

18, 1948

No. 87 of 1946.

In the Privy Council.

UNIVERSITY OF LONDON

W.C.F.

12 NOV 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL

FROM THE SUPREME COURT OF GIBRALTAR
SITTING AS A COURT OF FIRST INSTANCE.

IN THE MATTER of the Estate of ANGEL COSTA, deceased. 45229

BETWEEN

PETER COSQUIERI - - - - - *Appellant*

AND

MAGDALENA FORMENTO (Spinster), MAGDALENA
SCULLARD (Married Woman), ANGEL FORMENTO,
VICTORIA FORMENTO (Spinster), VIRGINIA LATIN
(Spinster), EDUARDO LABRADOR, JUAN DANINO,
LOURDES RUIZ (Married Woman) and JOSEPH
FERNANDEZ - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
1	Originating Summons (re-issued on amendment)	26th June 1946 ..	1
2	Affidavit of George Michael Gonzalez	27th June 1946 ..	2
3	Appearance for Peter Cosquieri, another Defendant	28th June 1946 ..	3
4	Appearance for Magdalena Formento, one of the Defendants	28th June 1946 ..	3
5	Appearance for Joseph Fernandez, another Defendant ..	22nd July 1946 ..	4
6	Appearance for remaining seven Defendants	25th July 1946 ..	4
7	Affidavit of Joseph Fernandez and Exhibits	26th July 1946 ..	4
8	Copy of Indenture of Lease dated 18th June, 1927, from Angel Costa to Joseph Fernandez and Peter Cosquieri— "Cosquieri & Co."—referred to in Affidavit of Plaintiff George Michael Gonzalez and used at hearing of Originating Summons as a document before the Court by agreement of all parties	18th June 1927 ..	10

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
9	Will of Angel Costa, deceased. Photographic copy of Spanish original (<i>separate document</i>)	21st August 1944 ..	—
10	Translation of Will of Angel Costa, deceased	21st August 1944 ..	20
11	Chief Justice's Minutes of Proceedings	15th July 1946 ..	23
12	Order and Declaration on Originating Summons	1st August 1946 ..	28
13	Order (with reasons) of Chief Justice on Originating Summons	1st August 1946 ..	29
14	Chief Justice's Notes of Proceedings on Motions	26th August 1946 ..	32
15	Order dismissing Motion for New Hearing	26th August 1946 ..	35
16	Order giving Conditional Leave to Appeal	26th August 1946 ..	35
17	Order for a Stay of Execution	26th August 1946 ..	36
18	Order giving Final Leave to Appeal	18th September 1946	37
19	List of Documents Omitted		37

ON APPEAL
FROM THE SUPREME COURT OF GIBRALTAR
SITTING AS A COURT OF FIRST INSTANCE.

IN THE MATTER of the Estate of ANGEL COSTA, deceased.

BETWEEN

PETER COSQUIERI - - - - - *Appellant*

AND

10 MAGDALENA FORMENTO (Spinster), MAGDALENA
SCULLARD (Married Woman), ANGEL FORMENTO,
VICTORIA FORMENTO (Spinster), VIRGINIA
LATIN (Spinster), EDUARDO LABRADOR, JUAN
DANINO, LOURDES RUIZ (Married Woman) and
JOSEPH FERNANDEZ - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

No. 1.

ORIGINATING SUMMONS (re-issued on amendment).

20 LET Peter Cosquiere of No. 125, Main Street, Gibraltar, Trader one
of the executors and trustees of the Will of the above-named Angel Costa
and Magdalena Formento of No. 3 Kavannagh's Court, Gibraltar, Spinster,
Magdalena Scullard of No. 249, Main Street, Gibraltar, Married Woman,
Angel Formento of No. 643, Calle Supisiche, Sarandi Ferrocarril Sud,
Buenos Aires in the Argentine Republic, Victoria Formento of No. 27,
Prince Edward's Road, Gibraltar, Spinster, Virginia Latin of No. 4 Hospital
Steps, Gibraltar, Spinster, Eduardo Labrador of No. 3 Cooperage Lane,
Gibraltar, Clerk, Juan Danino of No. 4 Hospital Steps, Gibraltar, Driver
and Lourdes Ruiz of No. 4 Hospital Steps, Gibraltar, Married Woman
30 the persons entitled to the residuary estate of the said deceased and
Joseph Fernandez of No. 71, Main Street, Gibraltar, Trader Partner in
the firm of Cosquiere & Co., within eight days after service of this summons
on them respectively inclusive of the day of such service cause an
appearance to be entered for them to this Summons which is issued upon
the application of George Michael Gonzalez of No. 263 Main Street,
Gibraltar, Trader and Ernest Joseph Guetta of No. 2 Cannon Lane,
Gibraltar, Insurance Agent the other executors and trustees of the said
Will for the determination of the following questions and matters:—

1. Whether according to the true construction of the said Will the
40 Plaintiffs have power and ought to grant a lease to the Defendant Peter
Cosquiere and his sons of the house occupied by him mentioned in the
said Will.

(L.S.)
No. 1.
Originating
Summons
(re-issued
on amend-
ment),
26th June
1946.

*Supreme
Court,
Gibraltar.*

Filed
18th July
1946.

No. 1.
Originating
Summons
(re-issued
on amend-
ment),
26th June
1946,
continued.

2. If the Court shall be of opinion that the Plaintiffs have such power what are the conditions under which such lease should be granted and for what term.

3. That the costs of this application may be provided for.

4. That such order or direction may be made as the circumstances of the case may require.

Dated the 26th day of June, 1946.

This Summons was taken out by PETER GEORGE RUSSO, Esquire of No. 12 College Lane, Gibraltar, Solicitor for the above-named George Michael Gonzalez and Ernest Joseph Guetta. 10

The Defendants may appear hereto by entering appearance either personally or by solicitor at the Registry of the Supreme Court of Gibraltar.

Note: If the Defendants do not enter appearance within the time and at the place above-mentioned, such order will be made and proceedings may be taken as the Judge may think just and expedient.

No. 2.

AFFIDAVIT of George Michael Gonzalez.

I, GEORGE MICHAEL GONZALEZ of No. 263 Main Street, Gibraltar,

Trader make oath and say as follows:—

1. I am one of the above-named Plaintiffs. 20

2. Angel Costa late of Gibraltar Landowner deceased duly made his will in the Spanish language dated the 21st day of August 1944 and thereby appointed me a nephew of testator's late wife and his friends the plaintiffs Ernest Joseph Guetta and the defendant Peter Cosquiere executors thereof.

3. The said Will contains a direction a true translation of which direction is in the words following "I direct that the rent of the house which Mr. Peter Cosquiere occupies be not increased nor his rent be increased in any manner nor notice to quit be given to him so long as he shall pay punctually the rents stipulated in the contract. When rents revert to normal, this will be as stipulated £30 per month and payment by him of the rates and Water according to contract, with option to its renewal if he so desires on equal circumstances and the house shall not be ceded to anyone and let he and his sons have the right to occupy the house and shop." 30

4. The said testator died on the 29th day of August 1945 at Gibraltar without having revoked or altered the said will and on the 23rd day of October 1945 the same was duly proved by the executors therein named in the Supreme Court of Gibraltar.

5. By an order of the Supreme Court of Gibraltar made in an action marked 1945, C, No. 26 it was inter alia declared that according to the true construction of the said will the said Angel Costa died intestate as to his residuary estate. 40

No. 2.
Affidavit
of G. M.
Gonzalez,
27th June
1946.

*Supreme
Court,
Gibraltar.*

Filed
27th
June
1946.

6. The defendant Magdalena Formento is entitled to one fourth part of the said residuary estate and the remaining three fourth parts are distributable amongst the several persons named in the said order.

7. The house referred to in the said will as occupied by the defendant Peter Cosquiere forms part of the said residuary estate.

8. By an Indenture of Lease dated the 18th day of June 1927 and made between the said Angel Costa of the one part and Joseph Fernandez and the said Peter Cosquiere trading under the firm name of "Cosquiere & Co." of the other part the said house was demised by the said Angel
10 Costa to the said Cosquiere & Co. from the 1st day of June 1927 for the term of fourteen years at the monthly rent of thirty pounds sterling.

9. The said house consists of a ground floor occupied by the said Cosquiere & Co. for business purposes and a first floor occupied as dwellings by the said Peter Cosquiere and his family.

G. M. GONZALEZ.

Sworn by the above-named deponent at the Registry of the Supreme Court of Gibraltar this 27th day of June 1946.

Before me,

E. PIZZARELLO,

Registrar.

20

This affidavit is filed on behalf of the above-named plaintiffs by their Solicitor PETER GEORGE RUSSO, Esquire, of No. 12, College Lane, Gibraltar.

No. 3.

APPEARANCE for Peter Cosquiere, another Defendant.

Enter an appearance for Peter Cosquiere of No. 125 Main Street, Gibraltar, Trader one of the Defendants in this action.

Dated the 28th day of June, 1946.

(Sgd.) A. B. M. SERFATY

Solicitor for the said Peter Cosquiere

Whose address for service is No. 16
Parliament Lane, Gibraltar.

30

No. 3.
Appearance
for Peter
Cosquiere,
28th June
1946.

*Supreme
Court,
Gibraltar.*

Entered
28th June
1946.

No. 4.

APPEARANCE for Magdalena Formento, one of the Defendants.

Enter an Appearance for Magdalena Formento one of the Defendants to the Originating Summons at the suit of George Michael Gonzalez and Ernest Joseph Guetta in this Action.

The address for service of the said Defendant within the Sanitary limits of Gibraltar is No. 3, Bell Lane, Gibraltar.

Dated the 28th day of June, 1946.

(Sgd.) ALBERT R. ISOLA,
of No. 3, Bell Lane,
Gibraltar.

Solicitor for the Defendant,
Magdalena Formento.

40

No. 4.
Appearance
for
Magdalena
Formento,
28th June
1946.

*Supreme
Court,
Gibraltar.*

Entered
28th June
1946.

No. 5.
Appearance
for
Joseph
Fernandez,
22nd July
1946.

*Supreme
Court,
Gibraltar.*

Entered
22nd July
1946.

No. 5.

APPEARANCE for Joseph Fernandez, another Defendant.

Enter an appearance for Joseph Fernandez one of the Defendants herein.

Dated the 22nd day of July, 1946.

(Sgd.) S. BENADY,

Whose address for service is No. 7,
Governor's Parade, Gibraltar, Solicitor
for the above-named Defendant Joseph
Fernandez.

10

No. 6.
Appearance
for
remaining
seven
Defendants,
25th July
1946.

*Supreme
Court,
Gibraltar.*

Entered
25th July
1946.

No. 6.

APPEARANCE for the remaining seven Defendants.

Enter an Appearance for the Defendants Magdalena Scullard of No. 249 Main Street, Gibraltar, Married Woman, Angel Formento of No. 643 Calle Supisiche, Sarandi Ferrocarril Sud, Buenos Aires in the Argentine Republic, Victoria Formento of No. 27 Prince Edward's Road, Gibraltar, Spinster, Latin of No. 4 Hospital Steps, Gibraltar, Spinster, Eduardo Labrador of No. 3 Cooperage Lane, Gibraltar, Clerk, Juan Danino of No. 4 Hospital Steps, Gibraltar, Driver, and Lourdes Ruiz of No. 4 Hospital Steps, Gibraltar, Married Woman, to the amended 20 Summons in this action.

The address for service of the said Defendants within the Sanitary limits of Gibraltar is No. 3 Bell Lane, Gibraltar.

Dated the 25th day of July, 1946.

(Sgd.) ALBERT R. ISOLA,
of No. 3 Bell Lane, Gibraltar,
Solicitor for the above-named
Defendants.

No. 7.
Affidavit
of Joseph
Fernandez
and Deed
of Partner-
ship
exhibited
thereto,
26th July
1946.

*Supreme
Court,
Gibraltar.*

Entered
26th July
1946.

No. 7.

AFFIDAVIT of Joseph Fernandez.

30

I, JOSEPH FERNANDEZ of Gibraltar, Trader, make oath and say as follows :—

1. I am one of the above-named defendants.

2. By a Deed of Partnership dated the 11th day of June 1927 and made between this deponent of the one part and the above-named defendant Peter Cosquiere of the other part we became partners under the firm name of "Cosquiere & Co." in the business of Ironmongers and general merchants. The paper writing now produced and shown to me marked "J.F.1" is the original of the said Deed of Partnership.

3. For the purposes of the said business on the 18th day of June 1927 the said firm of "Cosquieri & Co." obtained a lease for the term of 14 years from the above-named Angel Costa of premises situate at No. 127 Main St. Gibraltar.

No. 7.
Affidavit
of Joseph
Fernandez
and Deed
of Partner-
ship
exhibited
thereto,
26th July
1946,
continued.

4. The said firm of "Cosquieri & Co." have been the tenants of the said premises from the 1st day of June 1927 and are still the tenants of same as shewn by the receipts for rents given by and on behalf of the said Angel Costa during his lifetime. The said receipts were made out by and on behalf of the said Angel Costa to any of the following names
10 as shewn by the ten receipts now produced and shewn to me marked "J.F.2," "J.F.3," "J.F.4," "J.F.5," "J.F.6," "J.F.7," "J.F.8," "J.F.9," "J.F.10," and "J.F.11" :—

Messrs. Cosquieri & Co.
Messrs. P. Cosquieri & Co.
Mr. P. Cosquieri
Mr. Cosquieri
Sres. P. Cosquieri y Cia.
Sres. Pedro Cosquieri y Cia.
Sres. Cosquieri y Cia.

20 5. The first floor of the said premises is occupied by the above-named defendant Peter Cosquieri as a sub-tenant of the said firm of "Cosquieri & Co." at a rental of £5.- per month.

6. On the 27th day of December 1945 the above-named defendant Peter Cosquieri gave notice in writing to me this deponent of the determination of the partnership of "Cosquieri & Co." on the 30th day of June 1946. The said notice is now produced and shewn to me marked "J.F.12."

JOSEPH FERNANDEZ.

30 Sworn by the above-named deponent at the Registry of the Supreme Court of Gibraltar this 26th day of July 1946.

Before me,
C. J. WHEELER,
Assistant Registrar.

This affidavit is filed on behalf of the above-named defendant Joseph Fernandez by his Solicitor S. BENADY Esquire of No. 7 Governor's Parade Gibraltar.

EXHIBIT "J.F.1" to Affidavit of Joseph Fernandez.

No. 7.
Affidavit
of Joseph
Fernandez
and Deed
of Partner-
ship
Exhibited
thereto,
26th July
1946,
continued.

Supreme
Court,
Gibraltar.

Filed
27th
August
1946.

Stamp Duty 5/-.

THIS INDENTURE Made in duplicate the Eleventh day of June One thousand nine hundred and twenty-seven Between JOSEPH FERNANDEZ of Gibraltar Trader of the one part and PETER COSQUIERI of Gibraltar Trader of the other part Witnesseth that the said Joseph Fernandez and Peter Cosquieri hereby mutually covenant and agree as follows :—

1. The parties shall become and be partners under the firm of "Cosquieri & Co." in the business of Ironmongers and General Merchants from the first day of June One thousand nine hundred and twenty seven 10 for the term of Seven years provided always that on or after the expiration of the said term of Seven years either of the parties may at any time determine the said partnership upon giving to the other six months' previous notice in writing of his desire so to do.

2. The business of the firm shall be carried on at No. 127 Main Street Gibraltar and or such other place or places as the partners shall hereafter agree on.

3. The capital of the partnership shall be the sum of One thousand five hundred Pounds Sterling to be contributed by the partners in equal shares and shall be credited as belonging to them in equal shares in the 20 books of the partnership.

4. The capital of the partnership may be increased from time to time as the partners shall determine and the amount of any such increase shall unless otherwise agreed be contributed by the partners in equal shares. If the proportion contributed by either partner of the capital for the time being of the partnership shall at any time exceed the proportion thereof contributed by the other partner the amount of such excess for the time being shall be considered a debt due from the partnership and carry interest at the rate of Six per centum per annum payable before 30 any division of profits and may be withdrawn by the partner on giving six months' previous notice in writing to the other partner and shall be withdrawn on a like notice by the other partner and in either case if the same shall not be withdrawn at the expiration of the notice the partner entitled thereto shall thenceforth receive only such interest, if any, as the bankers shall allow thereon in account with the partnership.

5. The bankers of the partnership shall be Barclays Bank (Dominion Colonial and Overseas) or such other Bank as the partners shall from time to time agree. All moneys bills cheques and other negotiable securities (except moneys required for current expenses) shall as received be paid into the bank to the credit of the partnership account and all 40 cheques on such account shall be drawn in the firm name and signed by one of the partners.

6. The rent and all taxes rates repairs alterations improvements and outgoings in respect of the said business premises and or other partnership place or places of business for the time being or of the business and all wages and salaries of all persons employed in or about the

I hereby certify that the full & proper duty has been paid on the original instrument of which this is the duplicate.

(Sgd.) W. A. BOWRING.
Rubber Stamp
Commissioner of Stamp
Duties, Gibraltar.

Gibraltar 18th June 1927.

partnership business and all insurances shall be charged against revenue in the deficiency appearing in that account upon taking any general annual account such deficiency shall be refunded to capital by the said partners in equal proportion and until refunded shall be debited in their respective capital accounts with the firm.

No. 7.
Affidavit
of Joseph
Fernandez
and Deed
of Partner-
ship
exhibited
thereto,
26th July
1946,
continued.

7. Each partner shall be at liberty to draw out of the said business for his own use any sum not exceeding Twenty Pounds Sterling monthly on account of his share of current profits. If on the taking of any annual account as hereinafter provided the aggregate amount drawn out by
10 either partner as aforesaid during the period covered by such account shall be found to exceed his share of profits for that period he shall within a reasonable time refund such excess to the partnership.

8. The net profits of the partnership shall belong to the partners in equal shares. The share of profits of each partner shall be carried to his credit immediately after the taking and signing of the annual account whereby the same was ascertained and may be drawn out by him at his pleasure.

9. The partners shall have the management of the partnership business and shall devote their whole time and attention thereto and
20 carry on and manage the same for their common benefit to the utmost of their skill and ability with such assistance from time to time of clerks servants workmen or other employees as they shall deem necessary and shall not during the continuance of the partnership be concerned or engaged directly or indirectly in any business trade other than the business of the partnership Save and except in the case of the said Joseph Fernandez who shall be entitled to continue with the trade carried on by him in co-partnership with his brothers.

10. Each partner shall be faithful and just to the other partner in all dealings and transactions relating to or affecting the partnership
30 business, and neither partner shall without the consent of the other partner employ any of the moneys goods or effects of the partnership or pledge the credit thereof except in the ordinary course of business and upon the account or for the benefit of the partnership.

11. Neither partner shall without the previous consent in writing of the other partner enter into any bond or become bail surety or security with or for any person or do or knowingly cause or suffer to be done anything whereby the partnership property or any part thereof may be seized attached extended taken in execution nor assign mortgage or charge his share in the partnership or any part of such share or make
40 any other person a partner with him therein nor compromise or compound or (except upon payment thereof in full) release or discharge any debt due to the partnership.

12. Proper books of account shall be kept of all transactions on behalf of the partnership in the said business premises and each partner shall at all times have free access to and the right to inspect and copy the same.

No. 7.
Affidavit
of Joseph
Fernandez
and Deed
of Partner-
ship
Exhibited
thereto,
26th July
1946,
continued.

13. As soon as practicable after the Thirty first day of May in every year during the continuance of the partnership a general account and valuation shall be taken and made up to such Thirty first day of May of the stock-in-trade credits property effects debts and liabilities of the partnership and of all transactions matters and things usually comprehended in a general account of the like nature. Every such account and valuation shall be balanced agreed to and signed by both partners and when so signed shall be binding on them except that if any manifest error therein be detected and pointed out by one partner to the other within six calendar months after such signature thereof such error shall be forthwith rectified. 10
Immediately after the signing and settling of every such annual general account and valuation each partner shall be entitled to draw out and receive his share of the net profits of the business for the then past year on bringing into account monthly sums previously drawn out by him under the provisions in that behalf hereinbefore contained.

14. Within three calendar months after the determination of the partnership by effluxion of time or otherwise a final account and valuation of the assets credits debts and liabilities of the partnership shall be taken made and signed by the partners or their respective representatives in like manner as is hereinbefore directed with regard to the annual account 20
and thereupon (subject as hereinafter provided) the partners or their representatives shall make due provision for paying and discharging such debts and liabilities and subject thereto and to the payment of any sum which may be due to either partner or his representatives for capital contributed in excess of the other partner or for interest on capital or undrawn profits or otherwise the assets credits and effects of the partnership shall be divided between the partners or their respective representatives in equal shares and they shall respectively execute do or concur in all necessary or proper instruments acts matters and things for getting in the outstanding debts and assets of the partnership and for 30
vesting in the parties entitled thereto the sole right in their respective shares in such assets credits and effects and for mutual release or indemnity or otherwise and for notifying the determination of the partnership in the Official Gazette and to the customers of or persons having had dealings with the partnership.

15. If the partnership shall be determined by the expiration of the said term of Seven years and either partner shall be desirous of continuing the said business but the other partner shall be unwilling to continue the same the continuing partner shall have the option (to be notified in writing to the outgoing partner within three calendar months from such 40
determination) of purchasing the share of the outgoing partner in the partnership business assets credits and effects at a price equal to the value of such share as ascertained by the final account and valuation hereinbefore directed together with a sum equal to one moiety of the goodwill of the said business as may be agreed upon by the partners and in default of such agreement as may be decided by arbitrators under Clause 17 hereof.

16. The partnership shall not be dissolved by the death of either partner but shall be continued by the executors or administrators of the deceased partner with the surviving partner. 50

17. All disputes and questions whatsoever which shall either during the partnership or afterwards arise between the partners or their respective representatives or between either partner and the representatives of the other touching these presents or the construction or application thereof or any clause or thing herein contained or on any account valuation or division of assets debts or liabilities to be made hereunder or as to any act deed or omission of either partner or as to any other matter in any way relating to the partnership business or the affairs thereof or the rights duties or liabilities of any person under these presents shall be referred to a single arbitrator in case the parties agree upon one otherwise to two arbitrators one to be appointed by each party to the difference in accordance with and subject to the provisions of the Arbitration Act 1889 or any Statutory modification thereof for the time being in force.

No 7.
Affidavit
of Joseph
Fernandez
and Deed
of Partner-
ship
exhibited
thereto,
26th July
1946,
continued.

In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first before written.

Signed sealed and delivered by the
within-named parties in the presence } JOSEPH FERNANDEZ (L.S.)
of :— } P. COSQUIERI (L.S.)

HENRY VALARINO

20

RAPHAEL ONOS

1946, C, No. 13.

IN THE SUPREME COURT OF GIBRALTAR

Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.

Between GEORGE MICHAEL GONZALEZ & another Plaintiffs

and

PETER COSQUIERI & others - - - Defendants.

This is the paper writing marked "J.F.1" referred to in the affidavit of Joseph Fernandez sworn before me this 26th day of July 1946.

30

(Sgd.) C. J. WHEELER,
Assistant Registrar.

No. 8.

No. 8.

Copy
Indenture
of Lease,
Angel Costa
to Joseph
Fernandez
and Peter
Cosquiere,
18th June
1927.

COPY OF INDENTURE OF LEASE dated 18th June 1927 from Angel Costa to Joseph Fernandez and Peter Cosquiere—"Cosquiere & Co."—referred to in Affidavit of the Plaintiff George Michael Gonzalez and used at hearing of Originating Summons as a document before the Court by agreement of all parties.

Supreme Court
Gibraltar
Filed
5 Sep. 1946.

Stamp Duty 5/-

C.L. No. 6463 (Duplicate)

Rubber Stamp
Commissioner of
Stamp Duties
Gibraltar

I hereby certify that the full and proper duty has been paid on the original instrument of which this is the duplicate.
(Sgd.) W. A. BOWRING.
Gibraltar 28th June 1927

THIS INDENTURE made in duplicate the Eighteenth day of June 10
One thousand nine hundred and twenty-seven Between ANGEL COSTA
of Gibraltar Landowner (hereinafter called "the Lessor") of the one
part and JOSEPH FERNANDEZ and PETER COSQUIERI of Gibraltar trading
under the firm name of "Cosquiere & Co." of Gibraltar Ironmongers
(hereinafter called "the Lessees") of the other part Witnesseth that in
consideration of the rent covenants and conditions hereinafter reserved
and contained the Lessor doth hereby demise unto the Lessees All those
the hereditaments and premises described in the Schedule hereto To hold
the same (subject nevertheless to the payment of the Ground or Quit
Rent reserved to His Majesty His Heirs and Successors and to the 20
performance and observance of the covenants and conditions contained
in the Letters Patent of the said premises dated the Eighteenth day of
November One thousand eight hundred and twenty-three) Unto the
Lessees from the First day of June One thousand nine hundred and
twenty-seven for the term of Fourteen years determinable nevertheless
as hereinafter provided Yielding and paying therefor during the said
term the monthly rent of Thirty Pounds Sterling on the last day of every
month in every year the first of such payments to be made on the Thirtieth
day of June instant Subject nevertheless to the proviso for the total or 30
partial suspension of the said rent in the events hereinafter mentioned
And the Lessees do hereby jointly and severally covenant with the Lessor
in manner following that is to say That the Lessees will pay the rent
hereby reserved at the time and in manner aforesaid And also will pay
during the said term all Sanitary Purposes Rates and Water Rates which
during the said term shall be assessed charged or imposed upon the said
demised premises or the landlord or tenant in respect thereof And also
will during the said term keep the inside of the said demised premises in
good and substantial repair and condition fair and reasonable wear and
tear and damage by fire decay tempest the firing of guns or the King's
Enemies excepted And also will during the said term permit the Lessor 40
or his agents at any time to enter the said demised premises and examine
the state of repair and condition thereof And also will not make any
structural alterations or additions in or to the said demised premises
without the previous consent in writing of the Lessor And also will not
carry on any trade manufacture or process of such nature as might
invalidate or affect any insurance upon the premises And also will not
assign transfer underlet or part with the possession of the shop on the
ground floor of the premises hereby demised without the previous consent
in writing of the Lessor (such consent not to be unreasonably withheld)
And also will at the expiration or sooner determination of the said term 50
peaceably surrender and yield up unto the Lessor the said premises hereby

No. 8.
Copy
Indenture
of Lease,
Angel Costa
to Joseph
Fernandez
and Peter
Cosquieri,
18th June
1927,
continued.

demised in a tenantable condition (making good and repairing all damage done or occasioned by the removal of any fixtures to which the Lessees may be entitled) such reasonable use and wear thereof and damage from fire decay storm or tempest or the firing of guns or the King's Enemies always excepted Provided always that if the rent hereby reserved or any part thereof shall at any time be in arrears for twenty-one days after the same shall become due or if there shall be a breach of any of the Lessees' covenants herein contained or if the Lessees shall while the said premises remain vested in them be adjudicated bankrupts or if their
10 interest shall be taken in execution then and in any of such cases it shall be lawful for the Lessor to re-enter upon the said demised premises and thereupon the said term shall absolutely determine Provided also that in case the said demised premises or any part thereof shall at any time be destroyed or so damaged by fire tempest the firing of guns or the King's Enemies as to be unfit for occupation or use then the rent hereby reserved or a fair and just proportion thereof according to the nature and extent of the damage sustained shall until the said premises shall have been rebuilt or reinstated and made fit for occupation or use be suspended or cease to be payable Provided also that if the Lessees shall
20 be desirous of putting an end to this present demise at the expiration of the first seven years of the term of fourteen years hereby granted and shall for that purpose deliver to the Lessor at least six calendar months' previous notice in writing of such their desire and shall pay all arrears of rent and perform all and every the covenants hereinbefore contained and on their part to be performed then and in such case immediately after the expiration of the said term of Seven years this present lease and everything herein contained shall cease and be absolutely void to all intents and purposes whatsoever And the Lessor hereby covenants with
30 the Lessees that the Lessor will during the said term pay the Ground or Quit Rent reserved to His Majesty His Heirs and Successors and observe the covenants and conditions contained in the Letters Patent aforesaid And also will insure the said demised premises against loss or damage by fire and in case of loss or destruction by fire tempestuous weather the firing of guns or the King's Enemies will rebuild or re-instate the same And also will at all times during the said term keep the outside walls roofs foundations and main drains and outside of the said demised premises in a proper and substantial repair and condition And further that the Lessees so long as they shall pay the said rent in manner aforesaid and observe and perform the covenants conditions and agreements on their
40 part to be performed and observed shall and may peaceably and quietly hold and enjoy the said demised premises during the said term without interruption or disturbance by the Lessor or any person claiming under or in trust for him And it is hereby agreed and declared that where the context so admits the expression "the Lessor" shall include the heirs and assigns of the Lessor and the expression "the Lessees" shall include the executors administrators and assigns of the Lessees In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first before written.

SCHEDULE

50 All that piece of ground with the dwelling house erected thereon situate lying and being on the East side of Main Street (formerly Waterport

EXHIBIT "J.F.2" to Affidavit of Joseph Fernandez.

No. 86

Gibraltar, 30th Sept., 1929.

Received of Messrs. Cosquiere & Co. the sum of thirty pounds stg being rent for house to the 30th Sept. 1929 one month

Gibraltar, 4.11.1929

£30

(Sgd.) ANGEL COSTA

Stamp 1d.

1946, C. No. 13.

Rent Receipts and Notices of Dissolution of Partnership Exhibited to Affidavit of Joseph Fernandez, sworn 26th July 1946.

10 IN THE SUPREME COURT OF GIBRALTAR

Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.

Between GEORGE MICHAEL GONZALEZ & another Plaintiffs

and

PETER COSQUIERI & others - - - Defendants.

This is the receipt marked "J.F.2" referred to in the affidavit of Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
Assistant Registrar.

20

EXHIBIT "J.F.3" to Affidavit of Joseph Fernandez.

Gibraltar, 31st August 1940.

Received of Messrs. P. Cosquiere & Co. the sum of thirty Pounds for one Month House rent to end of August 1940

£30

(Sgd.) ANGEL COSTA.

Stamp 2d.

1946, C. No. 13.

IN THE SUPREME COURT OF GIBRALTAR

Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.

30 Between GEORGE MICHAEL GONZALEZ & another Plaintiffs

and

PETER COSQUIERI & others - - - Defendants.

This is the receipt marked "J.F.3" referred to in the affidavit of Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
Assistant Registrar.

EXHIBIT "J.F.4" to Affidavit of Joseph Fernandez.

Rent
Receipts
and Notices
of
Dissolution
of Partner-
ship
Exhibited
to
Affidavit
of Joseph
Fernandez,
sworn
26th July
1946,
continued.

No. 8th Feb. 1941.
Received from Mr. P. Cosquieri the sum of thirty Pounds—shillings
and—pence
For the month of November 1940
pp. ANGEL COSTA
(Sgd.) A. F. CAVILLA
8/2/41
Stamp 2d.
1946, C. No. 13. 10
IN THE SUPREME COURT OF GIBRALTAR
Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.
Between GEORGE MICHAEL GONZALEZ & another Plaintiffs
and
PETER COSQUIERI & others - - - Defendants.

This is the receipt marked "J.F.4" referred to in the affidavit of Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
Assistant Registrar. 20

EXHIBIT "J.F.5" to Affidavit of Joseph Fernandez.

No. Gibraltar, 12th Aug. 41.
Received from Mr. Cosquieri the sum of Twenty five pounds for
rent due on premises situate No, Main Street for month ending May 1941.
£25 : 0 : 0
pp. ANGEL COSTA 12/8/41
(Sgd.) A. F. CAVILLA Stamp 2d.
1946, C. No. 13.
IN THE SUPREME COURT OF GIBRALTAR
Chancery Jurisdiction 30

IN THE MATTER of the Estate of ANGEL COSTA deceased.
Between GEORGE MICHAEL GONZALEZ & another Plaintiffs
and
PETER COSQUIERI & others - - - Defendants.

This is the receipt marked "J.F.5" referred to in the affidavit of Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
Assistant Registrar.

EXHIBIT "J.F.6" to Affidavit of Joseph Fernandez.

No. Gibraltar, 9th Sept. 41.
 Received from Messrs. Cosquiere & Co. the sum of Twenty five pounds
 for rent due on premises situate No. Main Street for month ending
 June 1941.
 £25 : 0 : 0

pp. ANGEL COSTA 9/9/41.
 (Sgd.) A. F. CAVILLA Stamp 2d.

1946, C. No. 13.

Rent
 Receipts
 and Notices
 of
 Dissolution
 of Partner-
 ship
 Exhibited
 to Affidavit
 of Joseph
 Fernandez,
 sworn
 26th July
 1946,
continued.

10 IN THE SUPREME COURT OF GIBRALTAR
 Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.

Between GEORGE MICHAEL GONZALEZ & another Plaintiffs
 and

PETER COSQUIERI & others - - - Defendants.

This is the receipt marked "J.F.6" referred to in the affidavit of
 Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
 Assistant Registrar.

20 **EXHIBIT "J.F.7" to Affidavit of Joseph Fernandez.**

Recibi de los Sres P. Cosquiere y Cia 20 meses (Veinte) renta de la
 tienda a fin de Sept 1943 que sums quinientas Libras esterlinas mas siete
 trimestres a fin de Dic 1943 la suma de treinta y cinco Libras total
 quinientas treinta y cinco libras

Gibraltar 7 Sept. 1944
 (Sgd.) ANGEL COSTA
 Stamp 2d.

1946, C. No. 13.

30 IN THE SUPREME COURT OF GIBRALTAR
 Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.

Between GEORGE MICHAEL GONZALEZ & another Plaintiffs
 and

PETER COSQUIERI & others - - - Defendants.

This is the receipt marked "J.F.7" referred to in the affidavit of
 Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
 Assistant Registrar.

Rent
Receipts
and Notices
of
Dissolution
of Partner-
ship
Exhibited
to
Affidavit
of Joseph
Fernandez,
sworn
26th July
1946,
continued.

Translation of EXHIBIT "J.F.7" to Affidavit of Joseph Fernandez.

Received from Messrs. P. Cosquiere y Cia. 20 months (twenty) rent of the shop to the end of September 1943 amounting to five hundred Pounds Sterling plus seven quarters to the end of December 1943, representing the sum of thirty-five Pounds Total five hundred and thirty-five Pounds.

Gibraltar, 7th September 1944.
(Sgd.) ANGEL COSTA
Stamp 2d.

EXHIBIT "J.F.8" to Affidavit of Joseph Fernandez.

10

Recibi de los Sres Pedro Cosquiere y Cia la suma de cinco libras que corresponden £5 renta de la casa por Enero Febrero y Marzo del 1944 y cien libras por 4 meses renta desde Oct Nov. Dic 1943 y Enero 1944.

£105.0.0

Gibraltar 2 Nov. 1944.

(Sgd.) ANGEL COSTA.
(Sgd.) ANGEL COSTA.
Stamp 2d.

1946, C. No. 13.

IN THE SUPREME COURT OF GIBRALTAR
Chancery Jurisdiction

20

IN THE MATTER of the Estate of ANGEL COSTA deceased.

Between GEORGE MICHAEL GONZALEZ & another Plaintiffs
and

PETER COSQUIERI & others - - - Defendants.

This is the receipt marked "J.F.8" referred to in the affidavit of Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
Assistant Registrar.

Translation of EXHIBIT "J.F.8" to Affidavit of Joseph Fernandez.

Received from Messrs. Pedro Cosquiere y Cia the sum of one hundred 30 and five pounds representing £5 rent of the house for January, February and March 1944 and one hundred pounds for 4 months rent for October, November and December 1943 and January 1944.

£105.0.0.

Cheque 2/11/44

Gibraltar, 2nd Nov. 1944.
(Sgd.) ANGEL COSTA.
(Sgd.) ANGEL COSTA.
Stamp 2d.

EXHIBIT "J.F.9" to Affidavit of Joseph Fernandez.

Recibi de los Sres Cosquiere y Cia la suma de ochenta libras por el 2do trimestre 1944 casa y Febrero marzo y abril 1944 del establecimiento setenta y cinco libras total ochenta Libras.

Rent Receipts and Notices of Dissolution of Partnership Exhibited to Affidavit of Joseph Fernandez, sworn 26th July 1946, *continued.*

Gibraltar 18 Dic. 1944

£80 : 0 : 0

(Sgd.) ANGEL COSTA.

Cheque

Stamp 2d. 18/12/44

1946, C. No. 13.

10 IN THE SUPREME COURT OF GIBRALTAR
Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.

Between GEORGE MICHAEL GONZALEZ & another Plaintiffs
and

PETER COSQUIERI & others - - - Defendants.

This is the receipt marked "J.F.9" referred to in the affidavit of Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
Assistant Registrar.

20 **Translation of EXHIBIT "J.F.9" to Affidavit of Joseph Fernandez.**

Received from Messrs. Cosquiere y Cia the sum of eighty pounds in respect of the second quarter 1944 house and February, March and April 1944 for the shop seventy-five pounds Total Eighty Pounds.

Gibraltar, 18th Dec. 1944.

£80.0.0.

(Sgd.) ANGEL COSTA.

Cheque

Stamp 2d. 18/12/44

Rent
Receipts
and Notices
of
Dissolution
of Partner-
ship
Exhibited
to
Affidavit
of Joseph
Fernandez,
sworn
26th July
1946,
continued.
Cheque
15/1/45.

EXHIBIT "J.F.10" to Affidavit of Joseph Fernandez.

Received from Messrs. P. Cosquiere & Co. the sum of eighty pounds
stg. 3/4 quarter, 1944—£5 house
May June & July as
Rent of Shop
3 months at £25, - 75
—
80
=

£80.0.0

Gibraltar 15 Jan. 1945

(Sgd.) ANGEL COSTA.
Stamp 2d.

1946, C. No. 13.

10

IN THE SUPREME COURT OF GIBRALTAR
Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.
Between GEORGE MICHAEL GONZALEZ & another Plaintiffs
and
PETER COSQUIERI & others - - - Defendants. 20

This is the receipt marked "J.F.10" referred to in the affidavit of Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
Assistant Registrar.

EXHIBIT "J.F.11" to Affidavit of Joseph Fernandez.

Recibi de los Sres Pedro Cosquiere y Cia la suma de ochenta libras de esta suma corresponde £5 del quart trimestre de 1944 de la casa, y setenta y cinco Libras renta de la tienda por los meses (Agosto Sept y Octubre) de 1944.

£80.0.0.

Gibraltar 19 Febrero 1945.

30

(Sgd.) ANGEL COSTA.

Cheque
Stamp 2d. 19/2/45

1946, C. No. 13.

IN THE SUPREME COURT OF GIBRALTAR
Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.
Between GEORGE MICHAEL GONZALEZ & another Plaintiffs
and
PETER COSQUIERI & others - - - Defendants. 40

This is the receipt marked "J.F.11" referred to in the affidavit of Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,
Assistant Registrar.

Translation of EXHIBIT "J.F.11" to Affidavit of Joseph Fernandez.

Received from Messrs. Pedro Cosquiere y Cia. the sum of eighty pounds representing £5 for the fourth quarter 1944 for the house, and seventy-five pounds rent for the shop for the months of August, September and October 1944.

£80.0.0.

Gibraltar, 19th February 1945.

(Sgd.) ANGEL COSTA.

Cheque

Stamp 2d.

19/2/45

Rent Receipts and Notices of Dissolution of Partnership Exhibited to Affidavit of Joseph Fernandez, sworn 26th July 1946, continued.

10

EXHIBIT "J.F.12" to Affidavit of Joseph Fernandez.

27th December 1945

Gibraltar.

Joseph Fernandez Esq.,

Dear Sir,

I hereby give you notice of determination of the partnership subsisting between us under an Indenture dated the 11th day of June 1927 and made between yourself of the one part and myself of the other part on the 30th day of June 1946.

Yours faithfully,

(Sgd.) PETER COSQUIERI.

PETER COSQUIERI.

20

1946, C. No. 13.

IN THE SUPREME COURT OF GIBRALTAR

Chancery Jurisdiction

IN THE MATTER of the Estate of ANGEL COSTA deceased.

Between GEORGE MICHAEL GONZALEZ & another Plaintiffs

and

PETER COSQUIERI & others - - - Defendants.

This is the notice marked "J.F.12" referred to in the affidavit of 30 Joseph Fernandez sworn before me this 26th day of July 1946.

(Sgd.) C. J. WHEELER,

Assistant Registrar.

No. 10.
Translation
of Will of
Angel Costa,
deceased,
21st August
1944.

No. 10.

Translation of WILL of Angel Costa, deceased.

IN the City of Gibraltar on this the 21st August 1944, I ANGEL COSTA FORMENTO, a native of Gibraltar British Subject, widower of 79 years of age, being in full enjoyment of my mental faculties and in a fit condition to dispose of my property, do dispose of the same wheresoever situate the same may be at my death and I declare :

I appoint the following three gentlemen to be Executors of my Estate these are

Mr. George Gonzalez, a nephew of my late wife, my friend Mr. Ernest J. Guetta, and Mr. Peter Cosquierei likewise my friend I direct that at my death the sum of One thousand five hundred pounds sterling be paid to Mrs. Elena Bonfante Cavilla, in paper currency or in a currency that may be legal, and in addition I direct that she be given for her children Dorita and her young brother, both children of Elena B. de Cavilla, the sum of Two hundred and fifty pounds each in cash. 10

If on my death the piano I possess has not been disposed of by me I direct that the same be given to Dorita Cavilla.

I direct that each of my Executors shall receive at my death One hundred and fifty Pounds sterling for their work. 20

I direct that on my death the sum of Seven hundred Pounds in useful money be paid to my cousin Horacio Formento but should he predecease me and should his niece, daughter of Juana and Lorenzo Formento, be living at the death of her uncle Horacio, the said sum be paid to her but if she should not be living and if both should have died this bequest shall be cancelled and the said sum of £700 shall be placed to the credit of my funds.

I direct my Executors to give at my death to my cousin Magdalena, the daughter of Maria and Angel Formento the sum of Five hundred pounds but should she not be living at my death this bequest shall be cancelled. 30

I direct my Executors to give to Francisco Gonzalez, the son of George Gonzalez the sum of Eight hundred pounds sterling to enable him to complete his studies in England to obtain the diploma of Architect in which studies he is much advanced and also to give to his sister likewise daughter of my nephew George Gonzalez the sum of Two hundred pounds sterling, provided always that these two shall survive me but should this not be the case their parents shall inherit the said sums.

I direct that the rent of the house which Mr. Peter Cosquierei occupies be not increased nor his rent be increased in any manner nor notice to quit be given to him so long as he shall pay punctually the rents stipulated in the contract. When rents revert to normal this will be as stipulated £30 per month and payment by him of the Rates and Water according to the contract, with option to its renewal if he so desires on equal circumstances and the house shall not be ceded to anyone and let he and his sons have the right to occupy the house and shop. 40

I direct that the sum of Five hundred pounds sterling be paid on my death to my friend Fanny Lopez to enable her with this sum to establish a Hairdressing and Ladies Manicure business under her management, this will provide her with the means to live so that she may not be dependant upon anybody and I direct that the sum of Fifty Pounds sterling be paid as a gift to Mrs. Otilia Raffo for the services rendered during my stay in Tangier, this gift if she survives me and I direct likewise regarding the bequest in favour of Fanny Lopez if both should be living on my death. If both should be dead these two gifts shall be cancelled—

No. 10.
Translation
of Will
of Angel
Costa,
deceased,
21st August
1944,
continued.

- 10 If at my death my cousin Virginia Latin should be living I direct that Fifty pounds be paid to her as a gift on her marriage which I hope will take place, if this takes place soon I will before my death make this gift and nothing shall then have to be paid on my death—

- I direct that on my death out of my own funds in Spain the sum of Two thousand five hundred Pesetas be paid to my friend José Llinas Umbria and the like sum of Two thousand five hundred Pesetas to my god-daughter Paulina daughter of José Llinas, but if both should not be living to his wife and remaining children in equal shares and should I not have any funds available in Spain I direct that a sum in £ be converted into Pesetas and the said two bequests paid—I direct that Five thousand Pesetas be paid to Carlota B. de Neira and Two thousand five hundred Pesetas to each of her two sons José and Andres Neira should these not be living to their respective wives and if none should exist this remains at the discretion of my Executors—I bequeath to Ana Ballou de Cuevas residing in Gerona, Spain, the sum of Five thousand Pesetas if she agrees to accept the payment as I have already proposed to her in final discharge of the Estate left by her deceased aunt Carlota B. de Costa, which sum is the same as has been offered by me to the others, namely Five thousand Pts, but should she not accept this sum as I propose I direct that she shall get nothing from me and let her do as she pleases, but in the event of her accepting she shall receive Pts. 5000 as from the Estate of my late wife in full payment from that Estate and a further Pts. 5000 (Five thousand) as a gift from me—as before stated if she shall not accept this settlement she shall get nothing from my Estate and she can do as she pleases. Out of the remaining funds bequeathed to her nephews and nieces by my late wife I will continue to pay Lola widow of Carlos Bonfante the sum of One hundred and fifty Pesetas per month until her children shall be able to help their mother and when such time arrives my Estate shall cease to pay any further monthly allowances and pay to her or to
- 30 such of these three, mother and two children, who shall be living the Pts. 5000 (Five thousand pts) which will be received today by the remaining persons who are seven entitled to this fund—
- 40

- Five children of Bonfante and two of Eduardo Ballou. In this manner that which was bequeathed by my late wife will be finally settled without right to claim anything else, My Executors shall pay on my death to Fernandez Bonfante Seven thousand five hundred Pesetas if at my death he has married Maria Dominguez to whom he is now engaged he shall receive on my death Two thousand five hundred Pesetas and if he had not married the said Maria Dominguez this bequest remains
- 50 without effect.

No. 10.
Translation
of Will
of Angel
Costa,
deceased,
21st August
1944,
continued.

If I have not settled it before I direct that Elena B. de Cavilla be paid on my death Pts. 5000 (Five thousand Pts) in settlement of her share in the Estate of her deceased aunt Carlota B. de Costa I will try to settle this as soon as possible.

I direct that Lourdes Bonfante daughter of Maria Ballou Bonfante he paid the Five thousand Pesetas which correspond to her on the winding up of the Estate of her deceased aunt Carlota B. de Costa and out of my estate she shall be given on my death Five thousand Pesetas and should there be no funds of mine standing to my credit in Spain for all these legacies I direct that funds be obtained from my money here and these 10 legacies paid. I direct that out of the Pts. 5000 which by arrangement Andres Bonfante is to receive as agreed, they should collect Pts. 3000 paid by me for his account to Mr. Francisco Gonzalez Palacio of Algeciras, and One thousand Pts which Fernando Bonfante paid to him out of my rents collected in La Linea and the balance up to the total of Five thousand Pesetas be credited against the rents collected by him without my authority from tenants of the Estate of Canilla—which monies he has used without my authority. This settles the distribution of the Estate of my wife bequeathed to these seven legatees who are named.

Annuities to the undermentioned charitable Institutions as follows :—				20
To St. Bernard's Conference	£50	per annum		
To Saint Mary the Crowned Conference	£50	„ „		
To St. John of God's Orphanage (Boys)	£100	„ „		
To other Charitable Institutions in the South District (Europa local Catholic)	£50	„ „		
To the Hebrew Poor Asylum in Cumberland Road	£50	„ „		
To other local Charitable Institutions of different English denominations	£50	„ „		
To widows with children under 15 years of age to help them during such time as these children are minors	£100	„ „		30
To Our Day Poor Fund each year during the existence of this Fund	£20	„ „		
To the Asylum of the Blind	£30	„ „		
To the Little Sisters of the Poor Home (Europa) (South) to be spent for our Poor not to be sent abroad	£75	„ „		
To the Society of Saint Vincent de Paul	£50	„ „		

After payment of Legacy Duties and duties to the State a monthly sum shall be deposited to meet insurance, Ground Rent, Rates and Water and repairs and my Executors shall endeavour to eliminate these 40 disbursements and make tenants themselves pay these expenses together with their rents.

In the event of there not being enough money out of the annual surplus to meet in their entirety all these bequests my Executors shall reduce proportionately the amount of each bequest so that the annual distribution shall not be closed with a deficit but with a surplus.

I direct that the mortal remains of my nephew Carlos Macias who died in Madeira be brought if possible to Gibraltar and be buried in my Vault at the new Cemetery in North Front. My body shall be buried in the Vault I possess in North Front Cemetery.

As to the rest of my property, furniture, clothes and divers jewels I will dispose on a separate sheet should I not do this and death should surprise me let my Executors dispose of these for the benefit of my Estate.

This present disposition of my estate etc. is my last will, any other disposition heretofore made by me prior to this date shall be null and
10 without effect and let this be my last testamentary disposition.

I sign these presents before the witnesses Mr. Henry Valarino and Mr. James Valarino.

ANGEL COSTA.

Witness

HENRY VALARINO

Sworn Broker

JAS. W. VALARINO.

No. 10.
Translation
of Will of
Angel Costa
deceased,
21st August
1944,
continued.

No. 11.

CHIEF JUSTICE'S MINUTES OF PROCEEDINGS in Chambers.

20 15th July 1946.

Russo for Plffs (executors other than Cosquieri).

Serfaty for Dft Cosquieri.

Isola for Magdalena Formento (one of the next-of-kin).

Originating Summons for construction of Will of Angel Costa, in so far as it relates to premises at present occupied by Cosquieri & Co.

Court takes preliminary point on form of proceedings: why are Dfts limited to Peter Cosquieri and Magdalena Formento? See O. XVI r. 32 (a), and O. LV, rr. 5.A (a), and 3 (g). It appearing that the entire class of next-of-kin have been ascertained and traced, O. XVI r. 32 (a)
30 is inapplicable.

Thereupon Russo applies for leave to amend Summons by adding all next-of-kin beneficiaries as Dfts.

Isola agrees.

Serfaty does not oppose.

Court takes further preliminary point: should not Joseph Fernandez also be joined as a Dft as being a "person whose rights or interests are sought to be affected" within O. LV. 5.A. (a)?

It appearing that the partners in Cosquieri & Co. (Joseph Fernandez and Peter Cosquieri) are awaiting the decision on this Summons as affecting
40 their interests as tenants holding over,

No. 11.
Chief
Justice's
Minutes of
Proceedings

No. 11.
Chief
Justice's
Minutes of
Proceedings
continued.

and Russo and Isola agreeing to proposed further amendt. of proceedings,

and Serfaty not objecting.

Court orders amendment of Summons by adding all next-of-kin benefics. (other than Magdalena Formento) and also Joseph Fernandez, as Dfts.

Costs reserved.

Hearing adjd to 29th July 1946.

ROGER BACON
C.J.

10

15 July 1946.

29th July 1946.

Further hearing of Originating Summons adjourned from 15th July 1946.

Russo for Plffs (Exors other than Cosquieri).

Serfaty for Dft. Cosquieri.

Isola for all next-of-kin (all Dfts other than Cosquieri and Fernandez).

Benady for Dft. Fernandez.

Since previous hearing the following have been joined as Dfts :

- (1) All next-of-kin of Angel Costa decd. other than Magdalena Formento (already a Dft.) 20
- (2) Joseph Fernandez (as a person whose rights or interests are sought to be affected : O. 55, r. 5.A (a)).

Russo does not desire to address Court by way of Re-opening the Summons.

Serfaty. The Will was not drafted by or with the aid of a legal practitioner. The Court should therefore not require technical precision : *Taylor v. Tweedie* [1923] 1 Ch. at p. 105. Testator's intention is the real criterion, i.e. his actual intention as expressed by or implied in the language of the Will : see Halsbury, 2nd Edn., Vol. 34, para. 209, p. 159. 30

Court must look at entire Will and may look at the original (in Spanish) for purposes of construction.

Dft Cosquieri is referred to in the Will as " my friend Cosquieri."

Throughout material passage in Will (see Gonzalez's afft. dated 27 June 1946, para 3 for translation before Court) all references to the donee are expressed in the singular and relate to Cosquieri, except where " his sons " are referred to towards the end.

The sons are not partners in Cosquieri & Co. Sole partners are Cosquieri and Fernandez.

A copy of original lease from testator to Cosquieri & Co. is before the Court (all Counsel waive objection as regards technical omission to exhibit the same to an afft.). 40

Lease contains *no* proviso for renewal.

The expression "renewal" in the Will means that if Dft. Cosquieri desires a lease he can have one, but, if not, he can live there, and his sons after him, as tenants for life in succession.

The expression "Cosquieri & Co." does not appear in the Will. Nor is Dft. Fernandez's name therein mentioned.

At date of Will, Cosquieri & Co. were tenants holding over (query whether yearly or monthly).

Testator made receipts for rent in favour of Cosquieri & Co., but *despite* that, he wished to benefit Dft Cosquieri personally and his sons.

- 10 Ambiguous words following on clear language cannot control or modify its effect. The references "the contract" and "renewal" are ambiguous. The last fourteen words are clear. See *Goodwin v. Finlayson* (1858) 25 Beavan, 65: "Plain and distinct words are only to be controlled by words equally plain and distinct."

See also *Bickford v. Chalker* (1854) 2 Weekly Reporter, 502.

See Hals. 2nd Edn. Vol. 34, para 245, p. 192: Construction must be in accordance with *apparent general* intention of the Will. The general intention here was that of benefiting Dft Cosquieri and his sons, and no one else. See Hals. *ib.* para 377, p. 327:

- 20 Court leans to construction most favourable to donee, as regards the term or interest given. *Cooper v. Woolfit* (1857) 2 Hurlst. & Norman 122.

Effect of whole passage is therefore this: Dft Cosquieri is a conditional donee of a tenancy for life, and he may if he wishes have a lease to that effect; on his death, if both his sons survive him, they can opt to become joint tenants for life—if only one survives, he alone can opt to become tenant for life.

- 30 *Benady*. Relevant propositions of law: Hals. 2nd Edn. Vol. 34 p. 232, para 289. Also Jarman, 6th Edn., Vol. 1 at p. 512—refce to *Re Feltham's Trusts* 1 Kay & Johnson, 528. In that case the words were "Thomas Turner, of Regency Square, Brighton." No such person existed. Held that it referred to James Turner of that address, another nephew, and not to Thomas Turner—Daventry. The word "occupies" in the present Will is equivalent to "occupant," i.e. a description. "The house which Mr. Peter Cosquieri occupies" are all words of description of the property in question. Everything down to the words "and let he and his sons" clearly relates to Cosquieri & Co. by direct reference to their lease, its terms, etc.

(Hearing adjourned to 31st July 1946)

31st July 1946.

- 40 Benady continues:—

Testator clearly intended to benefit the occupants of the premises in question, including Peter Cosquieri. He cannot be read as having intended to bring about a dissolution of partnership. He was concerned to provide for continuity of occupancy.

No. 11.
Chief
Justice's
Minutes of
Proceedings
continued.

There is thus an option in favour of the firm for a lease for 14 years as from the death of the testator. "A will speaks as from the testator's death."

The words "and let he" to the end of the passage do not make sense: "the house and shop" are one example of nonsense. In any event this cannot be read to give an option to P. Cosquiere for a life-tenancy, much less further similar options to his sons. See Hals., 2nd Edn., Vol. 34, p. 215, para 271: a clearly expressed intention cannot be over-ridden by ambiguous words.

As regards the choice between various words of description (where 10 inconsistent) see *Bernasconi v. Atkinson* (1853) 10 Hare, 345, which also deals with uncertainty. In choosing between inconsistent descriptions, the lesser of two evils must be selected: see per Wood, V.C. at p. 352. If necessary, the language must be strained in order to give effect to it—in the sense which is the less open to error.

Isola. Two questions arise: what is testator's expressed intention? can effect be given to it? See *Doe d. Hickman v. Haslewood*, 6 Ad. & Ellis, 167, at p. 174. Effect can only be given "consistently with the rules of law."

The opening phrase means: "the rent of these premises is never to 20 be increased, whoever occupies it." That is void: *A.-G. v. Catherine Hall*, 23 Rev. Rep. 92.

The words "nor his rent . . . in the contract" must be treated as a separate provision, relating to the particular tenant.

"On equal circumstances" may have one of a number of meanings.

Is the whole passage the creation of a trust or the expression of a wish? (Per Curiam: it may be neither, but a conditional gift.) It is merely the expression of a wish. Moreover, there is no certainty as to what is the gift. It is all too vague to give anything to anyone.

The whole passage is the expression of a pious hope. 30

Exmouth v. Praed (1883) 23 Ch. D. 158.

Jarman on Wills, 6th Edn. p. 698.

If the present passage means anything, it creates a trust. And if it creates a trust (or purports to) it must be clear in its expression and its operation.

The closing words only make the uncertainty more apparent.

The whole passage is void for uncertainty.

The original lease had expired before the Will was made.

"On equal circumstances" cannot be given any meaning at all.

Russo. See Exhibits 10 and 11 to afft. of Fernandez. When once 40 the Statutory period of reduction of rents had commenced, testator used "house" to mean the flat above the shop. It is therefore in that sense that the word is used in the Will. The passage should therefore be construed as: "I direct that the rent of the flat which P. C. occupies be not increased to him (in any circumstances in which executors might have the right to make fresh terms with him), and that the rent of the whole premises be not increased in any manner to him, and that notice

to quit be not given to him so long as he (as agent for the firm) pays the rent for the whole premises as stipulated (i.e. 1/3 of £5 + £25 net per month). When rents revert to normal . . . the contract, with option to Peter Cosquiere to enter into a new lease equal in all respects to the old lease of the firm if he wishes to do so at the time when rents revert to normal. The flat is not to be ceded to anyone other than P. C. ; and he and his sons are to have the right to occupy the flat and shop if he exercises that option."

No. 11.
Chief
Justice's
Minutes of
Proceedings
continued.

10 *Benady.* Testator knew that Peter Cosquiere was only paying rent as agent for the firm. How could testator have provided for the "renewal" of a lease which had never existed? Nor could he have contemplated the dissolution of the partnership.

Tibbets v. Tibbets, cited in Jarman 6th Edn. at p. 698 by Isola, is quite different case: there was a gift with a recommendation; the latter cannot annul the former or affect it.

Serfaty. *Tibbets v. Tibbets* is distinguishable, as contended by Benady.

"Uncertainty" means being incapable of any definite meaning. Nothing less will avoid a Will. See Hals., 2nd Edn., Vol. 34 at p. 276; also Jarman, 6th Edn., at p. 453.

20 I rely on "he," "his" and "to him" throughout. No authority for changing that into "they."

"House" means the whole premises *throughout* the Will, *despite* the final words of the material passage.

Arguments closed.

(Hearing adjourned to 1st Aug. 1946.)

1st Aug. 1946.

I deliver my decision, which I have recorded in writing filed in the Registry of this Court.

The answers to questions in O.S. are:—

- 30
1. No.
 2. Question does not arise.
 3. Costs of all parties, as between Solor and Client, out of estate. To be taxed, failing agreement.
 4. The Plffs and Dft Cosquiere have power and ought to grant to Cosquiere & Co., a firm, a lease of the premises being R No. 574 in the General Plan of the Garrison of Gibraltar for 14 years commencing from 1st October 1945 on the same terms and conditions as the lease dated 18th June 1927 if within one month from today the said firm exercises its option for such lease.

40 Liberty to apply as to the period of one month aforesaid, within one week.

ROGER BACON
C.J.

1st August 1946.

No.12.
Order and
Declaration
on
Originating
Summons,
1st August
1946.

No. 12.

ORDER AND DECLARATION on Originating Summons.

Thursday the 1st day of August 1946.

Before His Honour ROGER SEWELL BACON, M.B.E., Chief Justice.

*Supreme
Court,
Gibraltar.*

Entered
23rd
August
1946.

(L.S.)

UPON the application by Originating Summons of the Plaintiffs two of the executors and trustees of the Will of the above-named Angel Costa deceased issued against the Defendant Peter Cosquiere the other Executor and Trustee of the said Will and the Defendant Magdalena Formento a person entitled to one fourth share of the residuary estate of the said deceased AND His Honour the Chief Justice having directed that the Originating Summons herein be amended by adding as Defendants all the other persons entitled to the said residuary estate and Joseph Fernandez the only other partner with the Defendant Peter Cosquiere in the firm of Cosquiere & Co. as being a person whose rights or interests were sought to be affected within the meaning of O. 55 R. 5.A (a) of the Rules of the Supreme Court of Judicature in England as applied to Gibraltar by the Rules of the Supreme Court Gibraltar 1920 AND UPON READING the affidavit of the Plaintiff George Michael Gonzalez filed herein on behalf of the Plaintiffs on the 27th day of June 1946 AND the Indenture of Lease dated the 18th day of June 1927 referred to in the said affidavit AND the affidavit of the Defendant Joseph Fernandez filed herein on his behalf on the 26th day of July 1946 and the several exhibits therein respectively referred to AND UPON HEARING Peter George Russo Esquire of Counsel for the Plaintiffs Abraham B. M. Serfaty Esquire of Counsel for the Defendant Peter Cosquiere Samuel Benady Esquire of Counsel for the Defendant Joseph Fernandez and Albert Richard Isola Esquire of Counsel for the remaining Defendants THIS COURT DOTH DECLARE that according to the true construction of the said Will the testator meant and intended to bequeath to the firm of Cosquiere & Co. as constituted at the time of his death a conditional gift namely, an option for a lease of the premises referred to in the said Will being R No. 574 in the General Plan of the Garrison of Gibraltar for the term of fourteen years computed from the 1st day of October 1945 subject to the payment of rent as reserved by the said Indenture of Lease of the 18th day of June 1927 and subject to and with the benefit of such Lessees' and Lessor's covenants provisoes and conditions in all respects as are contained in the said Indenture of Lease AND IT IS ORDERED that the time within which the said option is to be exercised shall be one month from the date hereof AND IT IS ALSO ORDERED that the costs of the Plaintiffs and Defendants as between Solicitor and Client be raised and paid out of the said estate, such costs to be taxed failing agreement between the parties.

(Sgd.) E. PIZZARELLO,
Registrar.



No. 13.

ORDER (with reasons) of Chief Justice on Originating Summons (as amended),
dated 26th day of June, 1946.

No. 13.
Order (with
reasons) of
Chief
Justice on
Originating
Summons,
1st August
1946.

Three main questions arise in construing the material passage of the Will of Angel Costa: first, is it void for uncertainty; secondly, if not, who is or are the conditional donee or donees; thirdly, if there is a conditional gift, of what does it consist?

The Plaintiffs (the Executors under the Will, other than Peter Cosquieri) contend that there is a conditional gift in favour of Peter
10 Cosquieri personally, namely an option to call for a fourteen-year lease of the premises in question (R. No. 574 in the General Plan of the Garrison of Gibraltar) as from 1st October 1945, the date when by the law of Gibraltar rents reverted to normal, on the terms and conditions of the lease dated 18th June 1927.

The Defendant Peter Cosquieri contends that there are conditional gifts in favour of himself and each of his two sons, namely an option of his own to claim a tenancy for life on the same terms and conditions other than the fourteen-year term, and, on his death, an option in favour of both his sons if both survive him, to claim to become joint tenants
20 for life, or alternatively an option in favour of either son surviving him to become sole tenant for life—in each case on the terms and conditions last-mentioned.

The Defendants the next-of-kin of the testator (the persons entitled to the freehold interest in the said premises by virtue of a previous decision of this Court given in proceedings "1945, C. No. 26") contend that the whole passage of the Will is void for uncertainty.

Finally, the Defendant Joseph Fernandez (the only other partner with Peter Cosquieri in the firm of Cosquieri and Company) contends that
30 there is a conditional gift in favour of Cosquieri & Co., namely an option to call for a lease of the premises on the terms and conditions of the lease dated 18th June 1927, including the fourteen-year term, as from 29th August 1945, the date of the testator's death.

I have not been referred to, and am unable to discover any case where the same or a substantially similar text was contained in a Will in similar circumstances. I am thus left to apply the basic principles of construction. In any event "the nonsense of one man cannot be a guide for that of another": *Smith v. Coffin* (1795) 2 Hy. Bl., at p. 450.

I am bound to bear particularly in mind the rule that a secondary intention must give way to a general intention if they clash (per Lord
40 Kenyon, C.J., in *Doe d. Cock v. Cooper* (1801) 1 East, 229).

The testator, having evidently himself written his Will and having used the language of a layman in so doing, has on any view produced a passage which is somewhat garbled and obscure, bearing in mind the facts as known to him at the time. On the whole, however, I reject the contention of the next-of-kin that the passage is void for uncertainty. I am bound to exercise every effort to give effect to the testator's intention, and in my view his main intention is sufficiently clear.

No. 13.
Order (with
reasons) of
Chief
Justice on
Originating
Summons,
1st August
1946,
continued.

On the footing, then, that there is here a conditional gift, the subject is an option for a tenancy of certain premises. The testator's introductory (and principal) description of those premises consists of the words "the house which Mr. Peter Cosquieri occupies." Where the subject of a gift is described by reference to some extrinsic fact, extrinsic evidence must be admitted to ascertain the fact, and, through that medium, to ascertain the subject of the gift—in particular where premises are described as being in the occupation of A.B. See per Grant, M.R., in *Sanford v. Raikes* (1816) 1 Merrivale at p. 653. Hence paragraphs 8 and 9 of the affidavit of G. M. Gonzalez dated 27th June 1946 and paragraphs 1 to 5 inclusive of the affidavit of Joseph Fernandez dated 26th July 1946. The facts as to the premises and their occupants appear therein. The testator must have known those facts, as appears from the Will itself, except that he seems to have overlooked the fact that the original lease had already expired at the date of his Will and that the firm of Cosquieri & Co. were by then in occupation as tenants holding over. The receipts exhibited to the last-mentioned affidavit shew that, whenever he himself signed a receipt, he made it in favour of the firm, both before and after the making of his Will. 10

In my view the words "the house which Mr. Peter Cosquieri occupies" must be treated as an expression descriptive of the subject of the gift—or, more strictly, descriptive of the premises an option on which is the subject of the gift—in other words, the whole property R. No. 574. 20

There follow a series of references to Peter Cosquieri (whose name was introduced into that description) in the singular: the words "his rent," "to him," "so long as he shall pay," "payment by him," and "if he so desires." These follow naturally from the original reference to Peter Cosquieri as the individual occupant of the premises. But that original reference, if read literally, was, to the testator's knowledge, an error. Peter Cosquieri has never occupied the premises individually. He was, on the other hand, at all material times sub-tenant of the upper storey, his lessors being the firm of Cosquieri & Co. And it is argued by the Plaintiffs that the word "house" signifies only that upper storey. The Spanish word "casa," which is used by the testator in the original Will (which he wrote in that language) is capable of either meaning in Gibraltar. But in my opinion the Plaintiffs' contention is defeated by the general tenor of the material passage, which refers to the normal rent as being £30 per month, which was the rent stipulated for the whole of the premises. I am unable to agree with the Plaintiffs' further point in support of their argument, namely that the first two references to "rent" relate to the upper storey and to the entire premises respectively; the expression "nor his rent increased in any manner" seems to me to mean that no subterfuge or additional burden is to be used or introduced by way of increasing the total cost of occupation. 30 40

The crux of the matter is now reached: is the passage as a whole to be treated as providing for a gift in favour of Peter Cosquieri personally (and perhaps also of his sons) or of the then tenants of the premises?

In my opinion the testator undoubtedly desired to benefit Peter Cosquieri, elsewhere referred to in the Will as "my friend Cosquieri,"

but the manner in which he intended to go about effecting that object was by the rational and obvious method of preserving the status quo, as regards the premises in question, long after the expiration of the original lease if Peter Cosquiere so desired it. He knew that Peter Cosquiere had both his business and his home in the premises (see the exhibited receipts which differentiated between the two, according to the law then in force) and his basic and main intention was to provide for the continuation, on reasonable terms, of that state of affairs. Continuity is the keynote of the whole passage.

No. 13.
Order (with
reasons) of
Chief
Justice on
Originating
Summons,
1st August
1946,
continued.

- 10 That view is, I think, strongly reinforced by the use of the expressions "nor notice to quit be given" and "with option to its renewal." Neither phrase would be consistent with an intention that the firm should be dissolved (a matter in any event beyond the testator's power) and that Peter Cosquiere should be left in sole occupation of the premises. Indeed the ousting of the firm from their tenancy might well, so far from assisting the testator's intention to benefit his friend, have the reverse effect, a factor which the testator as a man of property must be taken to have appreciated.

- 20 The use of the third person singular, in the various expressions to which I have referred, must, I think, be regarded as not merely the natural grammatical sequence but as references to Peter Cosquiere in his capacity as the member of the firm who was foremost in the testator's mind and as agent for the firm in the matter of dealings with the testator. The over-riding consideration remains: the element of continuity undisturbed. The testator was facilitating, though it was beyond his power to assure, his friend's prolonged enjoyment of an established place of business and of a home for himself and his sons.

- 30 The expression "with option to its renewal" invited examination of the original Will. I have done so, and observe that the translation is precisely accurate. The testator did not say "a renewal" but "its renewal," thus indicating a new lease similar in all respects to the old one.

Continuity is again emphasized by the clause "The house shall not be ceded to anyone." If "house" here means, as the Plaintiffs would have me hold, the upper storey only, the clause is meaningless; for the testator had no power, as he well knew, over the dealings between Cosquiere & Co. as sub-lessors and Peter Cosquiere as sub-lessee.

- 40 Incidentally it should be mentioned that the original text does not contain the word "and" preceding the last-mentioned clause. Moreover, the original text corresponding to that clause commences with a capital letter, though the full-stop is omitted before it. Plainly a fresh sentence was intended to commence at that point. As to the effect of this sentence as a whole, in my view it can only be treated as a final flourish, so to speak—an announcement, however far from the testator's much clearer expression of his main intention in the earlier parts of the passage, of his pious hope that the Cosquiere family should be permitted by his executors to live and work where they were. The words are incapable of literal application in any event, in view of the then existing facts.

No. 13.
Order (with
reasons) of
Chief
Justice on
Originating
Summons,
1st August
1946,
continued.

The ascertainment of the testator's intention as shown by the Will cannot be varied by events subsequent to its making : see per Wood, V.-C., in *Re Clark's Trusts* (1863) 32 L.J. (Ch.) at p. 529. Accordingly I take no account of Peter Cosquieri's notice of dissolution of partnership dated 27th December, 1945.

I hold, therefore, that the effect of this passage is to devise a conditional gift in favour of Cosquieri & Co. namely an option for a lease of the premises in question.

The lease, if required, would be a fourteen-year lease on the same terms and conditions as the lease dated 18th June 1927. 10

As to the date from which the lease was intended to run, the testator appears to have provided that it should be the date when rents reverted to normal. I therefore hold that the commencement date should be 1st October, 1945.

I must reject the Defendant Cosquieri's contention that a further option is given to Peter Cosquieri's sons or to one of them. Nothing in the Will is sufficiently clear to produce such a result.

If the option is to be exercised, it should be done within a reasonable time from now, when the rights of the parties have been ascertained. In my view, a reasonable time is one month, and I so hold, subject, 20 however, to liberty to apply on this point within one week since Counsel for the Defendant Fernandez is unable to appear before me to-day and has had no opportunity of addressing me on this matter.

Following *Re Clarke* (1908) 97 L.T. (N.S.) 707, the costs of all parties, including the costs of and arising out of the amendment of the Summons, will be paid out of the estate as between solicitor and client. Failing agreement, the costs of all parties are to be taxed on that footing.

(Sgd.) ROGER BACON,
Chief Justice.

1st August, 1946.

No. 14.

30

CHIEF JUSTICE'S NOTES of Proceedings in Court.

No. 14.
Chief
Justice's
Notes of
Proceedings
on Motions,
26th August
1946.

26th Aug. 1946.

Three Motions, respectively for

(A) Setting aside Order and Declaration (dated 1st Aug. 1946) made on O.S. (heard on 15th, 29th and 31st July and 1 Aug. 1946), and for new hearing O.S., and for costs, or alternatively for fresh Order and Declaration ;

(B) Leave to appeal to P.C. ;

(C) Stay of execution and all further proceedings pending appeal, or such other order as Court thinks fit. 40

Russo for Plffs (Exors other than Cosquieri).

Serfaty for Dft Cosquieri.

Isola for next-of-kin (all Dfts other than Cosquieri and Fernandez).

Benady for Dft. Fernandez.
 MOTIONS by Serfaty for Dft. Cosquierei.
 Motion (A)

No. 14.
 Chief
 Justice's
 Notes of
 Proceedings
 on Motions,
 26th August
 1946,
continued.

Serfaty : Since *Dagnino v. Bellotti* (1886) 11 A.C. 604 (P.C.) practitioners in Gibraltar have always moved for new trial before moving for leave to appeal to P.C. This is automatic, but position is obscure. In *Cable & Wireless v. City Council*, which went on appeal to P.C., I argued against need for this Motion and asked for ruling. None given. Point still in doubt. *George D. Emery Co. v. Wells* (1906) A.C. 501 (P.C.) was
 10 similar case from Br. Honduras.

Per Curiam : In that case trial was with a jury, and law of Colony prescribed a time-limit for moving for new trial.

Serfaty : P.C. have never settled the point now arising.

Per Curiam : This case raises a question of construction alone. What possible ground for new hearing of O.S. could be alleged ?

Serfaty : I know of no such ground.

Benady : In *Marrache v. Onos & Ashton* I appeared before P.C. Point not raised. I oppose Motion. It has been the practice, but is unnecessary. No ground for new hearing here. Purely construction.

20 *Isola* : I support Benady.

Russo : I also.

Per Curiam : Motion refused. No suggestion of any ground for new hearing. Full argument already heard and full consideration given. Case raises general question as to practice. Present position unsatisfactory. It would be most helpful if P.C. thought fit to settle the point. *Dagnino v. Bellotti* decided when Charter of Justice, 1830, and Rules thereunder were operative. Moreover, that was a case tried by C.J. with assessors. Under present Rules (i.e. Rules of the Supreme Court Gibraltar, 1920) by Rules 3 and 10 the English R.S.C., O. XXXIX, governs question of
 30 new trials. In my view, to-day no obligation to move for new trial as pre-requisite to appeal to P.C. except where intending appellant desires to rely, in the course of that appeal, on one of the grounds recognized by C.A. in England as a ground for new trial.

Motion (B).

Serfaty : The lease at £30 per month shews property is worth more than £300. Therefore appeal as of right under Supreme Ct. Order, s. 84 (1) (a).

Benady : I agree.

Isola : I do not oppose Motion.

40 *Russo* : I agree appellant has appeal as of right.

Per Curiam : What do you say as to amount of security and time for security and steps under Sup. Ct. Order s. 84 (3) (a) and (b) ?

Serfaty : I offer £300 and ask for three months for security and steps.

No. 14.
Chief
Justice's
Notes of
Proceedings
on Motions,
26th August
1946,
continued.

Benady : I don't object to the amount, but the time is much too long ; one month ample maximum. In previous cases the records were voluminous. Here very small. And the partnership business (Cosquiere & Co.) is vitally affected. State of suspense at present.

Isola : I agree as to £300. Three or four weeks ample time.

Russo : I agree as to £300. As to time, residuary legatees have only small means and desire early distribution, etc. Three or four weeks ample here.

Per Curiam : Leave to appeal, conditional on Dft. Cosquiere giving £300 security within three weeks (s. 84 (3) (a)) and taking steps within 10 three weeks (s. 84 (3) (b)). Record quite small, no difficulty about taking steps, and saving of time clearly desirable.

Motion (c).

Serfaty : Stay of proceedings under Order dated 1st Aug. 1946 pending appeal is essential. Status quo must be preserved ; otherwise appeal, if successful, might be fruitless. See per Jessel, M.R., in *Polini v. Gray* ; *Sturla v. Freccia* ; (1879) 28 W.R. at p. 361 (C.A.).

Benady : I agree.

Isola : I agree.

Russo : I agree. 20

Per Curiam : Order that, pending appeal, time for exercising the option is not to run as from date of Notices of Motions (19th August 1946), and Exors of Will of Angel Costa are not to give notice to quit, or to grant any lease or enter into any letting, in respect of the premises in question or any part thereof, and all proceedings in this Court are stayed. (See *Polini v. Gray*, supra, and Bentwich on Privy Council Practice, 3rd Edition, p. 131, note (q)).

Costs of all Motions.

Serfaty : Costs of all three Motions should be paid out of the estate.

Benady : I do not oppose that. 30

Isola : Costs of these Motions should abide result of appeal. That is the Order made in every appeal from this Ct. to P.C. Residuary legatees should not in effect be ordered to pay these costs now.

Russo : Costs should abide result of appeal.

Per Curiam : Why are Motions (b) and (c) separate Motions ? One would have sufficed.

Serfaty : It has been the practice here to keep them separate, I have followed that practice.

Per Curiam : The practice seems unnecessary and undesirable. Had I been making an Order as to costs I should only have allowed costs of 40 two Motions to be paid out of the estate.

Order that costs of Motions abide result of appeal.

ROGER BACON
C.J.

26th Aug. 1946.

No. 15.

ORDER dismissing Motion for New Hearing.

Monday the 26th day of August, 1946.

Before His Honour ROGER SEWELL BACON, M.B.E., Chief Justice.

IN COURT

No. 15.
Order
dismissing
Motion
for New
Hearing,
26th August
1946.

UPON motion this day made unto this Court by Abraham B. M. Serfaty, Esquire, of Counsel for the Defendant Peter Cosquiere for an Order that the Judgment on the Originating Summons herein and the Order and Declaration made in pursuance thereto be set aside and that

10 a new hearing be had of the said Originating Summons or alternatively that an Order be made declaring that according to the true construction of the Will of the testator Angel Costa, deceased, there are conditional gifts in favour of the Defendant Peter Cosquiere and each of his two sons, namely an option of his own to claim a tenancy for life on the same terms and conditions other than the fourteen-year term, and, on his death, an option in favour of both his sons, if both survive him, to claim to become joint tenants for life, or alternatively an option in favour of either son surviving him to become sole tenant for life, in each case on the terms and conditions last-mentioned AND UPON HEARING the said Abraham

20 B. M. Serfaty, Esquire, of Counsel for the said Defendant Peter Cosquiere, Samuel Benady, Esquire, of Counsel for the Defendant Joseph Fernandez, Albert R. Isola, Esquire, of Counsel for the Defendants other than Peter Cosquiere and Joseph Fernandez, and Peter G. Russo, Esquire, of Counsel for the Plaintiffs THIS COURT DOTH ORDER that the said motion do stand dismissed and that the costs of the same abide the result of the Appeal to the Privy Council for which conditional leave has been given this day.

By the Court.

(Sgd.) E. PIZZARELLO,

Registrar.

30

No. 16.

ORDER giving Conditional Leave to Appeal.

Monday the 26th day of August, 1946.

Before His Honour ROGER SEWELL BACON, M.B.E., Chief Justice.

IN COURT.

No. 16.
Order
giving
Conditional
Leave to
Appeal,
26th August
1946.

UPON HEARING Abraham B. M. Serfaty, Esquire, of Counsel for the Defendant Peter Cosquiere, Samuel Benady, Esquire, of Counsel for the Defendant Joseph Fernandez, Albert R. Isola, Esquire, of Counsel for the Defendants other than Peter Cosquiere and Joseph Fernandez and

10 Peter G. Russo, Esquire, of Counsel for the Plaintiffs IT IS ORDERED that the Defendant Peter Cosquiere have conditional leave to appeal to His Majesty in Council from the judgment herein dated the 1st day of August, 1946, upon the Appellant

No. 16.
Order
giving
Conditional
Leave to
Appeal,
26th August
1946,
continued.

(1) Entering within three weeks after the date of this Order into good and sufficient security to the satisfaction of the Court in the sum of £300 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Plaintiff and the other Defendants in the event of the Defendant Peter Cosquiere not obtaining an Order granting him final leave to appeal or of the appeal being dismissed for non prosecution or of His Majesty in Council ordering the Defendant Peter Cosquiere to pay the Plaintiffs' and the other Defendants' costs of the appeal.

(2) Taking the necessary steps within three weeks after the date of this Order for the purpose of the preparation of the Record and the dispatch thereof to England. 10

AND IT IS FURTHER ORDERED that the costs of this motion abide the result of the Appeal.

By the Court,

(Sgd.) E. PIZZARELLO,
Registrar.

No. 17.
Order for
a Stay of
Execution,
26th August
1946.

No. 17.

ORDER for a Stay of Execution.

20

Monday the 26th day of August, 1946.

Before His Honour ROGER SEWELL BACON, M.B.E., Chief Justice.

IN COURT.

UPON HEARING Abraham B. M. Serfaty, Esquire, of Counsel for the Defendant Peter Cosquiere, Samuel Benady, Esquire, of Counsel for the Defendant Joseph Fernandez, Albert R. Isola, Esquire, of Counsel for the Defendants other than Peter Cosquiere and Joseph Fernandez and Peter G. Russo, Esquire, of Counsel for the Plaintiffs IT IS ORDERED that pending the hearing of the appeal to His Majesty in Council from the Judgment herein dated the 1st day of August, 1946, time is not to run for exercising the option for a lease by the firm of Cosquiere & Co. as constituted at the time of the death of the said testator Angel Costa deceased And that the Executors of the Will of Angel Costa deceased are not to give notice to quit nor grant a lease of the premises in question or part thereof AND IT IS FURTHER ORDERED that the costs of this motion abide the result of the appeal. 30

By the Court.

(Sgd.) E. PIZZARELLO,
Registrar.

No. 18.

ORDER giving Final Leave to Appeal.

Wednesday the 18th day of September, 1946.

Before His Honour ROGER SEWELL BACON, M.B.E., Chief Justice.

IN COURT.

No. 18.
Order
giving Final
Leave to
Appeal,
18th
September
1946.

UPON HEARING Abraham B. M. Serfaty, Esquire, of Counsel for the Defendant Peter Cosquiere, Samuel Benady, Esquire, of Counsel for the Defendant Joseph Fernandez, Albert R. Isola, Esquire, of Counsel for the Defendants other than Peter Cosquiere and Joseph Fernandez and
10 (on instructions of Peter G. Russo, Esquire) for the Plaintiffs and it appearing that the sum of £300 has been deposited in Court by the said Peter Cosquiere by way of security and that he has taken the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England in accordance with the terms of the order herein dated the 26th day of August 1946 granting conditional leave to appeal IT IS ORDERED that the said Defendant Peter Cosquiere have final leave to appeal to His Majesty's Privy Council from the Judgment herein dated the 1st day of August, 1946 AND IT IS FURTHER ORDERED that the costs of this motion abide the result of the appeal.

20

By the Court.

(Sgd.) E. PIZZARELLO,
Registrar.

No. 19.

LIST OF DOCUMENTS OMITTED to be copied in the Appeal Record.No. 19.
List of
Documents
Omitted.

NO.	DESCRIPTION	DATE
		1946
	1. Originating Summons (superseded by amendment) ..	June 26
	2. Certificate of Urgency for hearing of Originating Summons in Long Vacation	July 3
30	3. Notice of appointment to hear Originating Summons ..	" 4
	4. Notice of Motion to set aside order and for new hearing of Originating Summons	Aug. 19
	5. Notice of Motion for Conditional Leave to Appeal ..	" 19
	6. Notice of Motion for Stay of Execution	" 19
	7. Certificate of Urgency for preceding 3 Motions	" 19
	8. Request to pay £300 into Court as security for costs of Appeal	Sept. 5
	9. Lodgment Schedule for £300	" 5
10.	10. Notice of Motion for Final Leave to Appeal	" 9