

## M O O T \*

**A**LFIO GIUNTI was born in Italy of Italian parents in 1880; he was brought to Malta by his parents in 1886. He was baptised and brought up in the Roman Catholic faith.

It is known that by the year 1910 he had an extensive business in Malta where he had also purchased a villa. He had also a great estate in Italy and was the owner of a factory there and was director of several companies carrying business in Italy.

In 1911 he went to Italy and there married Rachele Moricca by going through a civil form of marriage. He returned to Malta in the same year and in 1912 he applied for, and was granted, British Nationality. There were three children of this marriage, Giulio, Charles and Louis; they were all educated in Malta.

Alfio Giunti died in 1946, and by a will made in Malta in 1944, he left all his property to his wife Rachele as his universal heir.

Giulio, Charles and Louis have instituted proceedings against Rachele Giunti for the 'legitima portio' as the legitimate children of Alfio Giunti. Rachele Giunti contends that the children are not according to the Law of Malta legitimate as the marriage between her and Alfio Giunti was not a valid marriage according to Maltese Law.

Professor W. Buhagiar, B.A., B.C.L. (Oxon.), LL.D., kindly consented to hear the case.

Counsel for plaintiff: Mr. J.V. Galea and Mr. O. Gulia, B.A., L.P.

Counsel for defendant: Mr. G. Schembri B.A., and Mr. G. Degaetano.

Mr. Galea maintained that the question was one of classifying the rights on which the plaintiffs were basing their claims to the succession. Counsel for plaintiffs contended that by the civil marriage contracted in Italy, valid by Italian law, the decuius had contractually instituted his children as heirs and

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\* Reported by F. Montanaro Mifsud.

thus given them a vested right which the will made in Malta in 1944 could not negative. The contractual institution of an heir was revocable, admittedly, but not unilaterally. Mr. Galea explained that one of the parts of the marriage ceremony in Italy was the reading to the spouses by the public official concerned of the law relating to the family, including the provisions regarding the succession rights of any future issue, which the spouses are presumed to have accepted.

Mr. Schembri, for the defence here pointed out that if Mr. Galea's contention was correct, absurd conclusions would result, such, as, for example, that no one could freely make a will after marriage. Moreover, it was recognised in all countries that all agreements made in view of a forthcoming marriage would lapse, should the marriage, for some reason or other, fail to take place.

Professor Buhagiar ruled that the reading of the Code was a mere formality, and in any case the important thing was to determine the domicil of Alfio Giunti at the time of his marriage to Rachele Moricca for on that question depended the validity or otherwise of the marriage.

Mr. Gulia spoke next. He said that, as Alfio Giunti's domicil of origin was Italian and that as the onus of proving a change of domicil rested on those who pleaded it, he would listen to the arguments brought forward by the defence and reserve the right to reply to them afterwards.

Mr. DeGaetano, who held that by 1911, when the marriage to Rachele Moricca took place, Alfio Giunti had acquired a Maltese domicil, made a reference to the facts of the case. We know that Alfio Giunti came to Malta with his parents in 1886, at the age of six. What happened between 1886 and 1910, is not at all certain, but we do know that he had an extensive business in Malta. He also purchased a villa — one of the strongest indications of a change of domicil recognized in jurisprudence. On the other hand, he was also the owner of a great estate and of a factory and the director of several companies in Italy: this would not, however, require his continuous presence there, and, in any case, such circumstances should not be given overmuch weight, for otherwise we will be forced to maintain that a domicil of origin can never be lost, as Cheshire says in his review of the English case, *Ramsay vs. Liverpool*

Royal Infirmary. Mr. DeGaetano further stated that Alfio Giunti's conduct from 1911, also supported his contention: he went to Italy married an Italian woman, in Italy, but came back soon after to Malta to live presumably in his villa, acquired British Nationality and educated his children in Malta.

Mr. Gulia quoted Cheshire to the effect that, "unless the decuius has loosened all the ties that connect him with the country of his origin, the acquisition of a new domicile will only rarely be admitted", and brought to the support of his case a description of the facts in *Winans vs. A.G.* The possession of a factory and a great estate and the directorship of several companies in Italy were sufficiently strong proofs of the retention of Italian domicile.

Professor Buhagiar, after reiterating his ruling on the point of classification raised by Mr. Galea, made a further examination of the facts of the case, and came to the conclusion that the marriage between Alfio Giunti and Rachele Moricca was invalid because the former had by that time acquired a Maltese domicile and according to the prevailing ideas of Maltese Law one of the conditions for the validity of the marriage of a Maltese wherever celebrated was the observance of the formalities required by the Council of Trent.

Professor Buhagiar's decision was based on the following grounds: Alfio Giunti was brought by his parents to Malta, a child of six. He did not come for business purposes (what his father's motives in coming to Malta were, and whether he later acquired a Maltese domicile cannot be determined) but by 1910, a year before his marriage, he had an extensive business in Malta. This and the fact that he acquired British Nationality in 1912, must have entailed his presence in the island for a considerable time. Moreover, we know that he was staying in Malta immediately before the marriage and returned soon after. These circumstances would seem to satisfy the condition of residence requisite for a change of domicile. Proof of the existence, at the time of the marriage, of Alfio Giunti's intention to make Malta his permanent home rests primarily on the fact of his having purchased a villa in Malta — a villa which subsequent events seem to suggest that he purchased with the specific purpose of making his conjugal home: although he married an Italian woman and in Italy, he returned to Malta almost immediately. Further



evidence of the intention of abandoning the domicile of origin some time prior to the celebration of the marriage is the naturalization so soon after. Finally, the education of the children in Malta, although Alfio Giunti was a man of substance and could well afford to send them to Italy, was an indication of his having severed all ties, except some purely commercial, with his native land.

The further question as to whether the plaintiffs, despite the nullity of the marriage, had any right to the succession of the deceased was not discussed.

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LORD MACMILLAN.

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