

LAW REPORTS*

H.M. COURT OF APPEAL

(SIR G. BORG C.J.; GANADO J.; CAMILLERI J.)

Joseph Axisa et vs. A.I.C. Jos. Zammit Bonett et.

Judgment delivered on 29. 11. 1948.

Plaintiffs had granted on lease to defendants the Cinema "Axisa" at Sliema, including its goodwill, police licences and all the necessary equipment for a period of ten years. When the term stipulated in the lease agreement expired, lessors sued defendants in H.M. Commercial Court and asked for an order of eviction against lessees from the cinema premises which they were holding as a result of the said agreement. Defendants pleaded that the Court was incompetent to take cognizance of the case as the matter was governed by the Reletting of Urban Property Ordinance (Chap. 109) and that consequently the Rent Regulation Board was the proper tribunal to order the eviction of defendants from an urban tenement.

Held: H.M. Commercial Court pointed out that the matter was not governed by the law concerning the reletting of urban property as the object of the contract of lease was not merely the lease of the bare premises but included also that of the goodwill which was owned by plaintiffs. The Commercial Court was therefore competent to decide the case. In accordance with the provisions of the ordinary law as laid down in the Civil Code plaintiffs had a right to retake possession of the cinema in question and lessees were therefore ordered to hand over the premises to plaintiffs within fifteen days. Judgment was confirmed on appeal.

Dr. M. Agius Vadalà vs. Capt. H. Parnis England.

Judgment delivered on 29. 11. 48.

Plaintiff applied to the Rent Regulation Board to retake possession of a garage let to defendant as the term of lease had expired. The tribunal **held** that sec. 10 (b) of Chap. 109 governing the reletting of urban property as amended by Ordinance XXI of 1942 was applicable to "any premises", which included therefore, private garages and plaintiff could not ask for the eviction of defendant from the tenement in question unless he

* Reported by J. A. Micallef, LL.D.

proved that the hardship suffered by him was greater than that of defendant. Plaintiff's demand was therefore dismissed with costs.

On appeal, H.M. Court of Appeal revoked the judgment given by the Rent Regulation Board. It was pointed out that the law limited the right of the owner to re-take possession of a premises for his own use or for a member of his family only in the case of dwelling houses. The Court quoted 'in extenso' the debates of the Council of Government during the second reading of the bill containing the above amendment as well as the objects and reasons laid down in the draft Ordinance and it was of the opinion that the spirit of the amendment agreed with the Maltese version of the law which had expressly mentioned 'dwelling houses'. The interpretation of the word 'premises' in the English text could not therefore be extended to include a private garage.

Joseph Axisa et vs. A.I.C. Jos, Zammit Bonett et.

Judgment delivered on 29. 1. 1949.

Defendants by petition filed in H.M. Court of Appeal prayed that they be granted permission to appeal to the Judicial Committee of the Privy Council from the judgment delivered by that Court on the 27 November, 1948. Plaintiffs replied that an appeal to H.M. Privy Council did not lie as the matter in dispute did not amount to £500 in value.

Held. The Court remarked that according to section 2 (a) Order in Council 1909, an appeal as of right was allowed to His Majesty in Council when the value of the matter in litigation was five hundred pounds sterling or upwards. Apart from the fact that it was manifest that the goodwill of the cinema "Axisa", situated at Sliema, exceeded the value of £500, the Court pointed out that it was the practice of the Maltese Courts when the value of the matter 'in lite' was uncertain and indeterminate, to abide by the value attributed by appellants. The Court in support of this view quoted the judgment of H.M. Court of Appeal 'Mifsud vs. Nicosia' (Vol. XXV, Pt. I, p. 650), 'Teuma vs. Rapinett' (Vol. VII p. 35) 'Onor. Vella noe. vs. Apap' (Vol. XVII p. 170) as well as section 762 of the Code of Civil Procedure (Chap. 15). It would be unjust that a defendant of an adverse judgment should be bound not by the

value to himself of the subject matter of the action but by the value originally assigned to it by his opponent. The Court quoted by Bentwich, *Privy Council Practice* (Second Edition). In fact, 'the proper measure of value for determining the question' was to consider it 'as it affected the interests of the party who was prejudiced by it, and who sought to relieve himself from it by appeal.' Defendants were allowed 20 days to submit a sworn declaration that the value of the matter exceeded £500 and when this was fulfilled they would be allowed to appeal to His Majesty in Council.

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ACKNOWLEDGEMENTS

Melita Theologica — A review of the Royal University Students' Theological Association — Vol. I, No. 4.

The Chest-Piece — A review of the British Medical Students Association (Malta Branch).

Lux et Vita — A publication of the University Students Catholic Guild.

La Crociata — *Rassegna Mensile di Lettere, Scienze ed Arti*.



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