

The Right Honourable Gerald Lord Strickland, G.C.M.G., LL.B.,  
M.L.A., the present Minister for Justice (in the place of The  
Honourable Dr. Alfredo Parnis, O.B.E., LL.D.), and others - *Appellants*

*v.*

Giuseppe Grima, in his capacity as President of the Trade Union  
Council of Malta (in the place of Walter Agius, deceased), and  
others - - - - - *Respondents*

FROM

THE COURT OF APPEAL FOR THE ISLAND OF MALTA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 23RD JANUARY, 1930.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD WARRINGTON OF CLYFFE.

LORD THANKERTON.

[*Delivered by* LORD BLANESBURGH.]

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This appeal is concerned with the validity of the election in July, 1928, of two of the appellants, Messrs. Mifsud and Borg to be members of the Senate of Malta, representatives there of the Trades Union Council of the Island. The Court of Appeal in Malta, by a judgment of the 14th August, 1928, has declared their election to be null and void and this is an appeal from that judgment.

A preliminary question of serious importance at once arises : viz., whether His Majesty can be advised further to entertain the appeal, and their Lordships, in the first instance at all events, must direct their minds to the consideration of that question to the exclusion of every other.

Although special leave to appeal had been granted by His Majesty in Council, it was recognised that it was not thereby intended that the Board, with all the facts before it,

should be precluded from reconsidering whether the appeal was competent, and Counsel on both sides before their Lordships agreed that that problem could only be satisfactorily solved after the Board had become seized of the history and nature of the controversy out of which it emerged. The arguments accordingly proceeded on that footing to their conclusion. Their Lordships will follow the same course, and before specifically dealing with this preliminary issue, will, without canvassing in detail the legal and constitutional questions discussed before them, give some account of the circumstances which have led up to the present situation.

Responsible self-government for Malta in internal affairs was in 1921 granted by His Majesty through the Malta Constitution Letters Patent, 1921. The Maltese Legislature thereby brought into existence consists of two Houses—the Senate and the Legislative Assembly. The Senate is a House of seventeen—seven general members and ten special members. Of these special members, two, nominated by the Archbishop of Malta, represent the clergy; two, the nobility; two, the graduates; two, the Chamber of Commerce, and two—and it is with these that this case is concerned—the Trade Union Council, a body so described in the Letters Patent. The method of electing the representatives of the nobility, the graduates, the Chamber of Commerce and the Trade Union Council, the registration of voters in and for any such classes and the conduct of such elections, are all matters under section 5 (3) of the Letters Patent, to be governed by such rules as may from time to time be determined by the nobility, the graduates, the Chamber of Commerce and the Trade Union Council respectively. It is apparently left to each of these orders to resolve how it shall be constituted for electoral purposes and particularly whether every member, say, of the Trade Union Council, must himself be a member of a constituent Trade Union. Section 6 (1), however, in effect provides that no person may be elected as a special member of the Senate who is not himself qualified to vote at the election.

It was apparently assumed that at the date of the Letters Patent there was in Malta a Trade Union Council as definite in its constitution as the Chamber of Commerce. But in fact no such Council existed, and it became necessary in order to overcome the difficulty thus ensuing for the Governor to utilize the power conferred upon him by Section 67 of the Letters Patent by which he is enabled to make to the Letters Patent within one year from their commencement, such additions as might be necessary in order to carry out their purposes.

Accordingly His Excellency with the previous consent of the Secretary of State by Proclamation dated the 15th September, 1921, declared that the term Trade Union Council wherever used in sections 5-7 inclusive, of the Letters Patent, should mean a Council or other Body recognised by the Governor as representing the Trade Union Council of Malta for the purposes of the Letters Patent.

In pursuance of the powers so vested in him a Trade Union Council was recognised by the Governor on the 16th September, 1921, and that Council elected two representatives to the Senate. In 1924 these representatives resigned their seats, which, on September 30, 1926, were still vacant.

On that day a Government Notice was issued, No. 308 of 1926, making regulations for the purpose of constituting a Trade Union Council of Malta. These regulations provided for the appointment of a Registrar who was to compile a register of Trade Unions and each Trade Union so registered was to elect representatives to the Trade Union Council—one representative for every hundred of its members. The Governor was empowered to recognise the persons elected by the registered Trade Unions as the Malta Trade Union Council for the purposes of the Letters Patent and the persons thus recognised were to elect a president and a returning officer. By Article 14 it was provided that the Governor, on being apprised of the election of these officials, should immediately issue a writ to the Returning Officer commanding him to hold an election of two members to represent the Trade Union Council in the Senate. The Council recognised under these regulations was by article 16 to remain in existence until the 31st December, 1928, and subsequent elections were to be held in the December of 1928, and of each subsequent year. The Government Notice of 16th September, 1921, was thereby cancelled.

These regulations were, it appears, impugned by the President, the Secretary and the Returning Officer of the Trade Union Council as recognised in 1921, and an action was instituted by them to obtain a declaration of their invalidity. But it was brought before any election had taken place under the regulations, and for that reason it was held to be premature and it failed.

No further obstacle being put in the way of the regulations they were acted upon, and by Government Notice 93 of the 11th March, 1927, which is the basis of the case laid before their Lordships by the respondents, and now by the appellants as well, the body of persons in the Schedule termed the "Trade Union Council," whose names are there set out were recognised by His Excellency the officer administering the Government as representing the Trade Unions of Malta for the purposes of the Letters Patent. The Trade Union Council so recognised consisted of 24 members representing eight unions. Of them, nine members represented the *Unione Cattolica San Giuseppe*, the appellant. Mr. Mifsud, being one of these, and amongst the seven other unions represented were the Imperial Government Workers' Benefit Society and the *Società dei Piloti*.

Thereafter on the 11th May, 1927, rules made by the Council so recognised for conducting the election of its two special members for the Senate were published in the Government Gazette, an election was held, and by a Government Notice of the 17th June, 1927, Mr. Walter Agius and the appellant Mr. Michel Angelo

Borg were declared to have been duly elected members of the Senate.

Three days later, however, on the 20th June, 1927, the Senate and Legislative Assembly were dissolved by Proclamation and between June 25th and August 2nd, writs to the electing bodies to the Senate other than the Trade Union Council were issued. In reference to this Council, all the representatives thereon of the *Unione Cattolica San Giuseppe*, which will now be referred to as the *Unione*, except the appellant, Mr. Mifsud, had on the 22nd May, 1927, resigned from the Council; a note to their resignations signed by Mr. Mifsud stating that as he conscientiously felt that his conduct in the Council was absolutely correct, he found it impossible to resign unless he was asked to do so by those who sent him as their delegate in a general meeting legally convened. At a general meeting held on the 27th June, 1927—but which Mr. Mifsud says was both irregularly convened and held—the members present by resolution purported to expel him from the *Unione* and struck his name off the *Unione's* representatives on the Council. On the 1st July, 1927, Mr. Mifsud wrote to the Governor setting forth his position in the matter and on the 8th July, 1927, he brought an action in the First Hall of the Civil Court against the President of the *Unione* impugning his expulsion. That action has never been brought to a hearing and is still pending.

Following upon the resolution of the 27th June, 1927, the *Unione* treated their entire representation on the Trade Union Council as vacant and on the 29th, 30th, and 31st July, 1927, they held a ballot for the election of their nine representatives. On the 1st August 1927, the result of the ballot was intimated to the Minister of Justice, and by him as Head of the Ministry to the Governor: and by Government Notice No. 303 of 9th August, 1927, the nine persons so elected were recognised by His Excellency for the purposes of the Letters Patent, as the representatives on the Trade Union Council of the "*Unione*" in substitution for the delegates whose names had appeared in Government Notice No. 93 of the 11th March, 1927.

The appellant, Mr. Mifsud, was not one of those elected. He did not stand as a candidate—not perhaps unnaturally—although it would appear that under the regulations of September 30, 1926, his expulsion from the *Unione*, even if valid, would not technically have been a bar to his election. Their Lordships, however, have been more struck by another feature of this election. It is said that members of both political parties stood as candidates, and their Lordships have found nowhere in the voluminous record any suggestion that the election was, as an election, in any way irregular or that the gentlemen elected did not accurately and adequately reflect in their own opinions, the then views of the members of the *Unione*.

On the same day, but, as the Court of Appeal must be taken to have found, after that recognition by the Governor

of the new representatives of the Unione had been published, the writ for the election of its two special members in the new Senate was issued to the Returning Officer of the Trade Union Council. The date originally fixed for the election was the 16th August, 1927. At the request of the Council this date was subsequently extended to the 25th August, 1927. On the 14th August, 1927, however, as the results of the General Election proceeding in the other Constituencies were showing that in the new Legislative Assembly, the then Ministry would be in a minority, Sir Ugo Mifsud, its Head, tendered his resignation to the Governor. This was accepted, and on the same day the appellant, Lord Strickland, was entrusted by the Governor with the duty of forming a new administration, a task which was completed on the 16th August, 1927.

Thereafter, on the same day, on the advice of his new Ministers, the Governor in Council, by Government Notice No. 323, revoked the Regulations of September 30th, 1926, and annulled all that had been done by virtue of the same. Four days later, by Government Notice No. 335, His Excellency recognised a new Trade Union Council, excluding therefrom representatives of the Unione, the Imperial Government Workers' Benefit Society and the Società dei Piloti—and adding delegates of the National Farmers Union, the National Union of Seamen and the Union of Dockyard Employees. The election writ of the 9th August, 1927, was withdrawn, and on September 2, 1927, a new writ was issued for the election by the Trades Union Council, as now recognised, of its two representatives on the Senate. In the result, by Notice 370 of the 19th September, 1927, it was announced that Colonel Savona and the appellant, Mr. Borg, had been returned without opposition as these representatives.

This election was at once impugned by the respondents other than M. Grima and in an action for the purpose was by judgment of the Court of Appeal dated December the 5th, 1927, declared null and void. The Court of Appeal, in giving its reasons therefor, expressed the view that the issue of the writ by the Governor and the fixing of the dates for the different stages of the election procedure must be held to constitute the commencement of the election: that once a Trade Union Council had been recognised by the Governor for the purposes of a given election, he could not recognise another Council if that election had commenced but had not been concluded, and that the only body competent to elect its two representatives for the two seats rendered vacant by the dissolution of Parliament was the Trade Union Council recognised by the Governor under the Government Notices No. 93 and 303 of 1927.

Leave to appeal to His Majesty in Council having been refused by the Court of Appeal, and on the 17th May, 1928, by His Majesty in Council, that judgment is now final and binding.

The appellant, Lord Strickland, as head of the Ministry, and his colleagues thereupon came to the conclusion, and, as they suggest, rightly, that their proper course, as that most in accordance with the principle in the Court of Appeal's judgment, was to cause the election of the two senators representing the Trade Union Council to be held by that Council as recognised at the time of the dissolution of Parliament on the 20th June, 1927, *i.e.*, by the persons whose names were scheduled to Government Notice No. 93 of the 11th March, 1927, and by them only. Accordingly, Government Notices Nos. 163 and 168, of the 19th and 21st June, 1928, were issued to the delegates whose names were so scheduled, directing them to choose a Returning Officer to whom a fresh writ might be issued for the election of the representatives of the Trade Union Council in the Senate ; and ultimately a writ for the election of these two representatives was, on the 25th June, 1928, issued to the Returning Officer who had been so chosen. The election took place, and resulted as published on the 6th July, 1928, in the appellants, Mr. Mifsud and Mr. Borg being declared to have been returned uncontested. This is the election now impugned, and it is convenient to note before going further that at the first of the two elections advised by the new Government, both the appellant, Mr. Mifsud, as its representative, and the Unione were disfranchised altogether ; while at the second Mr. Mifsud, although not amongst those chosen on the 9th August, 1927, was the sole effective representative of the Unione, the other eight representatives named in Notice No. 93 having disappeared, as above appears, by resignation.

The challenge of this second election was immediate. It was made in this action brought in the Court of Appeal on the 5th July, 1928, by the respondents, Mr. Agius and Mr. Grima, on behalf of the Trade Union Council as a whole, and Dr. Mizzi as President and delegate of the Società dei Piloti, and by a unanimous judgment of that Court, delivered on the 14th August, 1928, it was held, as it had been held on the occasion of the previous election, that the only body competent to elect members for the two seats in the Senate, now in question, was the Trade Union Council recognised by the Governor by Government Notices Nos. 93 and 303 of 1927 : and that the election of the appellants, Messrs. Mifsud and Borg, by the constituency named only in Government Notice No. 93 was null and void. As to the claim of the appellant, Mr. Mifsud, that under Article 16 of the Regulations of the 30th September, 1926, he was entitled to remain a member of the Trade Union Council up to the 31st December, 1928, the Court of Appeal held that he had thereunder, no vested right to remain an elector or an eligible candidate as these regulations were merely a ministerial measure and, as such, subordinate to the absolute right of the Governor to recognise from time to time the persons who should form the Trade Union Council for the purposes of the Letters Patent. These persons, for the



election in question, and as representatives of the Unione, were those named in Government Notice No. 303 of 1927.

Special leave to appeal from this Judgment, as has been already stated, was granted by His Majesty in Council on the 5th November, 1928.

Now their Lordships in the above recital have refrained from referring to the many topics, both of law and of constitutional practice, which were discussed before them by learned Counsel on both sides. They have referred only to those matters which seem in some sense relevant to the preliminary question to the consideration of which they now proceed, viz., whether His Majesty can be advised by them further to entertain this appeal.

The clause of the Letters Patent which deals with this matter is Section 33, and is in the following terms :—

“ All questions which may arise as to the right of any person to be or remain a member of the Senate or the Legislative Assembly shall be referred to and decided by Our Court of Appeal in Malta.”

To their Lordships, these words appear to be clear and distinct. They direct that all questions touching the membership either of the Senate or Legislative Assembly created by the Letters Patent themselves shall “ be referred to and decided ” not by the First Hall of the Civil Court, or any Court of first instance, but by the Court of Appeal of Malta, the highest judicial tribunal of the Island. Even if their Lordships had in this matter been without authority to guide them, they would have been led by the words themselves to the clear conclusion that His Majesty had advisedly designated His Court of Appeal in Malta finally to determine all these questions. It appears to their Lordships that the section being found in Letters Patent, in which His Majesty’s own words are used, gains in this respect an added significance, the force of which ought to have full effect given to it.

But this view is, their Lordships find, fully confirmed by the authorities, of which *Théberge v. Laudry* 2 A.C. 102 is the most notable.

In that case, which dealt, as this does, with questions relating to the membership of legislative bodies, it is pointed out that decisions upon such matters are not decisions of mere ordinary civil rights : that such an enactment as this Section 33 creates an entirely novel jurisdiction, the history of which, in cases where the legislative assembly is not itself then created for the first time, has been that the assembly has, by its own consent, concurred in vesting in the Court the jurisdiction hitherto inherent in itself of determining the status of those who claim to be its members. The jurisdiction is extremely special : it is of a character that ought, as soon as possible, to become conclusive, in order that the constitution of the assembly may be distinctly and speedily known. And there is another reason for finality in such a jurisdiction. It concerns what, according to British

ideas, are normally the rights and privileges of the Assembly itself, always jealously maintained and guarded in complete independence of the Crown so far as they properly exist, and as Lord Cairns adds in delivering the judgment of the Board in *Théberge v. Laundry* :

“ it would be a result somewhat surprising and hardly in consonance with the general scheme of the legislation, if, with regard to rights and privileges of this kind, it were to be found that, in the last resort, the determination of them no longer belonged to the Legislative Assembly, no longer belonged to the Superior Court which the Legislative Assembly had put in its place, but belonged to the Crown in Council, with the advice of the advisers of the Crown at home, to be determined without reference either to the judgment of the Legislative Assembly or of that Court which the Legislative Assembly had substituted in its place. . . . Their Lordships have to consider not whether there are express words here, taking away prerogative, but whether there ever was the intention of creating this tribunal with the ordinary incident of an appeal to the Crown.”

It is true that these words were spoken in a case where the special tribunal had been created with the consent of the Legislative Assembly, and not as, in this instance, where the Assembly is itself brought into existence by the Letters Patent, which also confer this jurisdiction on the Court of Appeal. But, as it appears to their Lordships, His Majesty, in these Letters Patent is merely adopting principles, to which all Lord Cairns's reasoning applies. He assumes that any enlightened legislative body would itself choose just such a tribunal as He himself prescribes for the determination of all such questions : accordingly, He creates a jurisdiction in terms of finality which leave no room for any review by Himself.

And the history of this case, as their Lordships have detailed it, serves to demonstrate the convenience of the course in this instance taken. The action impugning the election here was commenced on the 5th July, 1928 : the decision of the Court of Appeal was given in little more than a month—on the 14th August, 1928. It is more than a year later that this appeal comes before the Board.

Their Lordships would also permit themselves this further observation. While not intimating any opinion on the merits or otherwise of the appeal—although these were fully argued before them—they cannot refrain from expressing their satisfaction that the Court of Appeal was able to uphold, in principle, an election at which the Unione would have been fully represented by delegates whose views, it seems, would have adequately reflected the then opinions of their constituents, the members of the Unione. The position of the Unione in either of the two impugned elections was very different, as their Lordships have pointed out. It cannot be too clearly understood that the first duty of the Governor in recognising any Trade Union Council is to see that it represents, so far as is possible, the views of the ultimate constituents who are represented by its members. The views, as such, of any



political party in the State—whether those of the Government or of the Opposition, or of any other group, should not be allowed to enter into the question of recognition at all.

Upon the whole matter, and for the reasons given their Lordships will humbly advise His Majesty that this appeal be not further entertained. The appellants must pay to the respondents the costs they have incurred in resisting it.

In the Privy Council.

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THE RIGHT HONOURABLE GERALD LORD  
STRICKLAND, G.C.M.G., L.B., M.L.A., THE  
PRESENT MINISTER FOR JUSTICE (IN THE  
PLACE OF THE HONOURABLE DR.  
ALFREDO PARNIS, O.B.E., LL.D.), AND  
OTHERS

v.

GIUSEPPE GRIMA, IN HIS CAPACITY AS  
PRESIDENT OF THE TRADE UNION COUN-  
CIL OF MALTA (IN THE PLACE OF  
WALTER AGIUS, DECEASED), AND OTHERS.

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DELIVERED BY LORD BLANESBURGH