the cause in question (fol. 95), to which reference has already been made, Joseph Abela premised — as one of the reasons for his demand that the cause be heard and tried with urgency — that the defect in the beams was a source of danger 40

to the safety of the tenants, so much so that the latter had been forced to abandon the Villa and that, in this way, he had suffered damages **by way of loss of rent.**

10 In the humble submission of the undersigned, this fact is the most serious argument in favour of Plaintiffs' point of view. But, as was held in the afore-quoted judgment given by the Court of Appeal on June 7, 1929 in re "Father Portelli noe— vs — Carmelo Farrugia et" (Law Reports Vol. XXVII I 402), in order to invalidate a transfer of ownership of immovable property, the unilateral declaration of one only of the contracting parties is not enough. In the case in issue, it does not even appear that the defendants had been aware of that statement. This statement, therefore, did not avail — in the absence of other concluding circumstances — the party who made it. It cannot, therefore, avail the Plaintiffs, particularly Maria Felicia Cremona who, as stated, as heiress of that contracting party, cannot impugn the acts made by him except by availing herself of an action which would have been open also to him (Law Reports Vol. XVI II 332).

20 From what has been stated above, it does not appear that the 'indicium' inferred from that statement of Joseph Abela is sufficiently strengthened by other evidence, even circumstantial. It looks as if, on the contrary, it is weakened by other evidence and 'indicia' which so far have not been mentioned.

30 In fact, from the documents filed by defendant Antonio Abela at the sitting held by the undersigned on July 9, 1959, it appears that the receipts for all the expenses which were made in the Villa, after the contested transfer, as also for the substantial expenses made in the 'boat-houses' under the road facing the Villa (on a site which, presumably formed part of the transferred site) were made out in favour of Defendant Michael Abela. The receipts for rent and for water and electricity consumption in the said Villa were also made out in favour of this Defendant (Exhibits SS to ZZ and A¹ to A⁴).

40 What, in the humble submission of the undersigned, greatly weakens the Plaintiffs' thesis is their failure to bring in any evidence of the motive which could have induced Joseph Abela and the Defendants to create the alleged mere semblance of the said deed of sale. Evidence of such a motive, even though not altogether necessary, is undoubtedly of great importance in the research, particularly, for absolute simulation in a deed of sale. As was stated before, this Court in its judgment of February 25, 1934 in re "Giovanni Coleiro et —vs— Margherita Coleiro

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Legal Referee's
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et" (Law Reports Vol. XXVIII II 554), confirmed on appeal on November 2, 1934, — had taught that the deduction against public deeds "must be specific, detailed, **indicating the reason and the need for simulating.....**", and the Court of Appeal added, in the cause "Hon. James A. Galizia noe. —vs— Giuseppe Cuschieri" disposed of on January 22, 1932 (Law Reports Vol. XXVIII I 233), that "one must always look at the juridical effects which the parties wanted to obtain by their stipulation".

Even if the most favourable interpretation to the theory of simulation were to be given to the evidence, it would appear more likely that this simulation, if it existed, was a relative one, intended only to hide, in whole or in part, a contract of donation under the appearance of a contract of sale. In this hypothesis, the Plaintiffs' demand should have been formulated much differently. 10

For these reasons, the undersigned humbly submits that the Plaintiffs' demands should be disallowed.

This much has the undersigned the honour to submit to the wise and superior judgment of this Court.

(Signed) FORTUNATO MIZZI, Advocate. 20

This the sixteenth July, 1959.

Filed by Advocate Dr. Fortunato Mizzi without exhibits.

(Signed) M. PETROCCHINO, D/Registrar.

This the twenty sixth October 1959.

The legal referee has sworn that he has carried out, faithfully and honestly, the instructions given him by the Court.

(Signed) M. PETROCCHINO, D/Registrar.

No. 10.

No. 10
Plaintiffs' Note
of Submissions

Plaintiffs' Note of Submissions.

In the First Hall of Her Majesty's Civil Court.

Writ No. 294/1959M

Maria Felicia Cremona & Another.

vs.

Michael Abela & Others.

The Minute of Plaintiffs.

Whereby they file the annexed Note of Submissions.

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(Signed) F.N. BUTTIGIEG, Advocate.

„ G. GALDES,

Legal Procurator.

This the twenty eight October 1959.

Filed by L.P. G. Galdes with a Note and four exhibits.

(Signed) EDW. CAUCHI,

Dep. Registrar.

* * *

In the First Hall of Her Majesty's Civil Court.

Writ No. 294/1959M.

Maria Felicia Cremona & Another.

vs.

Michael Abela & Others.

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The Note of Plaintiffs:

Respectfully submit in relation to the referee's findings:—

The referee came to the conclusion that the deed of sale in question hides a donation and that therefore the issue is one of relative and not of absolute simulation as the Plaintiffs' contend.

In this way, the referee has rejected the contention of the Defendants that the deed in question was really one of sale.

30 The referee, in his report, stated that in order to rescind a deed of sale the unilateral declaration of one of the contracting parties is not enough; the Plaintiffs submit, however, that the fact of absolute simulation emerges from the **bilateral** statements of the contracting parties made in the said deed and

from the facts and concordant circumstances which happened at the time of the contract or later and resulting from documents or facts testified by the Defendants themselves and other witnesses.

From the statements made in the deed of April 14, 1952 one can argue that the object of the deed was the sale of a Villa which was a) small b) in course of construction c) for the price of £800 d) which had already been paid (to the seller).

All these statements are contradicted by facts and by the Defendants. 10

At the time of the contract, the Villa was not in course of construction but was completed and almost wholly occupied. In fact, architect England Sant Fournier, at the sitting held in this cause on July 4, 1959, said that between 1951 and 1952 he had made the valuation of the works: a valuation relative to the masonry works, concrete works, wood-works and other concrete works which cost £2002 0s. 0d., apart from other works which he did not value, namely, the pavement, the painting, whitewashing, electricity installation, water communication, drainage and some other things. 20

Apart from the cost of the works mentioned, there is the value of the site, which in the case of site of a lesser area, the same Joseph Abela, by a deed in the records of Notary Antonio Galea (22/12/1951) had sold to Emanuele Giudice for £320 besides the ground-rent to which it was subject. (cfr. Exhibits E and F).

From exhibits C and D, fol. 93 and 95, relative to the causes "Joseph Abela—vs—Carmelo Lorenzo Zammit et" and "Francesco Cassar—vs—Joseph Abela" it appears that, before the sale, the concrete terrace flooring had been completed and the wood-works placed in their apertures. 30

It appears from the evidence of Joseph Pavia (fol. 10) and of the Defendants themselves (fol. 14) that the Villa was not a small one because a part thereof was let to Joseph Pavia, another part to Antonio Pavia and still another part together with its large garden was kept by Joseph Abela for himself who communicated this last mentioned part to one of the 'boat-houses' built under the level of the road (which faces the sea) by means of an underground passage; indeed, according to Defendant Antonio Abela (fol. 14) the four brothers and sister, that is, the Defendants and their deceased brother, went to live in this part. 40

As to the sale-price of £800, Plaintiffs point out that this might have been adequate or not according to the initial or projected state of the construction works of the Villa at the time of the deed; as however, on that day the Villa had been completed, this price cannot be considered adequate but must be considered derisory especially when the defendants claim that the same deed had even implicitly transferred to them six 'boat-houses' built by the said Joseph Abela on the other side of the Villa and under its road: these 'boat-houses' are let at from 10 £15 to £20 each and the site they were built on does not form part of the emphyteutical site on which the Villa was built (cfr. Exhibit B in the records Notary J. Gatt 24.1.1951). In fact, the Defendant Antonio Abela, at the sitting held on July 9, 1959, states thus: "I think that the 'boat-houses' which are under the road facing the Villa were built on a site which had been transferred to us by the deed which is being impugned..." and the Defendant Mary Abela, in her evidence (fol. 124 — Exhibit J) declared that "at the time of the sale of the Villa, the 20 'boat-houses' which are situated in front of the Villa were completed and some of them already let". Thus stated also Michael Abela (fol. 122 — Exhibit J).

This site, in fact, remained the property of Messrs Coleiro Brothers Limited who, last April, transferred it in emphyteusis to the two Plaintiffs and the Defendants pre-empted it by Schedule of Pre-emption of April 29, 1959 (Exhibit H).

Still another bilateral simulation, made in the deed which is being impugned, is to be found in the statement that the price had already been paid. The Defendants (whether this is true or not is immaterial for the purposes of the present cause) 30 contend that they were partners with Joseph Abela in his stevedoring work because the latter used to work with tools which Publio Debono, their uncle, had left to the brothers Abela, that is, Gerardo, Felice, Antonio, Michael and Joseph. In fact, defendant Michael testified (fol. 120 — Exhibit J): "I and all my brothers were his (Joseph's) partners because he used to work with tools belonging to us all..... We did not share the money which Joseph used to get out of our stevedoring: he used to keep everything himself" and the Defendant Antonio, at the sitting held in the present cause on July 4, 1959 said in evidence: 40 "My brother Felice and my other brother Gerardo were not partners in the partnership 'Abela Brothers'."

This leads to the conclusion that there is no solid basis for holding that any partnership did exist, and if there were a partnership and the claim of £800 were real, the same should

have been declared set-off; if it were not real, the price should not have been declared paid.

The legal referee agreed that the facts set out by the Plaintiffs proved that the price mentioned in the deed was low and ridiculous and concluded that the deed in question constituted a relative simulation, that is a donation, because — he argued — whoever enters into a real contract of sale would not then indicate a price so low as to suggest a simulation.

By the same argument, Plaintiffs retort that whoever wants to make a donation will not enter into a contract of sale so simulated as to be easily impugned within 30 years by the action of rescission for simulation and, within a lesser time, by the action of rescission on account of lesion. 10

The legal referee states that the Plaintiffs did not succeed to indicate the motive which might have influenced Joseph Abela to enter into a simulated contract: this shows that the legal referee did not grasp the import of the statement made as a premise in the writ-of-summons that Joseph Abela lived apart from his wife and daughter (the Plaintiffs) since when the latter was a few months old. 20

It would have been easy for the referee to understand, from this premise, that Joseph Abela had certain interests and sentiments which conflicted with his duties as a husband and a conscientious father, while he did not want to deprive himself, during his lifetime, of his property, he did not wish that his wife and daughter should enrich themselves at his expense after his death.

This is so much so that, after the publication of the deed in question, he continued to occupy the garden of the Villa and a part thereof, and to pocket the rent of the two other parts: in fact, Defendant Antonio Abela, at the sitting of July 9, 1959 in this cause, stated: "The brothers Pavia used to give or send the rent for the part of the Villa let to them to my brother Joseph who kept it for himself". And Joseph Pavia, at the sitting of July 4, 1959 in this cause, stated: "I have never had a rent-book and Abela (Joseph Abela) did not give me or my brother any receipt for rent received. We did pay him rent however Abela remained in occupation of the part of the Villa, which he had reserved for himself, until he died My brother and I kept paying rent to Abela". 30 40

The actions of Joseph Abela and the Defendant Michael indicate the existence of simulation since before the sale of the

Villa in that, although Joseph Abela did himself let the 'boat-houses' which front the Villa and though these 'boat-houses' were never transferred to the Defendants, the receipts for their rent (which he used to keep for himself) were made by him in the name of his brother Michael.

10 Plaintiffs Maria Felicia Cremona, sole heiress of her father Joseph Abela, and Mary, his widow and an interested party in the community of conjugal acquets, are exercising the action of rescission for absolute simulation which Joseph Abela him-
self could have exercised within 30 years of the deed and thus obtain a Court declaration that "in view of the purely fictitious nature of the act, (its object) did not cease to form part of his patrimony....." (cfr. Baudry Lacantinerie 'Of Obligations' Volume I 'Of the Action for Simulation').

20 This action is directed against the Defendants "who in view of the simulation, do not exist except, in appearance" (cfr. *ibid.* Appendix "Of the Action for Simulation" para 733) "..... even if the fictitious act is not tainted with malice or fraud (181 para 30) and whether the third party is an acquirer on a gratuitous title or on an onerous title (781 para 40)".
"Because a simulated act is, in so far as it is simulated, absolutely non-existent quod nullum est the defect of simulation cannot be ratified except by means of a new agreement" (Ricci, "Fraudulent Acts", para 78).

30 Both Ricci and Fadda ('A Collection of Case-Law on the Civil Code') say, with reference to Section 1235 of the Italian Civil Code and on the strength of various judgments, that "the person entitled to the legitim may well impugn because of simulation a contract which had been entered into by the decuius to defraud him of his right to the said legitim".

40 The referee tried to discredit the evidence of Joseph Pavia by confronting his testimony with unilateral and contradictory statements and with the depositions of the defendants and did not give any weight to the consideration that, as tenant of the Villa or of part thereof, Pavia would have had an interest, but for the oath he had taken, not to antagonise the Defendants with his evidence. The referee relied on the unilateral statement of the Defendants who are undoubtedly interested in the outcome of the cause. In fact, their evidence is untenable as could be seen from the following extracts:

Mchael Abela (fol. 121 Exhibit J) said:—

(a) "..... these (boat-houses) had been built together

with the Villa were let at from £15 to £20 each", but at fol. 122 of Exhibit J. said:—

(b) "..... when Joseph sold the Villa to us, the first six garages had been completed". At the sitting held on July 9, 1959 in this cause he said:—

(c) "The boat-houses, whether those in front of the said Villa or those in front of another site were built at my expense after the publication of deed which is being impugned".

Antonio Abela at the sitting held in this cause on July 9 said:—

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"I think that the 'boat-houses' which are under the road facing the Villa were built on a site which had been transferred to us by the deed which is being impugned they were built after the publication of the said deed at my expense and that of my brother".

Mary Abela (fol. 124 Exhibit J) said:—

At the time of the sale of the Villa, the 'boat-houses' which are situated in front of the Villa were completed and some of them already let".

Apart from other contradictory statements of the defendants regarding the existence of the partnership between them, the Plaintiffs point out that Defendant Michael, who was hesitant in his evidence, appeared on the deed in question as a **passive** agent. In fact, as appears from his own evidence in this cause, Michael said that his brother Joseph Abela proposed to him the sale of the Villa for £800 and he (the Defendant) accepted; and — without any other discussions which are customary between buyer and vendor — appeared on the deed and there took the only initiative to join with him in the acquisition his brother Antonio and his sister Mary.

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It appears from the testimony of Defendant Michael Abela given in cause "Cremona —vs— Abela" (First Hall, writ-of-summons No. 367/59 before Mr. Justice J. Flores) that Joseph Abela had an ascendancy over him because he stated that his brother (Joseph Abela) had a nervous disposition and used to scold him, so much so that he had never asked him for his share of the profits which were supposed to have been made out of the alleged partnership.

The Plaintiffs, to back their theory of simulation, made reference to a number of incidents which give an insight into the behaviour of Joseph Abela and of the Defendants after the

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publication of the deed in question: these incidents, together with the facts and comments above premised, constitute other evidence of simulation and must be examined in the light of the simulation undoubtedly emerging from the deed in question. These facts, together with the very wording of the deed and the behaviour of Joseph Abela and of the Defendants, constitute what could be termed an "edifice of simulation".

10 But the referee, in his report, instead of examining the said 'edifice' as a whole, demolished it by looking at the individual 'bricks' composing it and, with such-like expressions as "it may be" "probable....." "presumably" and the like, found an excuse for every single incident considered separately and rendered negatory the probatory force of the ensemble.

This he did, in fact, with regard to the evidence of Joseph Pavia who said that Joseph Abela had let a part of the Villa to him and another part to his brother Antonio: the referee said that **it might be** that the lease had been made before the deed of sale when Joseph Abela was still owner of the Villa.

20 And yet it could not have been possible to imagine this after that the Plaintiff in the cause "Joseph Abela —vs— Lorenzo Zammit et" withdrawn on February 11, 1955 (Exhibits C and D) had declared that **Giuseppe Aquilina and the other tenants** had vacated the premises because of the serious danger that the roofing of the Villa might collapse — a danger which, as far back as September 22, 1952, was most imminent has stated in the application for urgency filed the same day as the writ-of-summons.

30 The referee pointed out that against the statement of Joseph Abela and the facts emerging from the two causes "Abela —vs— Zammit" and "Cassar —vs— Abela" above mentioned, there are the receipts filed by Antonio Abela at the sitting held in this cause on July 19, 1959 relative to the works carried out by the Defendant Michael Abela in the Villa and the 'boat-houses' after the publication of the deed in question.

40 The receipts relative to the works in the Villa are those marked A¹¹, A⁷ and TT which bear a date proximate to that of the deed. They confirm that, on the day of its transfer, the Villa was already completed and occupied except for the incident relative to the roofing.

From the receipts, the legal referee **presumed** also that the 'boat-houses' which front the Villa were also transferred to the

Defendants in that they were constructed on a part of the site of the Villa.

The referee should have never presumed this much because, even from a superficial examination of the deed of the emphyteutical grant of the site of the Villa (Exhibit B) it should have been apparent to him that the site on which the road was formed had never been transferred in emphyteusis to Joseph Abela, and that the said emphyteutical contract made reference to the obligation by which Joseph Abela undertook to construct at his expense — besides the Villa and a garden on the emphyteutical site — also the road fronting the Villa. As the level of the Villa was much higher than the road which had to be constructed, Joseph Abela — in the formation of the road and on the site which he had to fill up — constructed six boat-houses under the road's level. According to the testimony of Mary Abela (fol. 124 Exhibit J) these had already been constructed and partly let before the publication of the deed in question. According to the testimony of the other Defendants, the said boat-houses were either:

1. completed before the publication of the deed,
2. constructed together with the Villa after the publication of the deed, or
3. constructed after the publication of the deed, versions which varied according to the day on which the said Defendants testified and the way they felt while giving evidence!

As to the other receipts — those marked SS, TT, UU, VV, WW, XX, YY, ZZ and from A¹ to A⁴, dated from 1956 to 1959 — these refer to payments for the hire of meters and for water and electricity consumption; those for earlier periods, in spite of the transfer of the Villa, had been paid by Joseph Abela who remained on the registers of the Water and Electricity Department as the owner of the Villa.

The other receipts refer to periods far remote from the year of the transfer in question and refer to works connected with the cutting of rocks and the construction of other 'boat-houses'.

As these receipts do not concern the present cause, the Plaintiffs make only reference to the testimony given by Michael Abela at the sitting of November 14, 1958 (Exhibit J — fol. 121). In his evidence, Michael Abela said: "I have never withdrawn any money from the Bank to pay anything, because

everything was in the hands of Joseph. Once or more I did pay the mason myself with my own money, that is, not with the money which my brother Joseph had given me with which to pay the mason”.

No. 10
Plaintiffs' Note
of Submissions
—Continued

10 It is not, however, out of place to refer to the fact, mentioned in evidence by Joseph Pavia at the sitting held on July 4, 1959 in this cause, that the receipts for the boat-houses (which had been constructed before the sale of the Villa) used to be prepared, at the request of Joseph Abela, in the name of Michael Abela — evidently in preparation or in confirmation of the simulation in the deed of sale of the Villa.

20 The simulation in the said deed was kept up by Joseph Abela till his death: indeed, while the deed showed the appearance of a transfer, the Defendants never acted as its owners, and Joseph Abela not only occupied a part of the Villa and kept its garden for himself without paying any rent, but always pocketed the rent for the parts let to the brothers Joseph and Anthony Pavia (cfr. evidence of Pavia at the sitting in this cause of July 4, 1959 and of Antonio Abela at the sitting of July, 9, 1959).

30 Above all, after the transfer of the Villa, Joseph Abela kept up acting as its owner, or of its site, so much so that in the deed published in the records of Notary Joseph Spiteri on March 11, 1958 (Exhibit G) five months before his death, whereby Joseph Abela acquired two emphyteutical sites (plots 23 and 24) from Messrs Coleiro Brothers Limited bordering on plot 39 (the site of the Villa), he indicated as one of the boundaries to portion 23 ‘on the west **with the property of the buyer**’ and, as to plot 24, ‘on the north-east and east with the property of the said Abela’ (cfr. the testimony of the Defendant Michael Abela fol. 120 of Exhibit J: “I know that my brother left no property but has two plots of land behind the Villa at St. Paul’s Bay. He had taken this land from Messrs. Coleiro Brothers Limited”).

40 In conclusion Plaintiffs’ remark that the ‘boat-houses had never been the property of the Defendants, so much so that by Schedule of April 7, 1959 (Exhibit H) they exercised over them their right of pre-emption against the plaintiffs after that the latter had acquired them in emphyteusis from Messrs. Coleiro Brothers Limited. The Defendants would certainly not have done so had the boat-houses been already theirs and the Plaintiffs file the attached Exhibit I being a copy of an exhibit at fol. 14 of the cause “Cremona —vs— Abela” (writ-of-summons

No. 10
Plaintiffs' Note
of Submissions
—Continued.

number 16/1959) pending before Mr. Justice A. V. Càmilleri, to show that, notwithstanding the alleged transfer, Joseph Abela continued to appear as their owner because he continued to receive their rent.

(Signed) F.N. BUTTIGIEG, Advocate.

No. 11
Defendants' Note
of Submissions

No. 11.

Defendants' Note of Submissions.

In the First Hall of Her Majesty's Civil Court.

Writ No. 294/1959M.

Maria Felicia Cremona & Another. 10
vs.
Michael Abela & Others.

The Minute of Defendants.

Whereby they file a Note of Submissions and three documents, namely:

K — copy of a letter dated the 24th March 1959 sent to Joseph Pavia.

L — copy of a contract dated the 13th September 1955.

M — copy, nay the original, of a letter dated the 22nd December 1954 to the Director of Public Works.

(Signed) R. FARRUGIA, Advocate. 20

This the sixth November 1959.

Filed at this day's sitting by Advocate Dr. R. Farrugia with four exhibits.

(Signed) M. PETROCCHINO, D/Registrar.

In the First Hall of Her Majesty's Civil Court.

Writ No. 294/1959M.

Maria Felicia Cremona & Another.
vs.
Michael Abela & Others.

The Note of Submissions of Defendants. 30

Respectfully sheweth:—

1. The Plaintiffs have opened their Note of Submissions by alleging that the legal referee had reached the conclusion that the deed in question hides a donation, that is, an act of relative simulation. This allegation of Plaintiffs does not correspond to the truth and shows that the Plaintiffs did not understand or did not interpret correctly the findings of the legal referee which are clear enough and state — after premising, on the main evidence of the Plaintiffs, that “it does not appear that the ‘indicium’ formed from that statement of Joseph Abela is sufficiently strengthened by other evidence even circumstantial; on the contrary, it looks as if it is weakened by other evidence and ‘indicia’,” — that **“even if the most favourable interpretation to the theory of simulation were to be given to the evidence, it would appear more likely that this simulation, IF IT EXISTED, was a relative one, intended only to hide, in whole or in part, a contract of donation under the appearance of a contract of sale”**.

2. The allegation that the so-called declarations in the contract are contradicted by facts and by the Defendants is likewise baseless and rests on fantastic arguments.

3. In fact, it should be pointed out that:

- a) **regarding whether the Villa was small:** the size of a given thing is always relative; the Plaintiffs argue that the Villa could not be called ‘small’ because more than two thousand pounds had been spent in its construction; it is a known fact that these days one can hardly build an average-sized mezzanine for two thousand pounds and, therefore, a “villa” which costs as much as a mezzanine not only could, but should, in all honesty and reasonableness, be called “small”;
- b) **regarding whether it was in the course of construction:** both the depositions of the Defendants and the documents filed before the legal referees show unmistakably that the Villa and its accessories were not completed;
- c) **regarding the price of £800:** strictly speaking there cannot be any question regarding the alleged declaration in the deed concerning it, because the arguments of Plaintiffs seem to converge on the fact that the price of £800 was not adequate. It must be observed on this point that the price represented a share belonging to Defendants of common goods and common funds, and therefore, no importance was

placed by the parties on the amount declared in the deed: this notwithstanding, it should be pointed out that even where the price is obviously fictitious, this does not point to simulation nor to a serious 'indicium' of simulation but only to lesion which is contemplated by Law and which may or may not give ground for the rescission of the sale.

- d) **regarding the declaration that the price had been already paid:** what was stated in the deed cannot be understood otherwise than that the parties agreed that the consideration for the Villa was already in the possession of the seller: that this was so can be inferred from the depositions of the Defendants; the 'payment' need not necessarily be effected by means of the 'material' passage of liquid cash from one man to another, but can be effected by any means whereby the debtor is legally freed of his obligations; 10
- e) **regarding whether the 'boat-houses' form a part of the Villa or not:** this question goes beyond the terms of the present cause and forms the merits of another cause before this Court (writ-of-summons number 16/1959); in like manner, the contract of sub-emphyteusis entered into by the Plaintiffs and the Coleiro Firm and the right of pre-emption exercised by the Defendants do not affect the merits of this cause but of another cause, or, rather, of other causes; 20

4. The Plaintiffs do not agree with the referee that they had failed to bring in any evidence of motive for simulation and state that the simulation was resorted to because Joseph Abela — who lived separately from his wife and daughter (the Plaintiffs) — "while he did not want to deprive himself, during his lifetime, of his property, he did not wish either that his wife and daughter should enrich themselves at his expense after his death". 30

5. This theory appears untenable from the very picture presented by the Plaintiffs. Indeed, if Joseph Abela **desired** (as they allege) that his wife and daughter should not enrich themselves at his expense after his death, the logical, if not the only, inference to be made is that Joseph Abela wanted that the deed should have its effect even after his death, that is, he wanted something definitive and not provisional, something real (i.e. definite) and not simulated (i.e. provisional). From the way Joseph Abela felt towards the Plaintiffs — as alleged 40

by them — it is clear that he wanted definitely to transfer the property to Defendants; he might have only wanted to continue to enjoy this property until his death: this is the most favourable hypothesis in favour of the Plaintiffs on the basis of the facts alleged by them, a hypothesis, however, which in no way helps their theory of absolute simulation.

10 6. As to the deposition of Pavia, it must be pointed out, in reference to the comment offered by the Plaintiffs that he had an interest (as tenant) not to antagonise the Defendants, that this alleged interest was non-existent; indeed, the witness might have had a very different interest (that the Defendants be the party cast in this cause) in view of the fact that the latter had already informed him, by letter of March 24, 1959 (Exhibit K), that they did not intend to renew the lease to him: whether Pavia remains or not in possession of the part of the Villa let to him depends, therefore, on the outcome of this cause.

20 7. The extracts which the Plaintiffs took out of the testimony of the Defendants do in no way prove that the said testimony is untenable; a deposition must be looked at as a whole and it is not lawful to tear it into parts capriciously; one must also look for the connexion between what is said and the matter in issue: indeed, certain details which have nothing to do with the merits of a cause are not normally explained fully and, sometimes, are even ignored; this apart from the consideration that the burden of proof rests wholly and squarely on the Plaintiffs and, in this cause, the Plaintiffs brought only arguments and conjectures of slight probatory force; and when the evidence brought by the defendants is placed against the so-called evidence produced by the Plaintiffs, one can see at
30 once and without doubt that the Plaintiffs did not succeed to bring in enough evidence to disturb in any way the reality and firmness of the deed *de quo* which, as all other public deeds, is presumed and intended to be firm and real.

8. As against what has been submitted by the Plaintiffs, the legal referee did fairly weigh the evidence submitted to him by the Plaintiffs and the Defendants do not, therefore, feel that they should add anything on this score.

40 9. The allegation of Plaintiffs that the Defendants had never acted as owners of the Villa is also untrue: to begin with, the most important (and the only one required by Law vis-a-vis third parties) declaration of ownership is the registration in the Public Registry which could not have been omitted with regard to the property in question because the Notary has a

No. 11
Defendants' Note
of Submissions
—Continued.

legal duty to register every deed concerning immovable property. Secondly, the receipts for rent — according to witness Pavia produced by the Plaintiffs — were made out not in Joseph Abela's name but in the name of Michael Abela. Thirdly, the Defendants openly qualified themselves as owners on subsequent deeds, as they did on the deed of transfer of portions of a plot of land bordering on that in question published on September 13, 1955 in the records of Notary Bonello Du-Puis wherein the boundaries are indicated as bordering "on property of the brothers Abela" (Exhibit L).

10

10. As to the deed of March 11, 1958 the Defendants point out that—apart from whether the plots of land there mentioned border on the Villa or not — whatever Joseph Abela might have declared could lead nowhere because the Defendants were not a party to this deed and also because the boundaries are known to be given approximately and no one is in a position to state why, in that particular case, the boundaries were given the way they were.

11. As to the comments made by the Plaintiffs in the last paragraph of their Note, the Defendants point out as follows:—

20

- a) the question concerning the ownership of the 'boat-houses' forms the merit of another cause (as submitted in para 3e hereof);
- b) the Schedule of Pre-emption filed by Defendants was made — as stated clearly **in the said Schedule** — without prejudice to any other right belonging to them;
- c) the Plaintiffs had always claimed that the 'boat-houses' **were theirs**: yet they had admitted, without any reservation, that their ownership belonged to others and acquired them in sub-emphyteusis: this they did with the idea of weakening somehow the Defendants' title to these 'boat-houses', but the Defendants feel that this would not have the result desired by the Plaintiffs.
- d) the copy of the document filed in the cause already mentioned likewise means nothing, because it was something made unilaterally by Joseph Abela and is not enough to lead to the theory of absolute simulation as claimed by the plaintiffs;
- e) after all, defendant Michael Abela used to appear as

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40

owner before the Public Works Department as could be seen from the annexed letter (Exhibit M) of the Director of Public Works dated December 22, 1954 (file number A 1316/54) sent to the architect of Defendant Michael Abela.

No. 11
Defendants' Note
of Submissions
—Continued

(Signed) R. FARRUGIA, Advocate.

No. 12.

Procés Verbal of Court's sitting and Plaintiff's evidence.

No. 12
Procés Verbal of
Court's Sitting
and Plaintiff's
evidence

This the 7th December, 1959.

10 Anthony Dalli affirms on oath that he will carry out his duties as Court's stenographer to the best of his ability.

The Plaintiff gives evidence at her request.

Counsel on both sides declare they have nothing else to add.

The cause stands adjourned till January 29, 1960 for judgment unless some legal obstacle is encountered.

(Signed) M. PETROCCHINO, D/Registrar.

* * *

Sitting of Monday, 7th December, 1959.

Maria Felicia Cremona & Another.

vs.

20 Michael Abela & Others.

Maria Felicia Cremona, the Plaintiff, states on oath at her request:—

The Villa has a ground floor only, it has no balcony. No balcony was made for the Villa. I know, that in other premises at Marsa, number 7, Nazareno Street, belonging to one of the Defendants, that is, to Maria Abela, a balcony was put up in an aperture which, before the house had been damaged by war action, had been a window. I can say this out of personal knowledge.

No. 12
Procés Verbal of
Court's Sitting
and Plaintiff's
evidence
—Continued

Cross-Examination

I am thirty three years old.

Read over to witness in the Court's Hall by the stenographer, by the Court's order, from the shorthand notes which were signed by her.

(Signed) M. PETROCOCCHINO, D/Registrar.

No. 13
Defendants'
Application,
Plaintiffs'
reply and
Court's Decree

No. 13.

Defendants' Application, Plaintiffs' reply and Court's Decree

In the First Hall of Her Majesty's Civil Court. 10
Writ-of-Summons 294/59 M.

Maria Felicia Cremona & Another.
vs.
Michael Abela & Others.

The application of Defendants.

Respectfully sheweth:—

That the cause stands adjourned for judgment till January 29, 1960.

That during the last sitting, Plaintiff Cremona gave evidence regarding a receipt for £20, being one of the receipts filed by Applicants. 20

That — contrary to what had been stated in evidence by the Plaintiff Cremona — the said receipt for £20 was indeed relative to the Villa at St. Paul's Bay.

That though applicants feel that the question whether one of the receipts filed by applicants refers or not to the Villa, cannot have much bearing on the present cause; yet they have an interest that the deposition of Plaintiff Cremona should not remain unchallenged.

Wherefore, applicants respectfully pray that they be 30

authorised to produce evidence to rebut the testimony given, as stated above, by Plaintiff Cremona.

(Signed) R. FARRUGIA, Advocate.
 ,, JOSEPH GATT,
 Legal Procurator.

No. 13
 Defendants'
 Application,
 Plaintiffs'
 reply and
 Court's Decree
 —Continued

This the 14th December 1959.

Filed by L.P. Joseph Gatt without exhibits.

(Signed) A. TONNA, D/Registrar.

* * *

HER MAJESTY'S CIVIL COURT. — FIRST HALL

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Judge:—

The Honourable Mr. Justice A. Magri, B.Litt., LL.D.

The Court,

Upon seeing the application,

Orders that it be served on the opposite party who has two days within which to file a reply thereto.

This the 15th December, 1959.

(Signed) S. SANT'ANGELO, D/Registrar.

* * *

In the First Hall of Her Majesty's Civil Court.

Writ No. 294/1959 M.

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Maria Felicia Cremona & Another.
 vs.
 Michael Abela & Others.

The reply of the Plaintiffs:

Respectfully sheweth:—

That they have been served with a copy of an application filed by the Defendants on December 14, 1959 intended to challenge the deposition given by the Plaintiff Cremona at the sitting of December 7, 1959. On this point, they point out:

30 That she had stated in evidence that the receipt for £20 made out by the Firm "Pelican Engineering Works" relative to an **iron balcony** and dated April 22, 1952 (Exhibit A¹⁴), can-

No. 13
Defendants'
Application,
Plaintiffs'
reply and
Court's Decree
—Continued.

not refer to the Villa because this has no **iron balconies**: the Villa, in fact, is a ground-floor one and has only doors and windows on the outside.

As to the other receipts, it has already been pointed out in the Note of Submissions that those relative to water consumption refer to years following the publication of the contract, and the others — also referring to succeeding years — are relative to works presumably made in the seven 'boat-houses' which had been built after the sale of the Villa.

The Plaintiffs also point out that the Defendants had filed 10 various receipts for payments to impress on the Referee, as they have in fact succeeded in doing, that substantial works took place **in the Villa** after its sale.

The Plaintiffs reserve the right to produce any evidence which may be necessary after hearing the evidence of the Defendants.

(Signed) F. N. BUTTIGIEG, Advocate.

This the 19th December 1959.

Filed by appearers without exhibits.

(Signed) M. PETROCCHINO, 20
Rep. Registrar.

* * *

HER MAJESTY'S CIVIL COURT — FIRST HALL

Judge:—

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

Having seen its previous Decree;

Having seen the reply of the Plaintiffs who do not oppose the request;

Allows the request.

This the 21st December 1959.

30

(Signed) U. BRUNO, D/Registrar.

No. 14.No. 14
Defendants'
Minute**Defendants' Minute.**

In the First Hall of Her Majesty's Civil Court.

Writ No. 294/1959 M.

Maria Felicia Cremona & Another.

vs.

Michael Abela & Others.

The Minute of Defendants.

Whereby they file the annexed documents:

- 10 N — a snapshot of the Villa having an iron balcony.
O — a snapshot of the Villa without this balcony, following
some alteration works.

(Signed) F. FARRUGIA, Advocate.

This the 29th January, 1960.

Filed at this day's sitting by Dr. R. Farrugia with two exhibits.

(Signed) M. PETROCCHINO,
Dep. Registrar.**No. 15.**

20

Procès Verbal of Court's sitting.No. 15
Procès Verbal of
Court's sitting

This the 29th January, 1960.

The Court,

Dispenses the Defendants from producing the evidence which they meant to produce and to which they referred in their application at fol. 46.

Counsel on both sides declare that they have no further submissions to make.

The cause has been disposed of.

(Signed) M. PETROCCHINO,
Dep. Registrar.

Judgment, H.M. Civil Court.

HER MAJESTY'S CIVIL COURT — FIRST HALL

Judge:—

The Honourable Mr. Justice A. Magri, B.Litt., LL.D.
 Sitting of Friday the twenty-ninth January, 1960.

Case No. 16.

Writ-of-Summons No. 294/1959 M.

Maria Felicia wife of Joseph Cremona
 absent from these Islands, as sole heiress of her father Joseph Abela, and
 Giuseppa widow of the said Abela, as
 an interested party in the community
 of conjugal acquets 10

vs

Michael, Antonio and Mary brothers
 and sister Abela.

The Court,

Having seen its judgment of the 26th June 1959 wherein are
 formulated the demand of the Plaintiffs and the pleas of the
 Defendants and with which this Court had disallowed the plea
 of prescription raised by the Defendants with costs against
 them and had appointed Advocate Dr. Fortunato Mizzi as legal
 referee to report to this Court whether the Plaintiffs' demand
 is tenable or not; 20

Upon seeing the report of the said referee filed on the 16th
 July 1959 and sworn by him on the 26th October 1959;

Upon seeing the Plaintiff's Note of criticism of the report
 of the referee filed on the 28th October 1959 (fol. 31);

Upon seeing the Note of Submissions of the Defendants of
 the 6th November 1959 (fol. 40); 30

Having seen the record of proceedings;

Having heard Counsel on both sides;

Considers that:—

The Legal Referee has submitted that the Plaintiffs'
 demand should be disallowed and this after he had submitted

that, even if the most favourable interpretation to the theory of simulation were to be given to the evidence, it would appear more likely that this simulation, if it existed, was a relative one, intended only to hide, in whole or in part, a contract of donation under the appearance of a contract of sale and, in this hypothesis, the Plaintiffs' demand should have been formulated much differently;

10 As appears from the behaviour of the Plaintiffs and as confirmed by their explicit declaration made in their said Note of Submissions at fol. 31 and 35 of the record, the Plaintiffs are basing their action on absolute simulation, that is, that by means of the contract of sale 'de quo', Joseph Abela and his brothers and sister (the Defendants) not only did not want to effect any sale but they did not want to do anything at all and that the contract was inexistent and null because devoid of any substance; the plaintiffs based their claim on circumstances emerging from the same deed as well as on facts which took place later. As they said in their said Note, the Plaintiffs see
20 this absolute simulation in the facts 1) that the Villa which was the object of the contract was described as being a small one and in the course of construction, whereas this was not true; 2) that the sale was made for the price of £800 which was ridiculous; 3) that the said price was stated to have been already paid to the vendor, when, according to the evidence, this could not have been the case; 4) that the sale was not preceded by the usual discussions and was made even in favour of Mary Abela, the vendor's sister, without her having ever showed any intention to buy the said Villa. Following the signing of the contract — the Plaintiffs further submit in their said Note —
30 the apparent vendor 1) continued to occupy part of the Villa without paying any rent; 2) continued to pocket the rent of the part let to others; 3) continued to appear, at least for a certain time, on the registers of the Water and Electricity Department; 4) in the deed of March 11, 1958 (fol. 115) he declared that the plot of land he took on emphyteusis from the firm Coleiro Brothers bordered on his property; and 5) the works which were made in the Villa and the 'boat-houses' after the sale were paid for by the vendor and not the Defendants.

40 All these circumstances — apart from the consideration whether they can be said to be adequately supported by the evidence heard — can, in the Court's opinion, only lead to the conclusion that the deed impugned is affected by **relative** simulation in that the contracting parties wanted to do and agree on something which, however, they wanted to hide under

No. 16
Judgment, H.M.
Civil Court
—Continued.

the appearance of a contract of sale as would happen, for example, in a deed of simulated donation. No bearing whatsoever has the fact that Joseph Abela, as stated above, following the publication of the deed which is being impugned, had indicated his property as one of the boundaries of the plot of land acquired by him, because — apart from any question regarding the truthfulness and the precise nature of the said boundary — the said declaration was made unilaterally by him and cannot, therefore, prejudice the rights which may have already been acquired by the Defendants by the deed ‘de quo’ (Law Reports Vol. XXVII I 394); much less importance has this declaration when one considers that, in the deed of September 13, 1955 (fol. 125), the Defendants had indicated, as one of the boundaries of the building site transferred by them, their own property — apparently the said Villa. Nor could the fact that the cause against Carmelo Zammit (for the repair of the terrace-flooring of the Villa) was instituted by the vendor Joseph Abela following the publication of the deed which is being impugned be an inference of absolute simulation, because everything took place with the consent and understanding of the Defendants in view of the fact that it was Joseph Abela who had dealt with Zammit and was in the know of all the facts — this circumstance can, saving other considerations, amount at Law to a procedural defect of which the Defendants need not have necessarily been aware, but does not necessarily point to the **absolute** simulation pleaded by the Plaintiffs.

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Against the theory of absolute simulation there is the explanation given by the Plaintiffs themselves regarding the “causa simulandi”; in their Note at fol. 34 they submitted that the motive for the simulation is expressed in the writ-of-summons (**recte**, in the declaration annexed thereto) wherein it is stated that “Joseph Abela lived apart from his wife and daughter (the Plaintiffs) since when the latter was a few months old, and that he had certain interests and sentiments which conflicted with his duties as a husband and a conscientious father, and, while he did not want to deprive himself, during his lifetime, of his property, **he did not wish either that his wife and daughter should enrich themselves at his expense** after his death”: this suggests that he wanted to remunerate, by means of the transfer in question, his brothers and sister at the expense of the Plaintiffs. In this way, however, he showed that he did not want to do something provisional but something definite, something which could not, after his death, be neutralised by those same people whom he wanted to deprive of the ownership in question. If, as the Plaintiffs maintain, the

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deed were affected by absolute simulation, the motive attributed by them to Joseph Abela would have been defeated for the property would have reverted to his estate if, indeed, it had ever left it at Law;

10 Things being as they are, the Plaintiffs did not succeed to prove that the contract 'de quo' is affected by **absolute** simulation and, therefore, the demand on which it is based is not tenable; nor could it be maintained that that demand covers also **relative** simulation because, apart from the delimitations already made by the Plaintiffs, the object-matter of the cause would be different; in fact, as Butera comments, while "the judgment which declares the simulation (that absolute) of a juridical transaction makes manifest that the act itself is **inexistent, devoid of any juridical value** and, therefore, **unproductive of any effect whatsoever**, in as much as that which 'colorem habet, substantiam vero nullam'..., in the matter of **relative** simulation, the judge, on the one hand, annuls the simulated act and, on the other hand, **uncovers the hidden transaction**" ("Simulation" subheading 'Juridical Transactions, para 115 page 373 and para 119 page 383) and Francesco Ferrara expresses the same concept thus: "The action (of relative simulation) is not aimed at the declaration of the **inexistence** of the whole act but at the declaration of the total or partial inexistence of the **apparent** act with a view to its **substitution** by the **true** act done by the contracting parties which they had hidden under that form". ("Of the simulation of Juridical Transactions" para 131). In view, therefore, of this diversity of the object-matter, it is not lawful to review the merits on the basis of relative simulation.

30 For these reasons,

ADJUDGES by disallowing the Plaintiffs' demand.

In view of the circumstances of the case, costs shall not be taxed as between party and party, but the registry fee shall be paid by the Plaintiffs.

(Signed) M. PETROCCHINO,
Dep. Registrar.

A true copy.

(Signed) S. BONELLO, D/Registrar.

Plaintiffs' Note of Appeal.

In the First Hall of Her Majesty's Civil Court.

Writ No. 294/1959 M.

Maria Felicia wife of Joseph Cremona
 absent from these Islands, as sole
 heiress of her father Joseph Abela, and
 Giuseppa wife of the said Abela as an
 interested party in the community of
 conjugal acquests

10

vs

Michael, Antonio and Mary brothers
 and sister Abela

Note of appeal of the Plaintiffs, the said Cremona being
 assisted by her said husband who is now in Malta.

Plaintiffs appear and deeming themselves aggrieved by
 the judgment given by this Court in the cause aforementioned
 on the 29th January 1960, hereby humbly enter appeal there-
 from to Her Majesty's Court of Appeal.

(Signed) V. CARUANA, Advocate.

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„ F. N. BUTTIGIEG, Advocate.

„ G. GALDES,

Legal Procurator.

This the fifth February 1960.

Filed by L.P. Giuseppe Galdes without exhibits.

(Signed) S. SANT'ANGELO, D/Registrar.

Her Majesty's Court of Appeal.

The record of this cause has this day been introduced
 before this Court.

The eighteenth of February, 1960.

30

(Signed) S. BONELLO, D/Registrar.

Plaintiffs' Petition of Appeal

In Her Majesty's Court of Appeal.

Writ No. 294/1959 M.

Maria Felicia wife of Joseph Cremona
absent from these Islands, as sole
heiress of her father Joseph Abela, and
Giuseppa wife of the said Abela as an
interested party in the community of
conjugal acquets .

10

vs-

Michael, Antonio and Mary brothers
and sister Abela.

The Petition of Plaintiffs, the said Cremona being assisted
by her husband who is now in Malta.

Respectfully sheweth:—

By writ-of-summons filed on April 11, 1959 before the First
Hall of Her Majesty's Civil Court, the Plaintiffs, after premis-
ing that the said Joseph Abela, by deed in the records of
20 Notary Joseph Gatt of April 17, 1952 had declared that he was
selling to Defendants the Villa known as "Maria Teresa", in
the course of construction, situated at Rdum Irxew, in the
limits of St. Paul's Bay, for the price of eight hundred pounds
(which was not paid on the deed), subject to the payment of a
sub-ground-rent of eleven pounds per annum, and that this was
a fictitious sale as would be proved during the hearing of the
case, prayed that, for this reason, the said deed be rescinded,
under the directions which the Court may give, with costs
against the Defendants.

30 By judgment of January 29, 1960 the First Hall of Her
Majesty's Civil Court disallowed the demand of Plaintiffs —
the costs, in view of the circumstances of the case, were not to
be taxed as between party and party but the registry fee to be
paid by the Plaintiffs.

Petitioners have deemed themselves aggrieved by that
judgment and have entered appeal therefrom to this Honour-
able Court of Appeal by Minute dated the 5th February, 1960.

The grievance is manifest. It appears in fact from the
reasoning of the judgment appealed from that that Court was

perplexed by the resulting evidence and, without expressing definite opinion on the evidence, stated that the circumstances mentioned by petitioners “can lead to the conclusion that the deed impugned is affected by **relative** simulation ...” Now this relative simulation could not be otherwise — though the Court did not say so — than one of donation; indeed, through a donation, Joseph Abela could have arrived, up to a certain extent, at his intent of depriving his wife and daughter of their rights: but, in this case, his wife and daughter would have preserved their respective rights for their share of the community of acquets and the legitim. It could be, therefore, that, in the circumstances, Joseph Abela wanted to hide the donation under the appearance of a sale in order to evade the rights of petitioners; had it been so, however, it would have been the duty of the Defendants to state the facts as they were, admit that there had been simulation and maintain that the simulation was one of donation which Joseph Abela wanted to make in their favour. The Defendants said nothing of the sort and the Court could not substitute its own initiative to that of the Defendants; indeed, the stand taken by the Defendants (that is, their Statement of Defence) exclude any idea of donation because they kept maintaining that the deed was truly one of sale — what is diametrically different to a donation in both its material and intentional elements. And yet the Court said that, had the simulation been absolute, “the motive attributed by them (that is by the Plaintiffs) to Joseph Abela would have been defeated for the property would have reverted to his estate, if indeed it had ever left it at Law”. This argument of the Court does not hold any water because it presumes that the deed would be impugned successfully. Whoever does an act which is absolutely simulated, does it in the hope that the simulation remains unsuspected or unproven and, in this way, arrives at his intent, because even in the case of an absolute simulation the contracting parties have a scope at which they want to arrive. Strictly speaking, it is not a case of stating that the simulation was really absolute (in the sense that Joseph Abela wanted that the deed should be devoid of any juridical effect): he wanted it to have effect after his death because only after his death could his wife and daughter exercise their rights. It is quite a common thing — especially because of succession duties — for deposits of money to be made in someone’s name on the understanding, however, that the money should remain the property of the depositor who could withdraw any amount and the residue would be the property of the person in whose name the deposit was made.

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10 It is natural that whoever wants to deprive his legitimate successors of their rights after his death would hate depriving himself of his property during his lifetime. It was for this reason that, following the deed in question, Joseph Abela — with his brothers' and sister's connivance — continued to act and behave as owner as before the publication of the deed. This appears from the evidence produced by appellants and from the contradictions in which Defendants fell in their depositions as shown in the Plaintiffs' Note of Submissions at fol. 35 and 38, to which an express reference is being made here. It is hardly necessary to point out that such a disposition, which would have effect after one's death and which is not contained in a Will but in an onerous simulated deed, could have no validity at Law.

20 Wherefore Appellants — while producing the undermentioned surety for the costs of the appeal proceedings and making reference to the evidence heard and reserving the right to produce further evidence, including making a reference to Defendants' oath — humbly pray that the judgment given in this cause by H.M. Civil Court, First Hall, on January 29, 1960, be revoked and that Plaintiffs' claim be allowed with costs of first and second instance.

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

This the 18th February 1960.

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

(Signed) S. SANT'ANGELO, D/Registrar.

* * *

30 John Bonnici, son of the late Alfred and Caterina Debrincat, born and residing in Valletta, appears and hereby stands joint-surety with the Appellants Maria F. Cremona et for the costs of this appeal, hypothecating the whole of his present and future property in general and renouncing every benefit accorded by Law.

(Signed) JOHN BONNICI.

The said John Bonnici has signed this bond in my presence, this the eighteenth (18) February, 1960.

(Signed) V. BORG GRECH,
 Ass. Registrar.

40

No. 19
Registrar's
Protest

No. 19.

Registrar's Protest.

Her Majesty's Court of Appeal.

Maria Felicia Cremona & Another.

vs.

Michael Abela & Others.

The Protest of Advocate Dr. Edgar Buhagiar, Registrar of the Superior Courts.

Whereby he objects to the sufficiency of the surety produced by the appellants, simultaneously with their Petition, in the person of John Bonnici. 10

(Signed) WALLACE PH. GULIA,
Crown Counsel.
,, EDGAR BUHAGIAR,
Registrar.

This the 19th February, 1960.

Filed by the Registrar without exhibits.

(Signed) A. FARRUGIA, D/Registrar.

No. 20
Respondents'
Protest

No. 20.

Respondents' Protest.

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In Her Majesty's Court of Appeal.

Maria Felicia Cremona & Another.

vs.

Michael Abela & Others.

The Protest of respondents Michael, Antonio and Mary brothers and sister Abela.

Whereby they object to the sufficiency of the surety offered by the appellants simultaneously with their Petition.

(Signed) R. FARRUGIA, Advocate.
,, C. VASSALLO,
Legal Procurator. 30

This the eleventh March 1960.

Filed by L.P. Charles Vassallo with no exhibits.

(Signed) S. BONELLO, D/Registrar.

No. 21.No. 21
Respondents'
Reply**Respondents' Reply.**

In Her Majesty's Court of Appeal.

Maria Felicia Cremona & Another.

vs.

Michael Abela & Others.

The reply of respondents Michael, Antonio and Mary Abela.

Respectfully sheweth:—

10 The grievances mentioned by the Plaintiffs in their Petition are untenable.

It is in fact not true what the Plaintiffs stated that the first Court had remained perplexed by the resulting evidence. That Court had stated that the circumstances mentioned by the Plaintiffs (and not the bulk of the evidence) could lead — in the hypothesis most favourable to the Plaintiffs — to relative simulation. On this consideration, the first Court had no need to pronounce itself as to whether they led or not to relative simulation because such a pronouncement could not affect its
20 decision on the Plaintiff's claim which stood for absolute simulation.

In their Petition, the Plaintiffs did not adduce any valid argument in favour of their thesis that the deed 'de quo' is absolutely simulated; the arguments which they adduced seem to be based on the theory — which they did not even mention in first instance — that the contract was affected by relative simulation.

30 Respondents contest even this thesis of relative simulation and submit that — as the first Court rightly held — relative simulation cannot be adjudged on a demand for absolute simulation: no submission was made on this point by the Plaintiffs in their Petition.

Respondents had replied to the Plaintiffs' Note of Submissions before the first Court by another Note of Submissions to which they make reference.

40 Respondents declare that they wish to avail themselves of the Plaintiffs' appeal in order to enter a cross-appeal on the decision as to costs (which awarded part of the costs against Defendants) contained in the aforementioned judgment of January 29, 1960.

No. 21
Respondents'
Reply
—Continued.

On this cross-appeal, respondents submit that the Plaintiffs' demand was adjudged completely untenable and that, before filing their summons, the Plaintiffs had been aware of the facts and they must, therefore, bear the entire costs of the action which they instituted before the Court and which resulted in an unfavourable decision to them.

Wherefore, respondents humbly pray that the aforementioned judgment given by the First Hall of H.M. Civil Court on January 29, 1960 be confirmed on the merits and modified in its decision as to costs, this Court ordering instead that the costs of both first (apart from those of the preliminary judgment regarding the plea of prescription) and second instance be awarded against the Plaintiffs. 10

(Signed) R. FARRUGIA, Advocate.
,, C. VASSALLO,
Legal Procurator.

This the twelfth March 1960.

Filed by L.P. Charles Vassallo without exhibits.

(Signed) S. SANT'ANGELO, D/Registrar.

No. 22
Appellants'
Counter
Reply

No. 22.

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Appellants' Counter Reply.

In Her Majesty's Court of Appeal.

Maria Felicia Cremona & Another.
vs.
Michael Abela & Others.

The counter-reply of Plaintiffs.

Respectfully sheweth:—

The cross-appeal of Defendants is untenable.

Wherefore the Plaintiffs, while making reference to and reaffirming their principal appeal, pray that the cross-appeal be dismissed with costs. 30

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

This the seventeenth March, 1960.

Filed by L.P. Gius. Galdes without exhibits.

(Signed) S. BUGEJA, D/Registrar,

No. 23.
Appellants' Application.

No. 23
Appellants'
Application

In Her Majesty's Court of Appeal.

Maria Felicia Cremona & Another.
vs.
Michael Abela & Others.

The application of the Appellants.

Respectfully sheweth:—

This cause is put off for judgment till the 17th June, 1960.

10 In their Notes of Submissions, Applicants made reference to the evidence heard and produced in other suits and proceedings between the contending parties.

Applicants submit that among this evidence is that heard in the cause "Maria Felicia Cremona —vs— Michael Abela et" (writ-of-summons No. 16/1959) which stands adjourned **sine die** before the First Hall of the Civil Court and they wish especially to make reference to the deposition of Joseph Pavia (fol. 12 towards the end of the page) and of Maria Felicia Cremona (fol. 110).

20 Wherefore Applicants respectfully request leave to make reference to that evidence under the directives which this Court may give.

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

This the tenth June 1960.

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

30 (Signed) S. BONELLO, D/Registrar.

* * *

HER MAJESTY'S COURT OF APPEAL

The Court,

Orders that the Application be communicated to Counsel for the opposite party.

This the tenth June, 1960.

(Signed) S. BONELLO, D/Registrar.

Respondents' Reply and Court's Decree.

In Her Majesty's Court of Appeal.

Maria Felicia Cremona & Another
vs.
Michael Abela & Others

The reply of the Respondents to appellants' application of June 10, 1960.

Respectfully sheweth:—

The request of Appellants is nothing more than a request for the production of new evidence on appeal without any reason being given to justify this request. 10

The said application gives no hint of the scope for which the reference to the evidence is required.

The deposition to which Appellants refer at fol. 12 of the cause which stands adjourned **sine die**, is merely a copy of a deposition given in other proceedings which took place much before the present suit was instituted; regarding the evidence of Appellant Maria Felicia Cremona, the latter has already testified in this suit and no importance, therefore, could be attached to what she might have testified in other proceedings. 20

The record of these proceedings is not available to respondents who cannot, therefore, give further reasons why the request of Appellants should be disallowed.

Wherefore, at this stage, they oppose the demand of Appellants.

(Signed) R. FARRUGIA, Advocate.
 ,, C. VASSALLO,
 Legal Procurator.

* * *

HER MAJESTY'S COURT OF APPEAL 30

The Court,

Having seen the application,
Disallows the request

This the twenty sixth June, 1960.

(Signed) S. BONELLO, D/Registrar.

No. 25.

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 Judgment,
 H.M.'s Court of
 Appeal

Judgment, H.M. Court of Appeal.

HER MAJESTY'S COURT OF APPEAL
 (Civil Hall)

Judges:—

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

The Honourable Mr. Justice A. J. Montanaro-Gauci
 C.B.E., K.M., LL.D.

10 The Honourable Mr. Justice W. Harding, C.B.E.,
 K.M., B.Litt., LL.D.

Sitting of Monday, the twenty-seventh (27) day of June,
 1960.

Case No. 4.

Writ-of-Summons No. 294/1959.

20 Maria Felicia wife of Joseph Cremona
 absent from these Islands, as sole
 heiress of her father Joseph Abela, and
 Giuseppa widow of the said Abela as an
 interested party in the Community of
 Conjugal Acquests

vs.

Michael, Antonio and Mary brothers
 and sister Abela.

The Court,

30 Upon seeing the writ-of-summons filed on April 11, 1959 in
 Her Majesty's Civil Court, First Hall, whereby the Plaintiffs —
 after premising that the said Joseph Abela, by deed in the
 records of Notary Joseph Gatt of April 17, 1952, had declared
 that he was selling to defendants the Villa known as "Maria
 Teresa", in the course of its construction, situated at Rdim
 Irxew, in the limits of St. Paul's Bay, for the price of eight
 hundred pounds, which was not paid on the deed, subject to the
 payment of a sub-ground rent of eleven pounds per annum, and
 that this was a fictitious sale as would be proved during the
 hearing of the case, prayed that the aforementioned deed be
 rescinded under the directions which the Court may give. With
 costs against Defendants;

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—Continued.

Upon seeing the Statement of Defence of the Defendants in which they pleaded (1) preliminarily, the expiration of the period of limitation; (2) on the merits and without prejudice, the untenability of the Plaintiffs' claim;

Having seen the judgment of that Court of June, 26, 1959 which had disallowed the plea of prescription and had appointed a Legal Referee to report whether the Plaintiffs' claim was tenable or not;

Having seen the Report of the said Referee;

Having seen the judgment of the said Court of January 29, 1960 whereby the Plaintiffs' demand was disallowed, the costs, in view of the circumstances of the case, remained untaxed as between party and party but the registry fee was ordered to be borne by the Plaintiffs: that Court having considered:— 10

The Legal Referee has submitted that the Plaintiffs' demand should be disallowed and this after he had submitted that, even if the most favourable interpretation to the theory of simulation were to be given to the evidence, it would appear more likely that this simulation, if it existed, was a relative one, intended only to hide, in whole or in part, a contract of donation under the appearance of a contract of sale and, in this hypothesis, the Plaintiffs' demand should have been formulated much differently; 20

As appears from the behaviour of the Plaintiffs and as confirmed by their explicit declaration made in their said Note of Submission at fol. 31 and 35 of the record, the Plaintiffs are basing their action on absolute simulation, that is, that by means of the contract of sale 'de quo', Joseph Abela and his brothers and sister (the Defendants) not only did not want to effect any sale but they did not want to do anything at all and that the contract was inexistent and null because devoid of any substance; the Plaintiffs based their claim on circumstances emerging from the same deed as well as on facts which took place later. As they said in their said Note, the Plaintiffs see this absolute simulation in the facts 1) that the Villa which was the object of the contract was described as being a small one and in the course of construction, whereas this was not true; 2) that the sale was made for the price of £800 which was ridiculous; 3) that the said price was stated to have been already paid to the vendor, when, according to the evidence, this could not have been the case; 4) that the sale was not preceded by the usual discussions and was made even in favour of Mary Abela, the vendor's sister, without her having 30 40

ever showed any intention to buy the said Villa. Following the signing of the contract — the Plaintiffs further submit in their said Note — the apparent vendor 1) continued to occupy part of the Villa without paying any rent; 2) continued to pocket the rent of the part let to others; 3) continued to appear, at least for a certain time, on the registers of the Water and Electricity Department; 4) in the deed of March 11, 1958 (fol. 115) he declared that the plot of land he took on emphyteusis from the firm Coleiro Brothers bordered on his property; and 5) the works which were made in the Villa and the 'boat-houses' after the sale were paid for by the vendor and not the Defendants.

All these circumstances — apart from the consideration whether they can be said to be adequately supported by the evidence heard — can, in the Court's opinion, only lead to the conclusion that the deed impugned is affected by **relative** simulation in that the contracting parties wanted to do and agree on something which, however, they wanted to hide under the appearance of a contract of sale as would happen, for example, in a deed of simulated donation. No bearing whatsoever has the fact that Joseph Abela, as stated above, following the publication of the deed which is being impugned had indicated his property as one of the boundaries of the plot of land acquired by him, because — apart from any question regarding the truthfulness and the precise nature of the said boundary — the said declaration was made unilaterally by him and cannot, therefore, prejudice the rights which may have already been acquired by the Defendants by the deed 'de quo' (Law Reports Vol. XXVII I 394); much less importance has this declaration when one considers that, in the deed of September 13, 1955 (fol. 125), the Defendants had indicated, as one of the boundaries of the building site transferred by them, their own property — apparently the said Villa. Nor could the fact that the cause against Carmelo Zammit (for the repair of the terrace-flooring of the Villa) was instituted by the vendor Joseph Abela following the publication of the deed which is being impugned be an inference of absolute simulation, because everything took place with the consent and understanding of the Defendants in view of the fact that it was Joseph Abela who had dealt with Zammit and was in the know of all the facts — this circumstance can, saving other considerations, amount at Law to a procedural defect of which the Defendants need not have necessarily been aware, but does not necessarily point to the **absolute** simulation pleaded by the Plaintiffs.

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Against the theory of absolute simulation there is the explanation given by the Plaintiffs themselves regarding the "causa simulandi"; in their Note at fol. 34 they submitted that the motive for the simulation is expressed in the writ-of-summons (**recte**, in the declaration annexed thereto) wherein it is stated that "Joseph Abela lived apart from his wife and daughter (the Plaintiffs) since when the latter was a few months old, and that he had certain interests and sentiments which conflicted with his duties as a husband and a conscientious father, and, while he did not want to deprive himself, during his lifetime, of his property, **he did not wish either that his wife and daughter should enrich themselves at his expense** after his death": this suggests that he wanted to remunerate, by means of the transfer in question, his brothers and sister at the expense of the Plaintiffs. In this way, however, he showed that he did not want to do something provisional but something definite, something which could not, after his death, be neutralised by those same people whom he wanted to deprive of the ownership in question. If, as the Plaintiffs maintain, the deed were affected by absolute simulation, the motive attributed by them to Joseph Abela would have been defeated for the property would have reverted to his estate if, indeed, it had ever left it at Law;

Things being as they are, the Plaintiffs did not succeed to prove that the contract 'de quo' is affected by **absolute** simulation and, therefore, the demand on which it is based is not tenable; nor could it be maintained that that demand covers also **relative** simulation because, apart from the delimitations already made by the Plaintiffs, the object-matter of the cause would be different; in fact, as Butera comments, while "the judgment which declares the simulation (that absolute) of a juridical transaction makes manifest that the act itself **is in-existent, devoid of any juridical value** and, therefore, **unproductive of any effect whatsoever**, in as much as that which 'colorem habet, substantiam vero nullam' ..., in the matter of **relative** simulation, the judge, on the one hand, annuls the simulated act and, on the other hand, **uncovers the hidden transaction**" ("Simulation" subheading 'Juridical Transactions, para 115 page 373 and para 119 page 383) and Francesco Ferrara expresses the same concept thus: "The action (of relative simulation) is not aimed at the declaration of the **in-existence** of the whole act but at the declaration of the total or partial in-existence of the **apparent** act with a view to its **substitution** by the **true** act done by the contracting parties which they had hidden under that form" ("Of the simulation

of Juridical Transactions" para 131). In view, therefore, of this diversity of the object-matter, it is not lawful to review the merits on the basis of relative simulation.

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Upon seeing the note whereby the Plaintiffs appealed from this last mentioned judgment and their Petition whereby they prayed that that judgment be revoked and their demand allowed with costs of both instances;

10 Upon seeing the reply of the Defendants wherein they stated that the grievances alleged in the Petition were unfounded and, at the same time, cross-appealed from the decision as to costs and prayed that this head of the judgment be reformed so that the costs of the first instance (except those of the preliminary judgment regarding the plea of prescription) as well as the costs of the principal and cross-appeal be borne by the Plaintiffs;

Upon seeing the counter-reply of the Plaintiffs wherein they stated that the cross-appeal of the Defendants was without foundation;

20 Having seen the record of proceedings, heard the oral submissions of Counsel;

Considers **on the principal appeal:**

The sentence appealed from substantially held that:

1. the demand of the Plaintiffs is based on absolute simulation;
2. the Plaintiffs did not succeed to prove **this** simulation and, therefore, their demand, which is based on it, is untenable;
3. in so far as the evidence may show that the deed impugned may be affected by relative simulation, this issue cannot be examined in the present cause because it is not
30 comprised within the terms of the writ-of-summons.

This Court agrees with the first conclusion. The Plaintiffs' thesis is that the deed of sale in question was absolutely fictitious; the parties did not want and never had any idea to enter into a sale-transaction but merely wanted to create the **appearance** of such a transaction, in such a way that the apparent vendor did not want to divert himself of his property, nor did the apparent buyers acquire that property in virtue of that deed.

40 But, in this Court's opinion, if the Plaintiffs succeed in proving that, **as a sale-transaction**, the deed impugned was

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really fictitious as stated above, their demand must succeed in the absence of any deduction and evidence that it was in reality a different contract. The only hypothesis which seems possible (and which, in fact, was accepted by the first Court), is that the deed impugned may, under the appearance of the sale, hide a donation. But the **Defendants themselves** to whom only such a hypothesis could, even though subordinately, avail, did not in fact suggest it; on the contrary, they continued to deny it in their reply to the Petition. They maintained and continued to maintain till the very end that the deed was truly and really a sale transaction **and nothing else**. At no stage did they suggest that — if it were to be held that the elements of, and intention to effect, a sale-transaction were lacking — still the deed contained all the ingredients of, and the intention to effect, another transaction, e.g. a donation. In the absence of any such-like submission on the part of the Defendants, the Court feels that if, on the evidence, there was no sale-transaction and if in the intention of the parties, there should not have been any sale-transaction in the contract, **no other contract**, whatever it may be — for whose existence the interested parties would have had to prove its particular material and intentional ingredients — was contemplated by the contracting parties and, therefore, they had no intention to bind themselves by any contract. This means in effect that the deed impugned is, therefore, absolutely simulated.

10

20

The whole question, therefore, resolves itself into one of evidence in order to examine whether there really was a sale-transaction.

This Court, after carefully examining the evidence including the documents produced after the Petition was filed, feels inclined to hold, as in fact it holds, that the reply to that question must be a negative one, the Court having kept well in view the rule that the burden of evidence rests on the Plaintiffs and that the evidence must be sound and convincing.

30

By means of the deed which is being impugned, Joseph Abela appeared to have sold something to his brother Michael Abela who said he was appearing in his own name and in the name of his sister Mary Abela and of his brother Antonio Abela. The apparent buyers were, therefore, the brothers and sister of the apparent vendor who, according to the evidence, used to live with them in one premises.

40

As the Legal Referee has stated, the evidence clearly showed that the price mentioned in the deed was considerably

low. At the time of the publication of the deed, the Villa, if not wholly completed, was probably already occupied. According to the evidence, the sum of £2002 18s. 0d. had already been spent on works. If to this amount one had to add, for a fair appraisal of the premises transferred, the value of the site itself, the said amount would have to be increased by some £350 more. Now the price mentioned in the deed was of £800.

10 The circumstances in which the sale and the price were supposed to have been agreed upon are simply incredible if one had to assume that the transaction was genuine and real. Defendant Michael Abela testified before the legal referee (fol. 17) that it was he who had discussed the sale with Joseph. The price **was fixed** by Joseph: he (Michael) told him that he would not give him any money because they had their own money in his possession and Joseph agreed to get paid out of that money. The offer of sale was made by Joseph to **him**, but he proposed to include his brother Antonio with him. **When they came to sign the deed**, he proposed that the acquisition be made also by his sister Mary because she lived with and took care of
20 them.

The said Mary Abela testified (fol. 18) that she was not even aware that the acquisition was to be made in her name. She became aware after the publication of the deed **because they gave her a copy to read**.

30 Antonio Abela in his evidence at fol. 123 said that **he did not even know how much** was the sale-price for the Villa, because he used to leave everything in the hands of his brothers Michael and Joseph, so much so that he did not even appear on the deed. And yet in his evidence before the legal referee (fol. 14) he said that, as the brothers had between them a partnership styled "Abela Brothers" for port-works and Joseph had not given them their share of the profits, **they had agreed** that Joseph was to transfer the Villa to them **for the price of £800** on condition that he was to take this amount out of their share of the funds which were in his possession. Antonio Abela added that, although the Defendant Mary Abela had no share in the partnership, yet, as they were on excellent terms, **they thought they should include her with them**. And yet, as already stated, the idea that Mary was to be joined in the acquisition
40 was Michael's own "when they came to sign the deed".

From all this we have, therefore, that Joseph Abela who, for a number of years, was supposed to collect and keep the profits of the partnership which belonged to **all** the brothers —

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including two who are not parties to the suit — all of a sudden, without any reason (for none was alleged), without anybody asking him, himself proposes to sell the Villa which he was still constructing to **one** of his brothers: he fixes the price **himself** and agrees to set it off with the share of the profits which allegedly belong to his **brothers**. Though the value of the Villa then was, at least, £2400, he sells it for £800 and the buyer decides to join with him, without anybody asking him, another brother of his and his sister — by chance the only brother and sister who cohabited with him and the vendor. The other brothers who are also supposed to be partners are left out. 10

After the publication of the deed, Joseph Abela went **abroad**. Defendant Antonio Abela, who gave this information and who lived with Joseph, said **he did not know why** the latter went abroad. Naturally, the Court cannot make any conjectures in the absence of evidence. Had it resulted, however, that Joseph Abela went abroad for health reasons, this fact would have shed much light on the transaction. Be this as it may, the picture surrounding the sale as presented by the acquirers is in the opinion of the Court, simply unreal. 20

The Court does not even believe that the price, ridiculous as it was, was truly set-off with any amounts which were owing to Michael and Antonio Abela. In the first place, if this was really what was taking place in earnestness, the declaration of payment in the deed in question (fol. 89) would have been drafted much differently. It was stated in the contract that the vendor **had already received the price from the buyer** and gave him a receipt for it. Had this contract been a real one and the vendor was really and truly setting-off the price with amounts of profits from the partnership which were in the vendor's own hands, he would have had a clear interest to declare this fact, precisely in order that the buyers should not eventually claim once more their share of the profits. 30

Besides this, however, there is this more to say. It simply cannot be explained how, while both the Defendant Michael Abela and the Defendant Antonio Abela had **their own** bank deposits and **their own** other monies, which they were supposed to have saved from extra work they used to do — they who in the alleged partnership used to do virtually nothing or very little — what Joseph possessed belonged to the three of them together. In fact, according to the testimony of Michael (fol. 18), when Joseph died he left no immovable property apart from two or three emphyteutical sites and a share of some immovable property left by his uncle Publio Debono which was 40

bequeathed as subject to the usufruct of the Defendant Mary Abela. He did not leave any monies except £10 and a bank deposit of about £14 (fol. 18). According to this evidence, therefore, when Joseph sold the Villa and set-off its price with what had been owing to Michael and Antonio, he (Joseph) **was left with virtually nothing**. But this evidence of Michael is not complete or rather it is untrue: Infact, Mary Abela in her evidence before the legal referee (fol. 19) said that, apart from the £10 and £14 mentioned by Michael, Joseph left also three

10 Bank books of Lombard Bank showing a balance of about £1700 in the name of Joseph, Michael and Antonio Abela. Michael Abela in the evidence he gave at fol. 120 had admitted that, among the things left by Joseph, they had found three Bank books of Lombard Bank: one in Joseph's name, the other in his name and the third in Antonio's name: these deposits had been made **by the deceased**. "The money which had been deposited by him with Lombard's in the name of us three" — Michael added — "had been previously deposited in another bank in Malta, probably the National Bank, **in his own name only**:"

20 when he decided to transfer the money to Lombard's **we told him** to deposit them **in the name of us three**". It is **not true**, therefore, that Michael and Antonio **never took a penny** out of what Joseph had collected supposedly in the name of all partners in the partnership; still less could it be true that the price of £800 agreed upon for the sale of the Villa represented **all** that Antonio and Michael were claiming as their share of the profits of the partnership which Joseph was supposed to have gathered.

40 There is then the following circumstance which is very eloquent in the Court's opinion. Joseph Pavia testified that he was once asked by Defendant Michael Abela to enquire of Father Antonio Abela whether he (Michael Abela) would be making a false oath were he to say on oath that the Villa was his. Michael Abela himself admitted that these words had been said and remembered that Father Antonio Abela had told him that if he had not paid any money for the Villa, he would be making a false oath if he said that it was his: if he had paid any money, however, he would not be making a false oath were he to say on oath that the Villa was his.

30 Without dwelling on other points, the Court only points out that this doubt or scruple on Michael Abela's part cannot be explained away had it really been a case of a genuine sale with the price set-off against amounts which were really due — as he and the Defendant Antonio Abela are now maintaining.

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It has already been said that no reason has been put forward by the Defendants nor does any reason appear from the evidence why Joseph Abela should have wanted to sell the said Villa to the Defendants (apart, that is, from that which appears evident from the circumstances of the case, namely, to evade the rights of the plaintiffs).

The Villa was not even completely constructed. It was stated in the contract: "The buyer proprio et nomine knows what works have been made in the Villa which he is buying and undertakes to continue the works himself together with his brother and sister for whom he is appearing" (fol. 89). 10

When Michael Abela gave evidence, as appears at fol. 122 he stated as follows: "When we acquired the Villa I did not know how much of it had been ready". From the same deposition, it appears that, notwithstanding the undertaking he assumed "proprio et nomine" "to continue the works themselves", the work was continued always **by Joseph**: "Joseph continued to interest himself in the completion of the Villa and the construction of the other seven boat-houses". Michael did not know who was the mason, the architect, the carpenters and the other workers "because the work **was continued** by Joseph" (fol. 122). Antonio Abela testified that he did not know who were the workers who continued to work in the Villa because "we left the remaining works in the hands of my brother (Joseph)" (fol. 122). 20

Not only did Michael and Antonio fail to carry out the works, as they were supposed to have undertaken to do in the contract, and to be aware of what was taking place after that the Villa had supposedly become theirs, but it does not even appear that they paid anything **of their own** for those works which were made **in the Villa**, though some of the bills were made out in the name of Michael. To begin with, some of the bills filed at fol. 102-115 may easily refer to the boat-houses (garages) which Michael Abela says he had built, in his name and in the name of Antonio, on **another** plot of land which they took in emphyteusis, **adjacent to the Villa** (fol. 17). Before the legal referee, Michael Abela testified that the boat-houses, whether those in front of the Villa and the rest, were built by him, **after the contract, with his own money** (fol. 17) and added: "I took the money needed for the construction of the boat-houses from the cash I had at home and from my account with Barclays Bank" (fol. 17). This is a shameless contradiction with what Michael Abela had testified (fol. 121) where he stated that the boat-houses were built and work at the Villa continued **with** 30 40

the money which he used to receive as rent of the six boat-houses in front of the Villa and that he had never withdrawn money from the Bank to pay anything "for everything was in the hands of Joseph". It was only "once or more" that he had paid the mason himself with his own money "not, that is, with the money which his brother Joseph had given him with which to pay the mason" (fol. 121). Further on in the same evidence Michael Abela again admitted that the Villa was continued and the other seven boat-houses built from the rent of the six garages which are in front of the Villa and which belonged to Joseph.

Antonio and Mary Abela, on the other hand, do not even allege that they had paid any money of theirs to continue the works in the Villa or in the boat-houses in front of it.

Even the letting continued to be made by Joseph. Michael Abela was not even aware who were the tenants (fol. 122) or how much the Villa and the boat-houses had cost (fol. 121).

As to the rent of that part of the Villa let to the brothers Pavia, Michael Abela thus testified before he legal referee: "The rent used to be given by them (Pavia) either to me or to my brother Joseph or to somebody else and these used then to hand the money to me" (fol. 18). This is decisively contradicted by Joseph Pavia who testified that he and his brother "continued to pay the rent" to Joseph Abela. Indeed, they were not even aware that Joseph Abela had transferred the Villa to third parties and the Defendants never mentioned to them that they had a share of the Villa (fol. 10). It was only after the death of Joseph Abela that Pavia, for the first time, paid the rent to Defendant Mary Abela (fol. 11). Even if (presumably after the date of the contract) Pavia had at times made out some receipts for rent in the name of Michael Abela, this was evidently a part of the mis-en-scene of the simulation perpetrated by the deed as the money was pocketed by Joseph Abela (fol. 16).

On this point, Pavia is corroborated and Michael Abela contradicted by Defendant Antonio Abela who testified that "the brothers Pavia used to give or send the rent for the part of the Villa let to them to my brother Joseph who kept it for himself" (fol. 16).

Giuseppe Abela not only continued to take care of everything concerning the Villa even after the deed — he continues the works, engages the workers, pays for the works out of the rent received from the boat-houses, gives out parts thereof on

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lease, receives the rent and reserves a part of the Villa and the garden for himself: all this without the least interference from or even the least reference to the Defendants — but even in official correspondence and in judicial acts continued to appear as the owner. It is simply idle for the Defendants, in the circumstances, to allege that he used to do this with their consent or because they themselves told him so to act. The clear truth is that Joseph Abela knew and was aware — and the Defendants knew and admit — that, in spite of the appearance of the deed, he was still, as he had been before, the true owner of the premises. 10

With all due respect to the first Court, this last 'indicium' of simulation is not neutralised by the exhibits at fol. 102-115, which, in the opinion of this Court, had been filed with a view not to enlighten but to mislead the Court. Infact, it is obvious that those exhibits refer **not** to the premises in question but to another plot of land which, as already stated above, Michael and Antonio Abela had taken on emphyteusis **in their own name.**

The Court does not feel it should go into further details which could have been pointed out, consisting particularly in the contradictions existing in the evidence of the Defendants as rightly pointed out in the Note of Submissions of the Plaintiffs at fol. 31 et seq. 20

As against the Plaintiffs' thesis, it was observed in the judgment appealed from that, if it were true that by the deed in question Joseph Abela wanted that the Plaintiffs, being his wife and daughter, should not benefit of his said property after his death, this showed that he did not want to do a provisional but a definite transaction, something which could not, after his death, be neutralised by those same persons whom he wanted to deprive of the ownership in question: for if, as the Plaintiffs maintain, the deed were affected by absolute simulation, the motive attributed by them to Joseph Abela would have been defeated for the property would have reverted to his estate, if indeed it had ever left it at Law. 30

With all due respect, this Court agrees with the Plaintiffs' submission in their Petition that this reasoning is wholly fallacious. If it be true — as even the Defendants themselves appear to have been forced to grant — that Joseph Abela and the Defendants, at the same time in which they were supposed to conclude a sale — which according to Law (section 1397 of the Civil Code) transfers, as soon as agreement is reached, the 40

property of the thing together with its enjoyment and possession — nevertheless intended that the thing should not really pass from the ownership, possession and enjoyment of the vendor, then **there was no** real and true contract of sale. By creating an **appearance** of such a contract, it was their intention that, after the death of the vendor, the Defendants would continue **to appear** as owners in virtue of that title. But in as much as this was their intention, the contract was not one of sale, but, if at all, a disposition “causa mortis” which could not
10 have been validly made in that manner.

Whoever does a simulated act (at least speaking of sane persons) does it with the intent and hope that the simulation succeed. If the reasoning of the first Court were correct, there could **never** be a case of absolute simulation. The simulated act remains valid until the simulation is suspected and proved (and who does it, thinks and hopes that this would not take place): until this is done, the parties can succeed in their design on the strength of the appearance of that deed. “Until such time as
20 the simulated act is not legally removed away, it exists and produces all the effects which it is capable of producing, because the appearance takes the place of the reality and what appears takes the place of what really is” (Butera on the ‘Actio Pauliana’ (1934) p. 73). The fact that the parties on the deed impugned could have chosen **another** manner, genuine and real, to reach their intent means nothing. Experience shows that — luckily for the due observance and execution of the Law — whoever thinks of evading or contravening the Law, often makes use of the wrong means or makes mistakes which are so banal as fortunately to defeat his own intent.

30 For these reasons, this Court is of opinion that, taking together, as they should, all the evidence and ‘indicia’, the Plaintiffs have succeeded in proving that the deed impugned was fictitious.

On the cross-appeal:

This appeal is limited to the decision as to costs in view of the fact that in the judgment appealed from, the first Court had ordered that the costs be not taxed as between party and party except for the registry fee which was to be borne by the Plaintiffs. The Defendants feel that all costs should have been
40 awarded against the Plaintiffs.

In view of the conclusion reached by this Court on the principal Appeal, it is obvious that the cross-appeal must fail.

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For these reasons, this Court ADJUGES by

1. disallowing the cross-appeal of the Defendants with costs against them;
2. allowing the principal appeal of the Plaintiffs, revokes the judgment appealed from and allows the demand of the Plaintiff, this Court declaring that the deed of sale impugned is fictitious and, therefore, void: all costs of first and second instance to be borne by the Defendants.

(Signed) S. BONELLO, D/Registrar. 10

A true copy.

(Signed) S. BONELLO, D/Registrar.

No. 26
Defendants'
Petition for
leave to appeal
to H.M.'s Privy
Council

No. 26.

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

In Her Majesty's Court of Appeal.

Writ No. 294/1959.

Maria Felicia wife of Joseph Cremona
absent from these Islands, as sole
heiress of her father Joseph Abela, and 20
Giuseppa widow of the said Abela as an
interested party in the Community of
Conjugal Acquests

vs.

Michael, Antonio and Mary Abela.

The Petition of the Defendants Michael, Antonio and Mary
Abela.

Respectfully sheweth:—

By writ-of-summons filed in the First Hall of Her Majesty's
Civil Court, after premising that Joseph Abela had, by a deed 30
in the records of Notary Joseph Gatt of the 17th April 1952
declared that he was selling to them Villa Maria Teresa, in the
course of construction, situated in the limits of Saint Paul's
Bay, for the price of eight hundred pounds (which was not paid

on the deed) subject to the payment of a sub-ground-rent of eleven pounds and that this sale was fictitious as would result during the hearing of the cause, plaintiffs Maria Felicia Cremona and Giuseppa Abela prayed that the said contract be rescinded under the directions which the Court might give. With costs against the Defendants.

No. 26
Defendants'
Petition for
leave to appeal
to H.M.'s Privy
Council
—Continued.

Petitioners had pleaded prescription and the untenability of the Plaintiffs' demand.

10 By judgment of the 26th June 1959 the First Court had disallowed the plea of prescription and by judgment of the 29th January 1960 the same Court had disposed of the cause by disallowing the demand of the Plaintiffs and by ordering that the costs should not be taxed as between party and party but the registry fee to be paid by the Plaintiffs.

The Plaintiffs had appealed from this judgment and prayed that this same judgment be revoked and that their demand contained in the writ-of-summons be allowed with costs of first and second instance.

20 Petitioners, while submitting that the Plaintiffs had no grounds for appeal, themselves cross-appealed and prayed that the judgment be reformed in the sense that all costs of first instance (except those relative to the preliminary judgment regarding the plea of prescription) should be borne by the Plaintiffs.

30 This Court, by judgment of the 27th June 1960, disallowed the cross-appeal of the petitioners with costs against them, allowed the principal appeal of the Plaintiffs, revoked the judgment appealed against and allowed the Plaintiffs' demand, adjudging that the contract of sale impugned is fictitious and, therefore, void, all costs to be borne by petitioners.

Petitioners deem themselves aggrieved by the said decision given by this Court on the 27th June 1960 and would like to appeal therefrom to the Judicial Committee of Her Majesty's Privy Council.

The matter in dispute exceeds the value of five hundred pounds.

40 Wherefore petitioners humbly pray that this Court may grant them leave to appeal from the said judgment of this Court of the 27th June 1960 to the Judicial Committee of Her Majesty's Privy Council praying for the revocation — on the merits and as to costs — of the said judgment and for the dis-

No. 26
Defendants'
Petition for
leave to appeal
to H.M.'s Privy
Council
—Continued.

allowance of the Plaintiffs' demand with costs: this under the usual expedient and opportune directions.

(Signed) R. FARRUGIA, Advocate.
" G. PACE, Advocate.
C. VASSALLO
Legal Procurator.

This the fourteenth July 1960.

Filed by L.P. Charles Vassallo without exhibits.

(Signed) U. BRUNO, D/Registrar.

No. 27.
Decree on
Defendants'
Petition

No. 27.

10

Decree on Defendants' Petition.

HER MAJESTY'S COURT OF APPEAL

The Court,

Upon seeing the Petition,

Orders that it be put on the case-list for hearing at the sitting to be held on the 7th October, 1960 and that service be made upon the Plaintiffs.

This fifteenth July, 1960.

(Signed) U. BRUNO, D/Registrar.

No. 28.
Plaintiffs' Reply

No. 28.

20

Plaintiffs' Reply.

In Her Majesty's Court of Appeal.

Writ No. 294/1959.

Maria Felicia wife of Joseph Cremona
absent from these Islands, as sole
heiress of her father Joseph Abela, and
Giuseppa widow of the said Abela as an
interested party in the Community of
Conjugal Acquests

vs.

Michaelĭ, Antonio and Mary Abela,

30

The reply of the Plaintiffs:
Respectfully submit:—

No. 28.
Plaintiffs' Reply
—Continued.

That they abide by the judgment of this Court.

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

This the twenty first July, 1960.

Filed by L.P. Gius. Galdes without exhibits.

(Signed) A. FARRUGIA, D.Registrar.

10

No. 29.

No. 29.
Court's Minute

Court's Minute.

This the seventh October, 1960.

The parties, through their Counsel, declare that the matter in dispute amounts to more than one thousand five hundred pounds (£1500).

The case stands adjourned for judgment till the 10th October 1960.

(Signed) S. BUGEJA, D.Registrar.

No. 30.

No. 30.
Decree granting
Conditional
Leave to Appeal

20

Decree granting Conditional Leave to Appeal

HER MAJESTY'S COURT OF APPEAL
(Civil Hall)

Judges:—

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

The Honourable Mr. Justice A. J. Montanaro-Gauci,
C.B.E., K.M., LL.D.

The Honourable Mr. Justice W. Harding, C.B.E.,
K.M., B.Litt., LL.D.

No. 30.
Decree granting
Conditional
Leave to Appeal
—Continued.

Sitting held on Monday, the tenth (10) October, 1960.

Case No. 10.

Writ-of-Summons No. 294/1959.

Maria Felicia wife of Joseph Cremona
absent from these Islands, as sole
heiress of her father Joseph Abela, and
Giuseppa widow of the said Abela as an
interested party in the Community of
Conjugal Acquests.

vs.

Michael, Antonio and Mary Abela.

10

The Court,

Upon seeing the writ-of-summons filed in the First Hall of Her Majesty's Civil Court whereby the Plaintiffs — after premising that, by a deed in the records of Notary Joseph Gatt of April 17, 1952, Joseph Abela had declared that he was selling to Defendants Villa Maria Teresa, in the course of its construction, situated within the limits of Saint Paul's Bay, for the price of eight hundred pounds — which was not paid on the deed — subject to the payment of a sub-ground-rent of eleven pounds, and that this was a fictitious sale as would be proved during the hearing of the cause, prayed that the said deed be rescinded under the direction which the Court might give: with costs against the Defendants.

20

Upon seeing the Statement of Defence of the Defendants whereby they pleaded prescription and the untenability of the Plaintiffs' demand.

Upon seeing the judgment of June 26, 1959 whereby the First Court had disallowed the plea of prescription and the judgment of January 29, 1960 whereby the said Court disposed of the cause by disallowing the demand of the Plaintiffs and ordered that the costs were not to be taxed as between party and party but the registry fee to be paid by the Plaintiffs.

30

Upon seeing the appeal entered by the Plaintiffs before this Court whereby they prayed that the said judgment of January 29, 1960 be revoked and their demand contained in the writ-of-summons allowed with costs of both instances.

Upon seeing the cross-appeal of the Defendants whereby they prayed that that judgment be reformed in the sense that all costs of first instance (except for those relative to the preliminary judgment on the plea of prescription) be borne by the Plaintiffs.

40

Upon seeing the judgment of this Court of June 27, 1960 whereby the cross-appeal of the Defendants was disallowed with costs against them and the principal appeal of the Plaintiffs allowed, the judgment appealed from being revoked and the demand of the Plaintiffs allowed, it being adjudged that the contract of sale impugned was fictitious and, therefore, void; all costs against the Defendants.

No. 30.
Decree granting
Conditional
Leave to Appeal
—Continued.

10 Upon seeing the Petition of the Defendants whereby they prayed that this Court might grant them leave to appeal from its judgment to the Judicial Committee of Her Majesty's Privy Council so that they might pray for the revocation, on the merits and on costs, of the said judgment and for the disallowance with costs of the plaintiffs's demand.

Upon seeing the Reply of the Plaintiffs, whereby they declare to abide by the judgment of this Court.

Upon seeing the record of the proceedings and having heard Counsel on both sides;

Considers that:

20 According to the Minute registered on October 7, 1960 the parties agreed that the matter in dispute amounts to more than one thousand five hundred pounds (£1500), that is, more than £500 for each of the three Defendants (v. Bartolo vs. Tayar 29.1.54 and Agius vs. Pace 3.2.58).

They can, therefore, as of right, enter appeal to Her Majesty's Privy Council in terms of Section 2(a) of the Order-in-Council of November 28, 1909 as amended by the Order-in-Council of November 5, 1942.

30 The Court, therefore, DECIDES by allowing the demand and grants Defendants conditional leave to appeal to Her Majesty in Council, subject to their entering into good and sufficient security, in terms of Section 4 of the Order-in-Council aforesaid, within one month from this day, in the amount of four hundred pounds, and, further, gives the Appellants three months to run as above directed within which to procure the preparation and translation of the Record and the transmission thereof to the Judicial Committee, as provided in that Section.

Costs hereof are reserved to the final order.

(Signed) S. BUGEJA, D/Registrar.

Surety as per
Decree given by
H.M. Court of
Appeal on the
10th October 1960

**Surety as per Decree
given by H.M. Court of Appeal
on the 10th October 1960.**

Registry of Her Majesty's Superior Courts.

This the fourth (4) November one thousand nine hundred and sixty (1960).

Advocate Doctor Giuseppe Pace, son of the late Legal Procurator Giovanni and Emilia n e Attard, born and residing in Sliema, appears and in conformity with the Decree given by H.M. Court of Appeal on the tenth (10) October, one thousand nine hundred and sixty (1960) in re "Maria Felicia Cremona et vs. Michael Abela et", hereby stands joint surety with the appellants for and up to the sum of four hundred pounds (£400) for the due prosecution of the Appeal entered by the Defendants Michael, Antonio and Mary brothers and sister Abela to Her Majesty's Privy Council from the judgment given by Her Majesty's Court of Appeal on the twenty seventh (27) June, one thousand nine hundred and sixty (1960) and for the payment of all such costs as may become payable to the Respondents in the event of the Appellants not obtaining an order granting them final leave to appeal, or, as the case may be, of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Appellants to pay the Respondents the cost of the Appeal. 10 20

(Signed) G. PACE, Advocate.

The said Advocate Doctor Giuseppe Pace, known to me personally, has affixed his signature hereto in my presence.

(Signer) V. BORG GRECH,
A/Registrar.

Defendants' Application for Final Leave

HER MAJESTY'S COURT OF APPEAL

Maria Felicia Cremona et
vs.
Michael Abela et

The Application of Defendants.

Respectfully sheweth:—

10 That by a decree of the 10th October, 1960, this Honourable Court granted to applicants the conditional leave to appeal to the Judicial Committee of Her Majesty's Privy Council.

That applicants have completed the necessary conditions and prepared the translation of the records duly approved by the plaintiffs.

Wherefore applicants respectfully beg that this Honourable Court grant them the final leave to appeal to Her Majesty's Privy Council.

20 (Signed) RICC. FARRUGIA, LL.D.
,, JOS. PACE, LL.D.
,, JOS. GATT, L.P.
,, CH. VASSALLO, L.P.

This 11th March, 1961.

Filed by L.P. Charles Vassallo without documents.

(Signed) A. FARRUGIA,
Dep. Registrar.

HER MAJESTY'S COURT OF APPEAL

The Court,

30 Orders that after due notification to the plaintiffs, this application be put on the list of the 24th March 1961, for hearing.

This 14th March, 1961.

(Signed) S. SANT ANGELO,
Dep. Registrar.

No. 33.
Decree granting
Final Leave.

No. 33.**Decree granting Final Leave**

HER MAJESTY'S COURT OF APPEAL
(Civil Hall)

Judges:—

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

The Honourable Mr. Justice A. J. Montanaro Gauci,
C.B.E., K.M., LL.D.

The Honourable Mr. Justice W. Harding, C.B.E., K.M., 10
B.Litt., LL.D.

Sitting held on Friday, the
Twentyfourth March, 1961.

Case No. 11.**Writ-of-Summons No. 294/1959.**

Maria Felicia Cremona et
versus
Michele Abela et

The Court,

Upon seeing defendants Abela's application wherein they
submitted that the translation and printing of the Record of 20
proceeding have been completed and prayed that they be
granted final leave to appeal to Her Majesty in Council;

Upon seeing the Decree of October 10, 1960 whereby the said
defendants Abela were granted conditional leave to appeal to
Her Majesty in Her Privy Council from the judgment given by
this Court on June 27, 1960, the costs having been reserved to
the final order;

Upon seeing the Minute of the parties filed this day;

Allows the application of the said defendants Abela and 30
grants them final leave to appeal from the said judgment of this
Court to the Judicial Committee of Her Majesty's Privy Council.

The costs in respect of this present Decree and those relative
to the Decree granting conditional leave shall be borne by the
said defendants Abela, saving their right to recover them, in
whole or in part, from the plaintiffs if and as may be ordered
by the Judicial Committee of Her Majesty's Privy Council.

(Signed) S. BONELLO,
Deputy Registrar.

EXHIBITS

Plaintiffs' Exhibits

"A"
Contract dated
17th April, 1952

"A"

Contract dated 17th April, 1952.

This the Seventeenth Day of April
One Thousand Nine Hundred and Fifty Two

Before me, Joseph Gatt, Notary Public, and before the undersigned witnesses who are known to me and who possess all the qualifications required by Law have personally come and appeared:—

10 Of the one part — Joseph Abela, foreman, son of Carmelo and of the late Felicia née Spiteri, born in Valletta and residing at Marsa.

And of the other part — Michael Abela, foreman, who is appearing on this deed in his own name and on behalf of his sister Mary Abela, spinster, and of his brother Antonio Abela, storekeeper at the Dockyard, daughter and sons of Carmelo and of the late Felicia née Spiteri, born Mary at Hamrun and the others in Valletta and all residing at Marsa.

The appearers are known to me, Notary.

20 By virtue of these presents, Joseph Abela is selling and transferring to Michael Abela who accepts and buys for himself and his other two sister and brother, Mary Abela and Antonio Abela, the small Villa which is not yet completed and which is being built on the site which forms a divided part of the lands "Ta REXxew" or "Rdum XEMxija" in the neighbourhood of XEMxija, limits of Saint Paul's Bay, measuring the said divided part one hundred and forty six decimal point three hundred and one square canes (146.301 sq. canes), bounded on the west and north with the property of Coleiro Brothers Limited, on
30 the east with the property of Bezzina and Lupi and on the south with a new projected road which is still unnamed, as subject to the payment of a perpetual ground-rent of eleven pounds (£11) per year — the said portion of the site being indicated by the number thirty nine on the plan attached to the deed of emphyteusis in my records of the twenty fourth January one thousand nine hundred and fifty one.

40 The buyer proprio et nomine knows what works have been made in the Villa which he is buying, and undertakes to continue the works himself and his brother and sister for whom he is appearing.

"A"
 Contract dated
 17th April, 1952
 —Continued.

The vendor warrants the sale as required by Law by a general hypothecation of his property present and future in favour of the buyer proprio et nomine who accepts.

This sale is being made for the price of eight hundred pounds (£800) which the vendor declares to have already received from the buyer proprio et nomine and leaves receipt therefore.

I, Notary, declare that the premises sold by this deed are not subject to the provisions of Ordinance eighteen of the year one thousand nine hundred and eighteen, now known as Chapter Seventy of the Revised Edition of the Laws of Malta, in view of the fact that Joseph Abela had taken the land above described in perpetual emphyteusis by deed in my records of the twenty fourth January one thousand nine hundred and fifty one. 10

The expenses of this deed shall be borne by the buyer.

This deed has been done, read and published, after that I had explained it to the appearers, in Malta, Valletta, Castille Place, number eight, present as witnesses the clerks Arthur Micallef, son of the late Carmelo, residing at Sliema, and Edward Micallef, son of Arthur, residing at Gzira. 20

(Signed) JOSEPH ABELA
 „ M. ABELA
 „ A. MICALLEF
 „ E. MICALLEF
 „ JOSEPH GATT,
 Notary Public Malta.

Registered in the Public Registry on the 21st April, 1952,
 Hypothecation No. 1502/52.

A true copy of my records issued this the 4th April 1959 30
 Quod Attestor

(Signed) JOSEPH GATT,
 Notary Public Malta.

Contract dated the 24th January 1951.

This the twenty fourth January
One Thousand Nine Hundred and Fifty One.

Before me Joseph Gatt, Notary Public, and before the undersigned witnesses who are known to me and who possess all the qualifications required by Law, have personally come and appeared:—

10 Of the one part — Giovanni Coleiro, in trade, son of the late Giuseppe Coleiro and Rosina n^èe Vella, born at Qormi and residing in Valletta on behalf and in representation of the firm Coleiro Brothers Limited.

And of the other part — Joseph Abela, foreman, son of Carmelo and of the late Felicia n^èe Spiteri, born in Valletta and residing at Marsa.

The appearers are known to me, Notary.

20 By virtue of these presents, Giovanni Coleiro nomine is granting on perpetual emphyteusis to the other appearer Joseph Abela who accepts and takes on perpetual emphyteusis, with effect as from the fourteenth June one thousand nine hundred and fifty, the building site which forms a divided part of the lands "Ta REXxew" sive "Rdum Xemxija", in the neighbourhood of Xemxija, limits of Saint Paul's Bay, measuring this divided part one hundred and forty six decimal point three hundred and one square canes (146.301 sq. canes) and bounded on the west and north with the property of the firm making this grant, on the east with the property of Bezzina and Lupi and on the south with a new projected road which is still unnamed, which site is better shown on the plan attached for
30 registration to this deed as exhibit "A".

This grant is being made and accepted towards the payment of a ground-rent of eleven pounds per annum as from the said date of June 14, 1950, payable each year in arrears.

40 The grantee binds himself to spend no less than four hundred and fifty pounds (£450) on improvements by way of some permanent construction on the site within three years from the fourteenth June one thousand nine hundred and fifty — said construction to be built on that part of the site which is marked green on the plan and which measures thirty nine decimal point eighty nine square canes (39.89 sq. canes), on the

"B".
 Contract dated
 24th January, 1951
 —Continued.

understanding that the remaining portion of the site shall not be built upon, and in this way the said construction shall be in the form of a Villa: this in accordance with the planning scheme and subject to the approval of architect and civil engineer Edwin England Sant Fournier.

Any expense which may be required for the formation of the road and pavement in front of the site granted by this deed shall be a charge of the emphyteuta.

The grantor nomine reserves the right to exact a fine, equivalent proportionally to one year's ground rent, upon any total or partial alienation of the site. 10

— omissis —

This deed has been done, read and published by me, after that I had explained it to the appearers, in Malta, Valletta, Castille Place, number eight, present as witnesses the clerks Arthur Micallef son of the late Carmelo and Edward Micallef son of Arthur, both residing in Sliema.

(Signed) JOHN COLEIRO
 „ JOSEPH ABELA
 „ A. MICALLEF 20
 „ E. MICALLEF
 „ JOSEPH GATT,
 Notary Public Malta.

Exhibit "A" omitted.

Registered in the Public Registry on February 5, 1951.
 Privilege 518/51.

Reference 133/51.

A true extract from my records issued this the 4th April 1959.

Quod attestor 30
 (Signed) JOSEPH GATT,
 Notary Public Malta.



Summons issued on 30th September 1952.

Writ-of-Summons No. 538/52.

In Her Majesty’s Commercial Court.

This the thirtieth of September 1952.

Filed by L.P. Ed. Axiaq Mifsud without exhibits.

(Signed) J. DEBONO, Dep. Registrar.

E L I Z A B E T H II

10

By the Grace of God of the United Kingdom
of Great Britain and Northern Ireland
and of Her Other Realms and Territories Queen,
Head of the Commonwealth,
Defender of the Faith.

(Withdrawn 11. 2. 55)

To Marshal of Our Superior Courts for the
Island of Malta.

20

BY OUR COMMAND, at the suit of Joseph Abela, you shall summon Carmelo L. Zammit in his own name and on behalf of the firm Concrete Works Limited and by decree of the 24th October 1952 the vacant inheritance of A. & C.E. Louis Mifsud was joined to the suit and by decree of the 3rd November 1952 Philip Mifsud was appointed curator to represent the said vacant inheritance of A. & C.E. Louis Mifsud, to appear before Our said Court at 9 a.m. at the sitting to be held on the seventeenth (17) October 1952, the legal periods being shortened;

and there — every necessary declaration and direction being first given;

30

whereas the Plaintiff had granted a contract to Defendant proprio et nomine for the construction of the terrace flooring of the new Villa situated on the lands known as “Rdum Irxew”, in Xemxija, limits of Saint Paul’s Bay, for the price of £256, calculated at £7 a cane, which price had been duly paid: the said works having been terminated some nine months ago;

and whereas the said flooring has cracked and broken not

"C"
Summons issued
on 30th
September 1952
—Continued.

only at the sides but also along its centre, is pulling down the walls and bulging in because it is deficient in cement and has not been constructed in accordance with the requirements of the trade;

The defendant proprio and nomine **to shew cause** — the declaration being first premised that the said roofing, because of its defects, is causing damage to the building and constitutes a danger to the safety of the tenants hereof and may also cause damage to their furniture — why it should not be declared and adjudged: (1) that the construction of the concrete roofing of the Villa owned by the Plaintiff in the neighbourhood of Rdm Irxew, at Xemxija, limits of Saint Paul's Bay, is defective and was not made according to the requirements of the trade, as would be proved during the hearing of the cause; (2) why he should not be condemned to dig up the said roofing at his expense and re-construct it; always at his expense, according to the requirements of the trade and with suitable materials, within a short time as would be given to him; (3) why an architect should not eventually be appointed as referee to examine the said roofing and refer on its condition.

10

20

With an express reservation for all the damages suffered and which may still be suffered by the Plaintiff because of the fault of the Defendant proprio et nomine.

With costs, including those of the protest of the 27th August 1952, against the Defendant proprio et nomine whom you shall summon so that a reference to his oath may be made.

You shall further give the said Defendant proprio et nomine notice that if he wishes to contest the claim, he must, not later than two working days previous to the day fixed for the hearing of the cause, file a statement of defence according to Law and that, in default of his so doing within the said time and of his appearance on the day and at the time and place aforesaid, the said Court will proceed to deliver judgment according to justice on the action of the said Joseph Abela on the said day or on any subsequent day as the Court may direct.

30

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

Given by Our aforesaid Commercial Court,

40

Witness Our faithful and well-beloved the Honourable Mr. Justice T. Gouder, Doctor of Laws, Judge of Our said Court.

"C"
Summons issued
on 30th
September 1952
—Continued.

This the second October 1952.

(Signed) T. GOUDER.

A true copy.

(Signed) U. BRUNO, D/Registrar.

"D"

Application for Urgency.

"D"
Application
for Urgency

10 Taken from the original records kept in the Registry of the Superior Courts of Malta and its Dependencies.

In Her Majesty's Commercial Court.

Joseph Abela

vs.

Carmelo L. Zammit in his own name and as Director of the firm "Concrete Works Limited".

The application of the said Joseph Abela.

Respectfully sheweth:—

20 That he has this day filed a writ-of-summons against Carmelo L. Zammit, proprio et nomine, wherein he prayed that the latter be condemned to dig up and renew the roofing of the Villa in Xemxija, limits of Saint Paul's Bay, which he had constructed not in accordance with the requirements of the trade and with materials of inferior quality, so much so that this roofing is bulging in, is being severed from the walls and cracking on the sides and down the middle.

30 That because of the evident danger to the safety of the tenants of the said premises, the latter had to abandon their residence and applicant suffered thereby damages consisting in the loss of the rent: apart from the possibility that the said roofing may in the meantime collapse.

That architect Falzon who has examined the premises has certified that the said roofing must be removed and renewed.

Wherefore applicant respectfully prays that because of the urgent nature of this cause it be put on the list at an early date,

"D"
Application
for Urgency
—Continued.

so that it may be heard and disposed of as soon as possible under the usual directions.

(Signed) GIOVANNI SAMMUT,
Advocate.

„ EDW. AXIAQ MIFSUD,
Legal Procurator.

The thirtieth of September 1952.

Filed by L.P. Axiaq Mifsud without exhibits.

(Signed) J. DEBONO, D/Registrar.

A true copy.

(Signed) U. BRUNO, D/Registrar.

10

"E"
Contract dated
3rd March 1951

"E"

Contract dated 3rd March 1951.

This the third March
One Thousand Nine Hundred and Fifty One.

Before me Joseph Gatt, Notary Public, and before the undersigned witnesses who are known to me and who possess all the qualifications required by Law, have personally come and appeared:—

Of the one part — Giovanni Coleiro in trade son of the late Giuseppe Coleiro and Rosina née Vella, born at Qormi and residing in Valletta on behalf and in representation of the firm Coleiro Brothers Limited.

20

And of the other part — Giuseppe Abela, foreman son of Carmelo and the late Felicia née Spiteri, born in Valletta and residing at Marsa.

The appearers are known to me, Notary.

By virtue of these presents Giovanni Coleiro nomine is granting on perpetual emphyteusis from this day forward to the other appearer Joseph Abela who accepts and acquires on that title the building site which forms a divided part of the lands "Ta Rxxew" sive "Rdum Xemxija", in the neighbourhood of Xemxija, limits of Saint Paul's Bay, measuring this divided part one hundred and forty square canes (140 sq. canes) bounded on the west and north with the property of the firm Coleiro Brothers and on the south with a new projected road

30

which is still unnamed, which site is better shown on the plan attached for registration to this deed as exhibit A.

“E”
Contract dated
3rd March 1951
—Continued.

This grant is being made and accepted towards the payment of a ground-rent of eleven pounds (£11) per annum payable, as from this day, six monthly in arrears.

10 The grantee binds himself to spend not less than four hundred pounds (£400) on improvements by way of some permanent construction on the site within three years from today, said construction to be built on that part of the site which is enclosed in red on the plan and which measures forty square canes, on the understanding that the remaining portion of one hundred square canes shall not be built upon and in this way the said construction shall be in the form of a Villa; this in accordance with the planning scheme and subject to the approval of architect and civil engineer Edwin England Sant Fournier.

Any expense which may be required for the formation of the road and pavement in front of the site granted by this deed shall be a charge of the emphyteuta.

20

— Omissis —

This deed has been done, read and published by me, after that I had explained it to the appearers, in Malta, Valletta, Castille Place, number eight, present as witnesses the clerks Edward Micallef, son of Arthur, and Arthur Micallef, son of the late Carmelo, both residing at Sliema.

30

(Signed) JOHN COLEIRO
 ” JOSEPH ABELA
 ” A. MICALLEF
 ” E. MICALLEF
 ” JOSEPH GATT,
 Notary Public Malta.

Exhibit “A” omitted.

Registered in the Public Registry on March 14, 1951.

Note No. 963 Volume I of 1951.

A true extract from my records issued this the 27th April 1959.

Quod attestor

(Signed) JOSEPH GATT,
 Notary Public Malta.

"F"

"F"
Contract dated
22nd December,
1951

Contract dated 22nd December, 1951.

This the Twenty-second Day of December
One Thousand Nine Hundred and Fifty One.

Before me Notary Doctor Antonio Galea and before the undersigned witnesses who are known to me and competent according to Law have personally come and appeared.

Of the one part — Joseph Abela, foreman, son of Carmelo and of the late Felicia née Spiteri born in Valletta and residing at Marsa. 10

And of the other part — Emanuel Giudice, in trade, son of the late John and Clara née Azzopardi born at Floriana and residing at Sliema.

The appearers are known to me, Notary.

By virtue of these presents, appearer Abela sells and transfers to appearer Giudice who accepts, buys and acquires the building site which forms a divided part of the lands known as "Ta REXXEW" sive "Rdum XEMXIJA", in the neighbourhood of XEMXIJA, limits of Saint Paul's Bay, measuring one hundred and forty square canes, bounded on the west and north with the property of the firm Coleiro Brothers Limited, on the south with a new projected road which is without a name, subject to a perpetual ground-rent of eleven pounds (£11) per year in favour of the said firm "Coleiro Brothers Limited", with all its rights and appertences and with the right to build on the said site. 20

Appearer Giudice binds himself to observe the conditions mentioned in the deed of emphyteusis published in the records of Notary Joseph Gatt on the third March of this same year 1951, including the condition that on the said site no less than four hundred pounds (£400) must be spent in improvements by way of new constructions within three years of the said deed, the said construction to be built on that part of the site which in the plan attached to that deed is marked in red and which measures forty square canes and on condition that the remaining portion of one hundred square canes shall not be built upon in order to give the building the appearance of a Villa in accordance with the planning scheme and the approval of architect Edwin Eglan Sant'Fournier. 30

This sale is being made for the price of three hundred and twenty pounds (£320) of which the vendor Abela declares to 40

have already received of appearer Giudice the sum of fifty pounds (£50) on the seventeenth December of this year, and is hereby receiving the remaining two hundred and seventy pounds (£270) of the said buyer Giudice for which he leaves receipt.

“F”
Contract dated
22nd December,
1951
—Continued.

In warranty of the quiet possession and real enjoyment of the property transferred, the same Joseph Abela hypothecates all his property in favour of the said Emanuel Giudice who accepts.

10 For the purposes of the Succession and Donation Duties Ordinance I, Notary, declare that the said property is not subject to any duty in as much as it was acquired by title of sale by the said Joseph Abela from Arturo Burlò in the records of Notary Joseph Gatt of the twentieth December of this same year 1951 and this Burlò had earlier bought the same property from Joseph Abela himself in the records of the said Notary of the fourteenth June of the same year 1951, Abela having himself acquired the same property on perpetual emphyteusis from the said firm “Coleiro Brothers Limited” in the records of the said Notary Joseph Gatt of the third March of the same year 1951. The said 20 firm “Coleiro Brothers Limited” had acquired on an onerous title the lands “Ta REXxew” — of which the site transferred by this deed forms part — from Advocate Doctor Giuseppe Pace in the records of Notary Giovanni Azzopardi of the twenty fourth July one thousand nine hundred and twenty nine.

Also appearing on this deed is Giovanni Coleiro, in trade, son of the late Giuseppe and Rosina née Vella, born in Qormi and residing in Valletta, who is appearing on behalf and as co-owner and representative of the firm “Coleiro Brothers Limited”.

The appearer is known to me, Notary.

30 By means of these presents, the said Coleiro nomine is acknowledging the said Giudice as the new emphyteuta and holder of the site transferred by this deed, and, on his part, the said Giudice is acknowledging appearer Coleiro nomine as the dominus of the site transferred by this deed and binds himself in favour of the said Coleiro nomine for the due observance of the conditions contained in the aforequoted deed in the records of Notary Joseph Gatt of the third March 1951: in view of this reciprocal acknowledgment the said Coleiro is hereby receiving, by way of a fine, from appearer Giudice the sum of eleven 40 pounds and gives receipt therefore.

This deed has been done and published, after due explanation according to Law, in Malta, Valletta, twenty Strait Street,

“F”
Contract dated
22nd December,
1951
—Continued.

present as witnesses Anthony Azzopardi, in trade, son of the late Spiridione, residing in Sliema, and Edgar Sultana, messenger, son of Carmelo, residing in Floriana.

(Signed) EMANUEL GIUDICE
 „ JOSEPH ABELA
 „ JOHN COLEIRO
 „ A. AZZOPARDI
 „ EDDIE SULTANA
 „ ANTONIO GALEA
 Notary Public Malta. 10

A true copy.

Issued from my records this the 27th April, 1959.

(Signed) DR. ANT. GALEA.

Exhibits filed before the Legal Referee.

“AA”
Rent Book of
Joseph Pavia

“AA”

Rent Book of Joseph Pavia.

1st April, 1957.

Received of Mr. Joseph Pavia the sum of £10, six months rent in advance for mezzanine No. 2, part of Villa Teresa Maria, Xemxija, St. Paul's Bay. 20

1st April to 1st October 1957.

(Signed) MICHAEL ABELA.

* * *

1st October, 1957.

Received of Mr. Joseph Pavia the sum of £10, six months rent in advance, for mezzanine No. 2, part of Villa Teresa-Maria, Xemxija, St. Paul's Bay.

1st October 1957 to 1st April 1958.

(Signed) MICHAEL ABELA.

* * *

1st April 1958.

Received of Mr. Joseph Pavia the sum of £10, six months 30

rent in advance, for mezzanine No. 2, part of Villa Teresa-Maria, Xemxija, St. Paul's Bay.

"AA"
Rent Book of
Joseph Pavia
—Continued.

1st April 1958 to 1st October 1958.

(Signed) MICHAEL ABELA.

* * *

1st October 1958.

Received of Mr. Joseph Pavia the sum of £10, six months rent, in advance for mezzanine No. 2, part of Villa Teresa-Maria, Xemxija, St. Paul's Bay.

£10. 0. 0.

10 1st October 1958 to 1st April 1959.

(Signed) MICHAEL ABELA.

"BB"

Another Rent Book of Joseph Pavia.

"BB"
Another
Rent Book of
Joseph Pavia

1st April 1957.

Received of Mr. Joseph Pavia the sum of £3, six months' rent for a boat-house "St. Joseph" at Xemxija, St. Paul's Bay.

1st April to 1st October 1957.

(Signed) MICHAEL ABELA.

* * *

1st October 1957.

20 Received of Mr. Joseph Pavia the sum of £3, six months' rent in advance for a boat-house "St. Joseph" at Xemxija, St. Paul's Bay.

1st October 1957 to 1st April 1958.

(Signed) MICHAEL ABELA.

* * *

"BB"
Another
Rent Book of
Joseph Pavia
—Continued.

1st April 1958.

Received of Mr. Joseph Pavia the sum of £3, six months' rent in advance for a boat-house "St. Joseph" at Xemxija, St. Paul's Bay.

1st April to 1st October 1958.

(Signed) MICHAEL ABELA.

* * *

1st October 1958.

Received of Mr. Joseph Pavia the sum of £3, six months' rent in advance for storing boat at boat-house "St. Joseph", Xemxija, St. Paul's Bay.

10

£3. 0. 0.

1st October 1958 to 1st April 1959.

(Signed) MICHAEL ABELA.

"CC"
Document filed
by
Antonio Abela

**Documents CC to ZZ and A¹ to A²⁰
filed by Antonio Abela.**

"CC"

Malta, 24-12-53.

Mr. Michael Abela Dr. to

SPITERI'S WOOD-WORKS

"Gaetan", Naxxar Road, Birkirkara.

20

For wood-works at the Villa of St. Paul's
Bay in the garages

£85 — —

Paid.

* * *

DD/HH

DD/HH
Documents filed
by
Antonio Abela

Malta, 6th November, 1956.

Mr. Michael Abela Dr. to

CARMELO BORG

Concrete Works

78, St. Catherine Street — Qormi.

	Cost of bricks in the yards	£	—	—
	£10 bricks	10	—	—
	£1 for the journey	1	—	—
10	A cement bag 9s.	—	9	—
	5s. lime	—	5	—
	Cost of work — nothing	—	—	—
	For the stretching of iron-leaves	—	—	—
	A truck-load of sand and spalls	2	5	—
	7 bags cement	3	3	—
	Cost of work — nothing	—	—	—
	For removing the iron railing	3	—	—
	Works on the stairs	—	—	—
	1 bag cement 9s.	—	9	—
20	5s. lime	—	5	—
	Works in connection with the removal of the soil underneath the garages	39	—	—
	Works on the stairs of the garages	—	—	—
	A truck-load of sand and spalls	2	5	—
	7 bags cement	3	3	—
	5s. lime	—	5	—
	Works in connection with the removal of the soil in front of the garages	3	—	—
	For whitewashing the garages	30	—	—
30	Works on the water-conduit in the garages	—	—	—
	Excavation works	2	—	—
	Cost of concrete	1	10	—
	For whitewashing the old garage	3	—	—
		In all	£104	19 0

* * *

13th January 1956.

Received from Michael Abela the sum of £400 on account
of works at St. Paul's Bay for the garages.

(Signed) C. BORG.

* * *

DD/HH
Document filed
by
Antonio Abela
—Continued.

15th January 1957.

Concrete works etc on the edging at Xemxija	£ 170 — —
For the construction of the garages as per bill of architect Naudi	924 — —
	<hr/>
	£1094 — —
Already paid	£ 800 — —
	<hr/>
	£ 294 — —

Received the sum of £100.

To balance £194.

10

Paid with thanks.

(Signed) C. BORG.

"II"
Document filed
by
Antonio Abela

"II"

Malta 4-7-52.

Mr. Michael Abela Dr. to

C. SCERRI

General Glass Work Contractor
&

Ironmonger

31, Dingli Street, Sliema.

20

448 panes window glass @ -/4	£ 7 9 4
144 „ frosted „ 607/2 @ 1.4 per yd.	4 — —
work of same glass	1 4 0
10 panes window glass with work	— 10 —
	<hr/>
	£13 3 4

Settled with thanks.

(Signed) C. SCERRI
22/7/52.

"JJ"
Document filed
by
Antonio Abela

"JJ"

21st December 1953.

30

Received from Mr. Michael Abela the sum of thirty five pounds re Rdum ta' Rxaw, Xemxija, Plot 39, St. Paul's Bay.

(Signed) RAYMOND MINTOFF
for

DOM. MINTOFF, A & C.E.

"KK"

"KK"
Document filed
by
Antonio Abela

Mr. Michael Abela Dr. to
MELLIEHA CEMENT TILES FACTORY
Carmelo Bartolo
Design, Plain & Mosaic
90, Main Street, Mellieha

36 sq. meter plain tiling @ 10/- p. m.	£ 18	0	0
152 „ mosaic „ @ 11/- p. m.	83	17	6
	<hr/>		
Total	£101	17	6

10 For tiling the premises at Xemxija.
Paid with thanks.

(Signed) CARMELO BARTOLO.

"LL"

"LL"
Document filed
by
Antonio Abela

MESSRS. D & A SCHEMBRI
(Master Masons & Building Contractors)
231, 235, Qormi Road,
Marsa.

5th January, 1954.

20 Received from Mr. Michael Abela the sum of forty pounds
(£40) for a concrete floor in the backyard at the Villa at
Xemxija, St. Paul's Bay.

I Repeat £40 0. 0.

(Signed) DOMENIC SCHEMBRI.

"MM"

"MM"
Document filed
by
Antonio Abela

"Simpson House"
231 Qormi Road,
Marsa.

18th November, 1953.

Dear Sir,

30 I, the undersigned wish to state that I have received the
sum of eight hundred and ninety-four pounds seventeen shil-

"MM"
Document filed
by
Antonio Abela
—Continued.

lings (£894 17s.) from Michael Abela for works carried out at
Xemxija St. Paul's Bay.

Whilst taking this opportunity for thanking you,

I remain,

Yours faithfully,

(Signed) DOMENIC SCHEMBRI.

"NN"
Documents filed
by
Antonio Abela

"NN"

Malta, 23 June 1954.

Mr. Michael Abela Dr. to

ERGARDO LATEO

10

Spedizioniere e fornitore Marittimo
12, Barriera Wharf, Marina, Valletta.

5 gallons White & Cream paint	£8	0	0
-------------------------------	----	---	---

Paid with thanks.

(Signed) E. LATEO

23/6/54.

"OO"
Documents filed
by
Antonio Abela

"OO"

Malta, 14 December, 1953.

Mr. Michael Abela, Marsa, Dr. to

ANGELO VELLA

20

Coal and Iron Merchant
36, Parish Street — Zebbug
Retail Store 12 Flagstone Wharf, Marsa.

15 steel plates 6 × 3	£13	10	0
-----------------------	-----	----	---

Paid with thanks.

(Signed) ANGELO VELLA.

"PP"

22 October 1953.

"PP"
Document filed
by
Antonio AbelaCARMELO MIFSUD & CARMELO DEGUARA
144, Naxxar Road — Birkirkara.

10	15 hinges			
	15 hinges			
	5 locks			
	20 Locking-bolts			
	1 lock	£35	0	0
		1	5	0
		<hr/>		
		£36	5	0
		<hr/>		

I have received the sum of thirty six pounds from Michael Abela.

(Signed) DEGUARA C.

"QQ"

"QQ"
Document filed
by
Antonio Abela

An estimate of the works at Villa 'Maria Theresa' at Rdim "Ta Rxew", Xemxija, the property of Michael Abela.

20	Pointing and whitewashing the façade
	Pointing of jambs everywhere
	Butting all windows for rainwater
	Whitewashing the ceiling — 2 courses
	Painting of the beams — 2 courses
	Grooving of the outside doors; with holes for water
	Pointing of the dado with cement
	Pointing of a stone door from the inside and the outside.

These works, including expenses, cost twenty five pounds (£25).

(Signed) GERALD SALIBA & BRO.
4, Sabbella Lane,
Birkirkara.

"RR"
Document filed
by
Antonio Abela

"RR"

6-9-58.

Mr. Michael Abela Dr. to
CARMELO BORG
General Contractor
8, Guzman Navarra Street,
Rabat, Malta.

10 bags cement @ 9s. 3d. each	£4	12	6	
3 „ lime „ 4s. „		12	0	
2 pipes „ 5s. 3d. „		10	6	10
1 bend „ 9s.		9	0	
		<hr/>		
	£6	4	0	
		<hr/>		

(Signed) C. BORG.

SS/XX
Document filed
by
Antonio Abela

SS/XX

Water And Electricity Department
Reference No. 1772.

Received from Mr. Michael Abela, the sum of three shillings eight pence in respect of Water and/or Electricity supplied at Theresa Maria, Mellieha Road, St. Paul's Bay 20 during June 56.

1-9-56.

(illegible signature)
Receiving Clerk.

* * *

Received from Michael Abela the sum of three shilling in respect of Water and/or Electricity supplied at Theresa Maria, Mellieha Road, St. Paul's Bay, during December 56.

28-1-57

(Signed) J. BUHAGIAR
Receiving Clerk.

* * *

Received from Michael Abela the sum of three shillings in respect of Water and/or Electricity supplied at Theresa Maria, Mellieha Road, St. Paul's Bay during March 1957.

SS/XX
Document filed
by
Antonio Abela
←Continued.

20-4-1957

(Signed) C. AZZOPARDI
Receiving Clerk.

* * *

Received from Michael Abela the sum of three shillings in respect of Water and/or Electricity supplied at Theresa Maria, Mellieha Road, St. Paul's Bay during June 1957.

10

11-8-57

(Signed) EDW. AGIUS
Receiving Clerk.

* * *

Received from Mr. M. Abela the sum of seven shillings four pence in respect of Water and/or Electricity supplied at Teresa Maria, Mellieha Road, St. Paul's Bay, during October 1958.

Date illegible.

(Signed) EDWARD F. ABELA
Receiving Clerk.

* * *

20 Received from Mr. Michael Abela the sum of five shillings and six pence in respect of Water and/or Electricity supplied at Teresa Maria, Mellieha Road, St. Paul's Bay during J. 59.
Date illegible.

(Signed) J. EBEJER
Receiving Clerk.

YY/A⁴

YY/A⁴
Document filed
by
Antonio Abela

30 These are 5 demand Notes sent by the Water and Electricity Department to Michael Abela calling for the payments referred to in Documents SS, UU, VV, WW and XX and a Demand Note addressed to Ant. Abela in respect of Water supplied at "Capri B" Mellieha Road, St. Paul's Bay.

A⁵
Document filed
by
Antonio Abela

A⁵

Nazarene Street,
Hamrun — Malta
Nazarene House.

Fidiel Bonnici received the sum of £30 for the work he has done for Michael Abela at St. Paul's Bay.

28-12-53

(Signed) FIDIEL BONNICI.

A⁶
Documents filed
by
Antonio Abela

A⁶

Received from Michael Abela the sum of £28 10s. for eight truck loads stone and £1 for one half truck loads spalls: in all 10
£29 10s.

Paid on 8-7-55.

A⁷
Document filed
by
Antonio Abela

A⁷

1st May 1952.

I the undersigned declare that I received the sum of £70 0. 0. from Mr. Michael Abela for decorating his house at St. Paul's Bay.

(Signed) JOSEPH BARBARA.

A⁸
Document filed
by
Antonio Abela

A⁸

9th September 1955.

20

Carmelo Spiteri received from Michael Abela the sum of twenty four pounds on account of the work he is doing at Xemxija.

I repeat £24 0. 0.

(Signed) ALF. GATT
for CARMELO SPITERI.

A⁹
Documents filed
by
Antonio Abela

A⁹

20/8/55

Carmelo Spiteri received from Michael Abela the sum of 30
twenty pounds on account of the work I am doing at Xemxija.

I repeat £20 0. 0.

(Signed) ALF. GATT
for CARMELO SPITERI,

111

A¹⁰

23rd September 1955.

A10
Documents filed
by
Antonio Abela

Carmelo Spiteri received from Michael Abela the sum of twenty four pounds for works at Xemxija: this payment is on account.

I repeat £24 0. 0.

(Signed) ALF. GATT
for CARMELO SPITERI.

10

A¹¹

9/7/55

A11
Document filed
by
Antonio Abela

Received from Michael Abela the sum of thirty pounds on account of my bill for rock-cutting at Xemxija.

I repeat £30 0. 0.

(Signed) ALF. GATT
for CARMELO SPITERI.

A¹²

VICTORY WOODWORK
CARMELO XERRI
2, Luqa Briffa Street, Naxxar

A12
Document filed
by
Antonio Abela

20

I declare to have received on the 24th February 1956 the sum of £190 from Michael Abela for the garages' doors at Rdum Rxew, St. Paul's Bay.

Paid in full.

(Signed) CARMELO SCERRI.

A¹³

24/7/55

A13
Document filed
by
Antonio Abela

Received from Michael Abela the sum of £30 on account of the work I am doing at Xemxija.

30

I repeat £30 0. 0.

(Signed) ALFRED GATT
for CARMELO SPITERI
Qormi.

A¹⁴
Documents filed
by
Antonio Abela

A¹⁴

PELICAN ENGINEERING WORKS
TREVISAN BROTHERS

Office & Works:

62, 63, Church Wharf — Marsa — Malta.

22nd April 1952.

Mr. Michael Abela Dr. to

Manufacture and erection of balcony £20. 0. 0.
Paid with thanks 22.4.52.

(Signed) P. TREVISAN. 10

A¹⁵
Document filed
by
Antonio Abela

A¹⁵

6th October 1955

Carmelo Spiteri received from Michael Abela the sum of nineteen pounds (£19) in settlement of the amount due to him for the works he had done at Xemxija and declares that he has now been paid in full and in settlement.

I repeat £19 0. 0.

(Signed) ALFRED GATT
for CARMELO SPITERI
Qormi. 20

A¹⁶
Document filed
by
Antonio Abela

A¹⁶

5/8/55

Carmelo Spiteri received from Michael Abela the sum of twenty five pounds on account of works at Xemxija.

I repeat £25 0. 0.

(Signed) ALFRED GATT
for CARMELO SPITERI
Qormi.

A¹⁷
Document filed
Antonio Abela

A¹⁷

VICTORY WOODWORK 30

CARMELO XERRI

2, Luqà Briffa Street, Naxxar

I received the sum of forty pounds from Michael Abela account of what is due to me for works at the garages at St. Paul's Bay, Xemxija.

(Signed) CARMELO SCERRI.
11/1/55.

A¹⁸

VICTORY WOODWORK

CARMELO XERRI

2, Luqa Briffa Street, Naxxar

A¹⁸
Document filed
by
Antonio Abela

I the undersigned declare to have received on the 5th November 1956 I had received the sum of £35 from Michael Abela for wood-works at St. Paul's Bay.

(Signed) CARMELO SCERRI.

6—11—56

10

A¹⁹

20—11—58

Mr. Michael Abela Dr. to

A¹⁹
Document filed
by
Antonio Abela

JOHN BORG

C A R P E N T E R

1, St.Paul's Street — Naxxar

	For one Union Lock with 3 keys for the main door at Hamrun	£ 1 15 0
	For 15 days' work at the Villa putting on glass panes	11 10 0
20	For a vestibule-door at Xemxija	4 18 0
		<hr/>
		18 3 0
		1 3 0
		<hr/>
	Paid	<u>£17 0 0</u>

(Signed) JOHN BORG.

A²⁰
Document filed
by
Antonio Abela

Michael Abela Dr. to

JOSEPH CARDONA & SONS

Contractors in Paints of all kind of Work,
As Well as all Kind of Sanitary Work

82, Pinto Street, Alley No. 1, Qormi

Villa Maria Teresa, Rdum Rxew, St. Paul's Bay.					
I received £40 on account.					
9th December 1957	Giuseppe Cardona 3 days' Labour	£ 4	1	0	10
	Anthony Cardona 3 days' labour	3	12	0	
	A bag of white lime	1	18	0	
10th June 1958	2 galleys and a grate				
	Giuseppe Cardona 5 days labour and stamps	6	16	6	
16th June 1958	Giuseppe Cardona 1 week's labour and stamps	8	3	6	20
	George Cardona 5 days' labour and stamps	5	10	6	
	Nazzareno Spiteri 5 days' labour and stamps	6	1	6	
	2½ rotoli plaster of Paris		1	6	
23rd June 1958	Giuseppe Cardona 1 week's labour and stamps	8	3	6	30
	For placing a lock		12	0	
	For 2 drains, white cement and 2 iron rods		9	6	
28th July 1958	Giuseppe Cardona 1 week's labour and stamps	8	3	6	
4th August 1958	Giuseppe Cardona 1 week's labour and stamps	8	3	6	40

	George Cardona 1 week's labour and stamps	6	13	6
11th August 1958	Giuseppe Cardona 5 days' labour and stamps	6	16	6
	George Cardona 5 days' labour and stamps	5	10	6
		<hr/>		
		£80	17	0
		<hr/>		

A20
Document filed
by
Antonio Abela
—Continued.

10

24/9/58

(Signed) GIUSEPPE CARDONA.

Documents filed together with the
Plaintiff's Note of October 28, 1959

"G"

**Note of Enrolment of Deed
Public Registry — Valletta**

"G"
Note of
Enrolment of
Deed

Year 1959.

20 I, the undersigned, do hereby certify that the following is
a true copy of a Note of Enrolment of Deed registered in this
office:—

No. 1225/1958.

The eleventh day of March one thousand nine hundred and
fifty eight.

A perpetual emphyteutical grant made by the firm "Coleiro
Brothers Limited" in favour of Joseph Abela, born in Valletta
and residing at Marsa, of the following two sites namely:

30 1) a building site at Rdum ir-Rxew, Xemxija, St. Paul's
Bay, known as plot number twenty three (23) on the planning
scheme measuring one hundred and fifty three and a half square
canes (153.5 sq. canes) of which thirty-nine square canes could
be built upon and the rest to serve as gardens, bounded on the
north and north west with the property of Giuseppe Fenech
and of Dentist Joseph Fiorini, on the west in part with the
property of the buyer Abela and in part with the under-
mentioned plot and on the east with the property of the grantor

"G"
Note of
Enrolment of
Deed
—Continued.

firm and with the property of Fortunato Lupi, as per plan attached to the deed marked Document "A" towards the payment of an annual and perpetual ground-rent of eleven pounds eleven shillings six pence (£11. 11. 6) and

2) another building site in the same neighbourhood and area known as plot number twenty four (24) of the same area of 153.5 square canes of which thirty nine square canes could be built upon and the rest gardens, bounded on the west and south-west with the property of architect Maurice Captur and John Bianco, north-east and east with the property of the said Abela as per plan attached to the deed marked Document "A" towards the payment of an annual and perpetual ground-rent of eleven pounds eleven shillings six pence (£11. 11. 6) as from the date of the deed and on the conditions mentioned in the deed, besides the payment of a premium, for once only, of one hundred and fifty pounds (£150) for every plot above described.

10

(Signed) JOS. SPITERI,
Notary Public Malta.

17th March 1958.

(Signed) J. SCICLUNA, Director.

20

This the eleventh day of September one thousand nine hundred and fifty nine.

(Signed) V. FORMOSA, A/Director.

"H"
Schedule of
Pre-emption and
of the right of
Preference

"H"

Schedule of Pre-emption and of the right of Preference.

In the First Hall of Her Majesty's Civil Court.

Michael (without occupation born Valletta), Antonio (labourer born Valletta), and Mary (spinster born Hamrun) brothers and sister Abela, of the late Carmelo Abela and Felicia née Spiteri residing at Marsa

30

vs.

Giuseppa Abela (widow of Joseph Abela, daughter of the late Carmelo Micallef and the living Paolina née Cassar, born and residing at Hamrun) and by Decree of June 2, 1959, Carmela Micallef wife of Pietro Paolo assisted by him, was nominated curatrix to

40

represent the absentee Maria sive Maria Felicia Cremona (wife of Joseph Cremona, daughter of the late Joseph Abela and Giuseppa née Micallef, born at Marsa and residing at Hamrun) and the absentee Joseph Cremona (teacher, son of Michael Cremona and Maria Assunta née Vella, born in Valletta and residing at Hamrun).

“H”
Schedule of
Pre-emption and
of the right of
Preference
—Continued.

10 Schedule of Pre-emption and of the exercise of the right of Preference of the said Michael, Antonio and Mary Abela.

Respectfully sheweth:—

That by deed of the eight April of this year 1959 in the records of Doctor Carmelo Giuseppe Vella, Giuseppa widow Abela and Maria sive Maria Felicia Cremona wife of Joseph Cremona acquired on perpetual subemphyteusis from the firm “Coleiro Brothers”, for the payments of an annual sub-ground-rent of thirty three pounds (£33) and on the conditions mentioned in the deed — two divided plots of the lands “Ta Rdum Rxew”, in the neighbourhood of “Għar Fekruna”, limits of Saint Paul’s Bay, namely one plot measuring about thirty six and one half square canes (bounded on the east and on the west by the property of the firm “Coleiro Brothers”, on the south by the seashore and on the north by Villa “Maria Teresa”, the property of the Appearers brothers and sister Abela, on which plot of land are built six boat-houses whose ceiling is directly beneath the road in front of the said Villa), and the other measuring about forty and three fourths square canes (bounded on the east and west with the property of the firm “Coleiro Brothers”, on the south with the seashore and on the north with the property, that is. the Villa of John Bianco, on which plot are built seven boat-houses whose ceiling is directly beneath the road facing the said Villa);

That appears are the owners — in virtue of the deed of April 17, 1952 in the records of Notary Joseph Gatt — of Villa Maria Teresa above mentioned, a part of which (together with the road facing it) overlies the said boat-houses and plot of land granted on subemphyteusis. Moreover, both the site on which the Villa is built and the plots granted on subemphyteusis on April 8, 1959 are portions of the lands which are subject to the payment of a perpetual ground-rent of seventeen shillings eight pence 17/8 in favour of the Government as per grant of July 30, 1728;

"H"
Schedule of
Pre-emption and
of the right of
Preference
—Continued.

That — apart from and without prejudice to the rights of appearers on the said plots and boat-houses — appearers have the right to assume by right of pre-emption and to exercise their right of preference on the grant of subemphyteusis already mentioned and are, therefore, exercising these rights;

Wherefore the appearers, in virtue of their said rights and of any other right to them appertaining according to Law, are hereby assuming by right of pre-emption and are exercising the right of preference (against the said Giuseppa Abela, Maria sive Maria Felicia Cremona and Joseph Cremona) on the said grant of subemphyteusis made by the aforementioned deed of April 8, 1959 in the records of Doctor Carmelo Giuseppe Vella of the said two plots of land and divided portions of the lands "Ta Rdum Rxew", in the neighbourhood of Ghar Fekruna, limits of Saint Paul's Bay, as described above, for the annual and perpetual ground-rent or rather sub-ground-rent of thirty three pounds (£33) and on the other conditions mentioned in the said deed. 10

The appearers declare and confirm on oath that they are not aware what expenses had been made by the said grantees in connection with the said grant of subemphyteusis and bind themselves to deposit the amount of such expenses within the legal time as soon as they shall have been informed of this amount. 20

(Signed) RICCARDO FARRUGIA,
Advocate.

„ C. VASSALLO,
Legal Procurator.

This the twenty ninth April 1959.

The appearers have sworn before me the contents of the last paragraphs of this schedule after that I had read it over to them in the presence of Advocate Dr. R. Farrugia for purposes of identification. 30

(Signed) M. L. PETROCCHINO,
Dep. Registrar.

I certify that on the fifth of June 1959 I served, through Usher Alfred Abdilla, on Giuseppa widow Abela, a copy of this schedule together with an extract from para 4 of the Fourth Schedule to the Malta (Constitution) Order-in-Council 1959.

This the 8th June, 1959.

(Signed) NAZ. AQUILINA, 40
Marshal.

I certify that on the sixth of June 1959 I served, through Usher Vincent Grupetta, on Carmela Micallef a copy of the present schedule together with an extract from para 4 of the Fourth Schedule to the Malta (Constitution) Order-in-Council 1959.

"H"
Schedule of
Pre-emption and
of the right of
Preference
—Continued.

This the 8th June, 1959.

(Signed) NAZ. AQUILINA,
Marshal.

A true Copy.

(Signed) V. BORG GRECH,
Ass. Registrar.

10

"I"

**Correspondence exchanged between Joseph Abela
and Director Public Works Department**

7, Nazarene Street, Marsa.

22 — 7 — 58.

"I"
Correspondence
exchanged
between Joseph
Abela and
Director of
Public Works
Department

The Director of Public Works
Valletta.

Dear Sir,

20 I wish to inform you that last Saturday employees of your Department had to effect work on the ceiling (roof) of my two garages at "Ta Rxew" St. Paul's Bay and to my knowledge this has caused damage to my roof which furthermore may increase in time. Under the circumstances I feel I must hold your Department responsible for the damage as well as for that which may arise due to the works performed.

Yours truly,
(Signed) JOSEPH ABELA.

* * *

Office of Public Works
Valletta.

30

19th August 1958.

Sir,

I have to refer to your letter dated 22nd July 1958 regarding damages to your garages at "Ta Rxew" St. Paul's Bay and to inform you that the alleged damages have not been caused by employees of this Department.

(no signature)

“J”
Evidence taken
by the Legal
Referee
appointed by
the Second Hall
of H.M. Civil
Court on the
Application of
Felicia Maria
Cremona

“J”

**Evidence taken by the Legal Referee
appointed by the Second Hall of H.M. Civil Court
on the application of Felicia Maria Cremona.**

In the Second Hall of Her Majesty's Civil Court.

In the records of the application of Felicia Maria Cremona, wife of Joseph filed on the 28th August 1958.

III. Sitting held this day, 14th November 1958, at 3.30 p.m., in one of the Halls of the Superior Courts, Valletta, in the presence of applicant assisted by Advocate Dr. Filippo N. Buttigieg. 10

Michael Abela, son of the late Carmelo, born in Valletta and residing at Marsa, called by the Applicant, states on oath:—

I am the brother of the deceased Joseph Abela. I know that my brother left no property, but had two plots of land behind the Villa at St. Paul's Bay. He had taken this land from the firm "Coleiro". When we checked his belongings, we found among them three Lombard Bank booklets and a smaller one of another bank in Malta. Of the three Lombard Bank booklets, only one was in his name; the other two were in my name and in the names of my brother Antonio and of my deceased brother. The deposits, even of the said two booklets, were made by the deceased. The money which had been deposited by him with Lombard's in the name of us three had been previously deposited in another bank in Malta, possibly the National Bank, in his own name only: when he decided to transfer the money to Lombard's, we told him to deposit them in the name of us three. The deposit of the small-booklet was and is still in his name. The booklets are in our house. 20

The Villa at Saint Paul's Bay "Maria Teresa" which was being constructed by the deceased, was sold to us by him against the compensation which he owed us for the work of stevedoring we did together, that is, against our share of the profits we made out of this work. I and all my brothers were his partners in this work because he used to work with tools belonging to us all. These were not the tools of our uncle Publio Debono. The tools I mentioned and which consisted in ropes, planks, hooks, tarpaulin, etc had been bought by us, that is, by the brothers only. 30

The Villa had been transferred to us three, that is, to me, my brother Antonio and my sister Mary. The price corresponds to my share and that of my brother Antonio only, but we wanted 40

to include our sister Mary with us because we live with her and she takes care of us. Even our brother Joseph used to live with her and used to give her 2s. 6d. a day for his maintenance.

“J”
Evidence taken
by the Legal
Referee
appointed by
the Second Hall
of H.M. Civil
Court on the
Application of
Felicia Maria
Cremona
—Continued.

10 We did not share the money which Joseph used to get out of our stevedoring: he used to keep everything himself. On the other side of the road, to be exact under the road facing the Villa, there are six boat-houses facing the sea which belong to the same proprietors of the Villa, namely, the three brothers. They had been built together with the Villa, and later I built another
10 seven with the money which I used to get from the lease of the other six boat-houses which I had also built myself for I had, in fact, built the thirteen boat-houses. The boat-houses were let at from £15 to £20 each. Even the Villa was completed with the rent of these boat-houses, but it was my brother Joseph who continued to interest himself in the completion of the Villa and the construction of the other seven boat-houses. I do not know who was the mason or the architect. I think the mason was a certain Carmelo from Qormi. As I do not know how to write,
20 the receipts for the rent received used to be prepared for me by Anthony Pavia. I do not know how much the Villa and the boat-houses cost. I have never withdrawn any money from the Bank to pay anything, because everything was in the hands of Joseph. Once or more I did pay the mason myself with my own money, not, that is, with the money which my brother Joseph had given me with which to pay the mason.

After the war, the stevedoring work decreased appreciably and during the last four years we did not do any such work. Nor did we do any stevedoring during the war.

Read over to witness.

30

(Signed) M. ABELA.

,, M. I. BIANCHI.

* * *

IV. Sitting held this day the 20th November 1958 in one of the Halls of the Superior Courts Valletta, in the presence of Applicant assisted by Advocate Dr. Filippo N. Buttigieg.

Michael Abela continues his evidence and states on oath:—

When Joseph died, my sister Mary and I opened a closed box, in the presence of Joseph Pavia, by means of a key which we found, after his death, in a tin box.

40 My brother felt ill in St. Paul's Bay and went down by truck to his house at Marsa: two days later we took him to St. Luke's

"J"
 Evidence taken
 by the Legal
 Referee
 appointed by
 the Second Hall
 of H.M. Civil
 Court on the
 Application of
 Felicia Maria
 Cremona
 —Continued.

Hospital where he died some days later. The box I mentioned was at Marsa. My brother used to sleep in my room and the box, which only he used, was in this room.

The tools and tarpaulins which we had inherited from Publio Debono were destroyed during the war: we bought the new ones with which my brother used to work, out of the compensation we received from the War Damage Commission.

I do not know Carmelo Lorenzo Zammit who had a cement factory at Pietà.

When my brother Giuseppe sold the Villa to us, the first six garages (boat-houses) had been ready: we gave them out on lease and with the rent we resumed work on the Villa and built the other seven boat-houses. I do not know who are the tenants of these last mentioned seven boat-houses because, as I stated, my brother Joseph used to take care of these matters. I am now receiving the rent of the thirteen boat-houses. Inside the box — besides the bank books I mentioned — there were some documents but I do not know to what they referred. When we acquired the Villa I did not know how much of it had been ready and we continued the remaining works involving cement, stone, woodwork, etc. I do not know who were the carpenters and the labourers because the work was continued by Joseph. Joseph did not keep any books but only notes on pieces of paper.

At that time I had some money in my name at the Barclays Bank. I withdrew them and re-deposited them again with Lombard's: this account had nothing to do with the three accounts I mentioned earlier. At Barclays Bank, the money was deposited in a Savings Account.

The truck mentioned in the Warrant had been exchanged with another truck which we had and which had been bought by Joseph, with common money, from an auction sale. The truck is not being used and is parked in the garage; I sometimes start its engine to keep up the battery.

Read over to witness.

(Signed) M. ABELA.
 „ M. I. BIANCHI.

Anthony Abela, the brother of the previous witness, called by the applicant, states on oath:—

I am employed at the Dockyard since the last ten years or so. Joseph Abela is my brother. When we acquired the Villa, it was only half completed. We left the remaining works in the

10 hands of my brother and I do not, therefore, know the names of the workers. At the time of the sale of the Villa, some of the boat-houses were ready and some not. I do not know how much was the sale-price of the Villa because I used to leave everything in the hands of my brothers (Michael and Joseph) so much that I did not even appear on the deed. I had some money in the Bank at the time, but I paid for the Villa out of my share of the money which was in Joseph's possession. We brothers were partners in everything and we had a common economy. We included our sister with us because we wanted to. My brother who lives in America is not included with us. He is the son of the second wife of my father. We were partners from the very beginning and Joseph used to work for me and my brother Michael and we could get what we wanted. Joseph had no share of the boat-houses and their rent belonged to me and Michael but we never refused him anything he needed. We used to work as stevedors under the style "Abela Brothers".

20 I was present when the box was opened and, besides the small bank booklet, we found, I think, over £10 notes inside a copybook. I did not stay there till the end.

We did not work during the war and, after the war, we did little work. Before I entered the Dockyard, I used to go at times to help them in their work.

He never mentioned his wife to us.

Read over to witness.

(Signed) A. ABELA.

„ M. I. BIANCHI.

30 V. Sitting held this day the 3rd December 1958 in one of the Halls of the Superior Courts, Valletta, in the presence of Applicant assisted by Advocate Dr. Filippo N. Buttigieg.

Mary Abela, spinster, daughter of the late Carmelo Abela, born and residing at Marsa, called by the Applicant, states on oath:—

I am the sister of the decuius Joseph Abela. He used to live with us in a room which he shared with Michael. He had a trunk which he kept closed with a key which was always with him. After his death we found this key in a small tin box and we opened the trunk in the presence of Joseph Pavia and my brother Michael.

"J"
Evidence taken
by the Legal
Referee
appointed by
the Second Hall
of H.M. Civil
Court on the
Application of
Felicia Maria
Cremona
—Continued.

"J"
Evidence taken
by the Legal
Referee
appointed by
the Second Hall
of H.M. Civil
Court on the
Application of
Felicia Maria
Cremona
—Continued.

When the Warrant of Description was being executed, this box remained closed.

Inside the box or trunk we found a pair of gold links, another pair of silver links, a gold collar-button, two new pairs of sandals, some underwear and some two dresses, one of them new. There was also a wallet with fourteen pounds notes of which I took £4 to have some Masses said for his repose.

I am the owner of the house at Marsa where I and my brothers live. It was bequeathed to me in usufruct by my uncle Publio Debono.

10

In the trunk I mentioned, we also found a National Bank booklet.

At the time of the sale of the Villa, the boat-houses which are situated in front of the Villa were completed and some of them already let, but the road over them was not yet completed.

My brother Joseph never gave me money, apart from a shilling now and then and the two shillings six pence he used to give me for his maintenance.

Read over to witness.

(Signed) MARY ABELA.

20

M. I. BIANCHI.

A true copy.

(Signed) EDW. CAUCHI,
Dep. Registrar.

Documents filed together with the Defendants'
Note of Submissions of November 6, 1959.

"K"
Copy of a letter
sent to Joseph
Pavia

"K"

Copy of a letter sent to Joseph Pavia.

24th March 1959

To Joseph Pavia — 6 St. John Street, Valletta.

30

Michael, Mary and Antonio Abela inform you, as they have already told you verbally, that they do not want to renew the lease you have of Villa "Maria Teresa" and the garage, at Xemxija, St. Paul's Bay, because they want to resume possession of them for their own occupation.

You are, therefore, asked to vacate these premises by the end of this month. My clients would be prepared to let you

keep the garage for another six months if (1) you vacate the Villa by the end of the month and (2) declare that you would vacate the garage by the end of September 1959.

"K"
Copy of a letter
sent to
Joseph Pavia.
—Continued.

In default, they will sue you before the competent tribunal for authorisation to resume possession of the said premises.

So much for your guidance.

(Signed) RICC. FARRUGIA, Advocate

"L"

Contract dated 13th September 1955.

"L"
Contract dated
13th September
1955

10 The thirteenth (13) September
 One Thousand Nine Hundred and Fifty Five.

Before me Notary Doctor George Bonello DuPuis and before the undersigned witnesses who have all the qualifications required by Law and are known to me, have personally come and appeared:

20 Of the one part: Michael Abela, stevedore, son of the late Carmelo and Felicia née Spiteri, born in Valletta and residing at Marsa who is appearing on this deed in his own name and as the special mandatory of his brother Antonio Abela, storekeeper, son of the late Carmelo and Felicia née Spiteri, born in Valletta and residing at Marsa, nominated in virtue of a special Power of Attorney which is herewith annexed for its conservation and registration marked "B".

And of the other part: Architect and Civil Engineer Maurice Captur, son of Luigi and Mary née Bonello, born and residing at Sliema.

John Bianco, in trade, son of the late Carmelo and of the living Carmela née German, born in Hamrun and residing in Valletta.

30 Joseph German, in trade, son of the late John and Carmela née Camilleri, born in Valletta and residing in Sliema, who is appearing on this deed in his own name and as the special mandatory of Gustav Ricci, in trade, son of the late Raphael and the living Josephine née Rodenas, born in Alexandria and residing in Gzira, nominated in virtue of a special Power of Attorney which is herewith annexed for its conservation and registration marked "A".

The Appearers are known to me, Notary.

"L"
Contract dated
13th September
1955
—Continued.

By means of these presents, appearer Michael Abela proprio et nomine is selling and transferring:—

1) to appearer Joseph German proprio et nomine who accepts and proprio et nomine buys and acquires for the price of two hundred and seventy five pounds (£275) a portion of a building site from the field known as "Tax-Xemxija" sive "Tal-Kortin", in the neighbourhood of Xemxija, limits of Saint Paul's Bay, measuring sixty seven and a half square canes ($67\frac{1}{2}$ sq. canes) of which twenty square canes could be built upon and forty seven and a half square canes ($47\frac{1}{2}$ sq. canes) to remain as garden, subject to an annual and perpetual ground-rent of four pounds ten shillings (£4 10. 0), bounded on the north-west with the property of the brothers Abela, on the south with a private road without a name which faces the sea, on the east with the property of the brothers Abela and on the west with the property of Emmanuele Giudice. 10

2) to appearer John Bianco who accepts, buys and acquires for the price of one hundred and thirty seven pounds ten shillings (£137 10s. 0d.) a portion of a building site measuring sixty seven and a half square canes ($67\frac{1}{2}$ sq. canes) for the field known as "Tax-Xemxija" sive "Tal-Kortin", in the neighbourhood of Xemxija, limits of Saint Paul's Bay, of which twenty square canes could be built upon and forty seven and half square canes ($47\frac{1}{2}$ sq. canes) to remain as garden, not included in this transfer the space above thirteen courses from the level of the damp proof course, which space is going to be transferred further down, subject to the ground-rent or rather to its share of ground-rent amounting to two pounds five shillings (£2 5s. 0d.) per year and in perpetuity, such site being subject also to what is going to be stated further down and is bounded on the south with a private road which is unnamed but faces the sea, on the east and north-west with the property of the brothers Abela. 20 30

3) to appearer Architect Maurice Captur who accepts buys and acquires for the price of one hundred and thirty seven pounds ten shillings (£137 10s. 0d.) the space above thirteen courses from the level of the damp proof course of the preceding site, namely that transferred to John Bianco, subject to its share of an annual and perpetual ground-rent of two pounds five shilling (£2 5s. 0d.), which space is bounded on the south with a private road which is unnamed but faces the sea, on the east and north-west with the property of the brothers Abela, with the right to build a flight of steps on the side of the site described in paragraph two of not more than three feet six 40

inches wide (excluding the portion housed inside the wall) and forty two feet deep from the façade or street-alignment.

"L"
Contract dated
13th September
1955
—Continued.

Appearer Michael Abela declares that he is hereby receiving:

- 1) from John Bianco the sum of one hundred and thirty seven pounds ten shilling (£137 10s. 0d.), that is, the sale-price, and is, therefore, leaving hereby in his favour a valid receipt for the said amount.
- 10 2) from Architect Maurice Captur the sum of one hundred and thirty seven pounds ten shillings (£137 10s. 0d.) that is, the sale-price, and is, therefore, leaving hereby in his favour a valid receipt for the said amount.
- 30 3) from appearer Joseph German proprio et nomine the sum of one hundred and twenty five pounds (£125) from the sale-price of two hundred and seventy five pounds (£275) and is, therefore, leaving hereby in his favour a receipt for the said £125: appearer Joseph German proprio et nomine binds himself to pay the balance within a year from to-day without interest and, as a security for payment, hypothecates his present and future property and those of his mandators in favour of appearer Michael Abela proprio et nomine who accepts — this besides the special privilege contemplated by Law.

The building sites transferred by this deed are better marked on the plan annexed herewith for registration and conservation marked "C" and are coloured red and yellow.

Appearer Michael Abela proprio et nomine binds himself to construct and maintain the road in front of the sites transferred until the Government takes possession of it and, when this happens, all expenses shall be borne by the buyers.

Appearer Michael Abela proprio et nomine warrants this sale as of Law, and, for this purpose, hypothecates his present and future property and that of his mandator in favour of the buyers who accept.

For purposes of the Succession and Donation Duties Ordinance (Chapter Seventy of the Revised Edition of the Laws of Malta) it is being declared that the vendors had acquired the building sites hereby transferred from Architect England Sant Fournier and others by means of an onerous contract in the records of Notary Joseph Gatt of the twenty eight (28) October 40 one thousand nine hundred and fifty four (1954).

For this reason I, the undersigned Notary, declare that the

"L"
Contract dated
13th September
1955
—Continued.

present transfer is not subject to the provisions of the said Ordinance.

This deed has not been preceded by the usual researches in the Public Registry.

Appearer Michael Abela proprio et nomine binds himself to construct a flight of steps on the side of the building site marked "A" on the annexed plan, which shall be more or less of the same dimensions of the neighbouring Villas and if no permit is obtained for the construction of this flight of steps, then Michael Abela binds himself to construct it in front of the building site hereby transferred. 10

This deed has been done, read and published, after it had been explained by me, in Malta, Saint Paul's Bay, Xemxija, in Villa "Teresa Maria" situated in a road without a name, present as witnesses John Spiteri, employed with the Water Works Department, son of Lewis, residing in Naxxar, and Joseph Pavia, in trade, son of the late Joseph, residing in Hamrun.

(Signed) M. ABELA
" JOS. GERMAN
" M. CAPTUR A. & C.E. 20
" JOHN BIANCO
" JOSEPH PAVIA
" JOHN SPITERI
" DR. GEORGE BONELLO DUPUIS,
Notary Public Malta.

A true copy.

Quod Attestor.

This the 14th January 1959.

(Signed) NOT. DR. GEORGE BONELLO DUPUIS.

"M"
Letter from
Director of
Public Works

"M"

30

Letter from Director of Public Works.

Office of Public Works,
Valletta.

22nd December, 1954.

Sir,

I am to refer to your application dated 21st October 1954, on behalf of Mr. Michael Abela, regarding the erection of buildings

at Rdum ta' Rxew — Xemxija, St. Paul's Bay, and to inform you that the necessary building declaration will be issued to you when the street in question will have been brought for formation level as required by law.

"M"
Letter from
Director of
Public Works
—Continued.

I have the honour to be,

Sir,

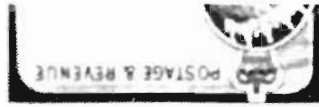
Your obedient servant,

(Signed) EDW. BORG CARDONA,
for Director of Public Works.

D. Mintoff Esq., B.Sc., M.A. (Oxon),
A. & C.E.

"N"

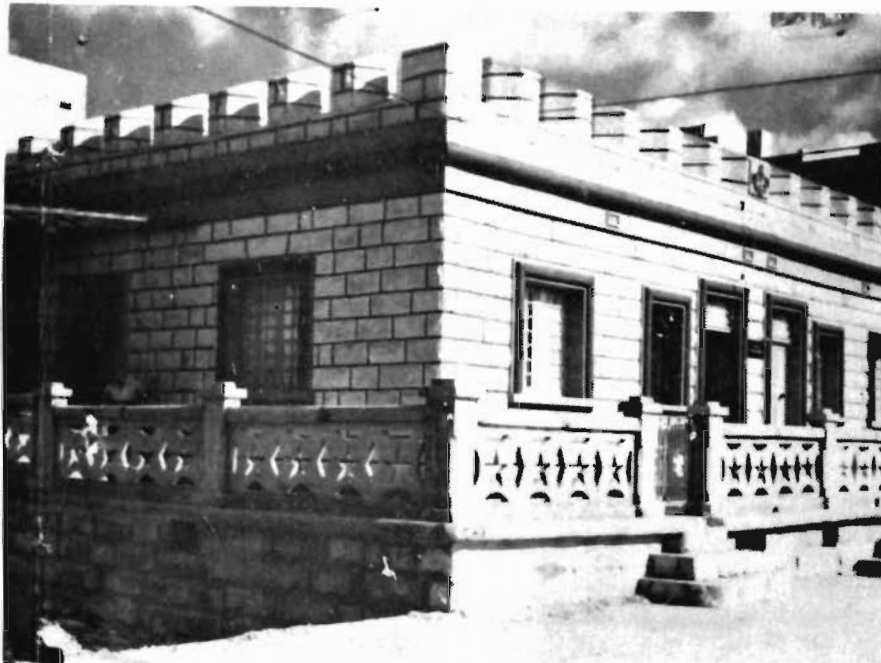
Snapshot of Villa "Maria Teresa"
with iron balcony.



"N"
Snapshot of Villa
"Maria Teresa"
with iron
balcony

"O"

Snapshot of Villa "Maria Teresa"
without the iron balcony.



"O"
Snapshot of Villa
"Maria Teresa"
without the iron
balcony