

30, 1950

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No. 6 of 1950. TY OF LONDON  
W.C.1.

In the Privy Council.

31, 1958

30 MAR 1951

INSTITUTE OF ADVANCED  
LEGAL STUDIES

30, 1950

**ON APPEAL**

FROM THE COURT OF APPEAL, MALTA.

BETWEEN

10 JOSEPH, PAOLO, CETTINA, the widow of CHARLES  
MICALLEF, ROSARIA *sive* LUCY, the wife of  
HENRY GALEA, and JOHN, brothers and sisters of  
ZAMMIT BONETT, and MARIETTA, the widow of  
ALFREDO ZAMMIT, as the successors of ALFREDO  
ZAMMIT, deceased; MARY, the widow of ALFRED  
AXISA, and EUGENE, the wife of MICHAEL AZZOPARDI,  
20 DOLORES, the wife of EMMANUELE BRIFFA,  
VINCENT, ANNIE, EDDIE, GEORGE, ROBERT  
and JOSEPH, brothers and sisters AXISA, as the  
successors of ALFREDO AXISA, deceased; MARIANNA,  
the widow of ALFREDO DEBONO, and JOSEPH, MARY,  
the wife of ALFREDO LANZON, DORIS, the wife of  
JOSEPH MIFSUD, AMELIA, the wife of JOSEPH ZAMMIT  
BONETT, and CARMELO, brothers and sisters  
DEBONO, as the successors of ALFREDO DEBONO,  
deceased; EMMANUELE GRECH, and his children,  
namely CHARLES *sive* CARMELO, and MARY, the  
wife of DAVID SMITH, as the successors of their late  
mother CARMELA, and in respect of their mother's  
share in the community of acquests between her and  
her said husband, EDGAR BALDACCHINO; and,  
in so far as their interests may be concerned, GEORGE,  
ALEXANDER, EDGAR, JOHN and ANTHONY,  
30 brothers PORTANIER, as parties concerned in the issue  
in so far as it affects the said EDGAR BALDACCHINO;  
and WALTER and FRANK DEBONO and  
WILLIAM AXISA, joined in the suit by Decree given  
on the 28th June 1947; and by Minute dated 17th  
October 1947, CARMELO DEBONO, who took up  
the proceedings as attorney on behalf of his brothers  
WALTER and FRANK DEBONO, absent from these  
Islands; and by Minute dated 27th February 1948,  
the said WALTER and FRANK DEBONO who,  
40 having returned to Malta, have personally taken up  
the proceedings in the stead of CARMELO DEBONO  
(Defendants) - - - - -

UNIVERSITY OF LONDON  
W.C.1.  
17 JUL 1953  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

*Appellants*

AND

JOSEPH, JOHN and CARMELINA AXISA, children  
of the late EMMANUELE AXISA; VINCENZA, the  
widow of the said EMMANUELE AXISA; JOSEPH,

VICTOR, CARMELO and FRANK CAMILLERI, as parties concerned in the issue in succession to their father PETER CAMILLERI ; and ROBERT, HARRY, HECTOR and VICTOR PACE, as successors to the share previously held by their brother, Dr. GIUSEPPE PACE (Plaintiffs)

*Respondents.*

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## CASE FOR THE RESPONDENTS.

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RECORD.

- p. 32. 1. This is an Appeal from a Judgment of His Majesty's Court of Appeal in the Island of Malta and its Dependencies, dated the 29th day of November 1948, which Judgment dismissed the Appellants' Appeal and affirmed the Judgment given by His Majesty's Commercial Court on the 4th day of May 1948 with costs against the Appellants, saving only that the period of fifteen days established by that Judgment shall begin to run from the said 29th day of November 1948. 10
- pp. 19 to 24.
2. The issues to be determined in this Appeal are :—
- (A) whether His Majesty's Commercial Court in Malta was competent to adjudicate on the Plaintiffs' (the Respondents) claim to evict the Defendants on the expiry of a lease of a Cinematograph and premises at 5 Tower Road, Sliema, granted by the Plaintiffs and/or their predecessors in Title in two contracts dated the 29th of July 1930 and the 2nd day of July 1934 the said Tenancy expiring on the 30th day of April 1947 ; 20
- pp. 71 to 75.
- (B) whether the Plaintiffs' claim should have been filed before the Rent Regulation Board established by Ordinance No. XXI of 1931 as submitted to the Court on behalf of the Defendants ;
- (C) whether His Majesty's Commercial Court in Malta was right in Law in dismissing the Defendants' plea of non-competence and in allowing the Plaintiffs' claim to evict the Defendants and in giving them 15 days in which to vacate the premises and to return to the Plaintiffs divers chattels set out in an Inventory ; 30
- p. 19.
- (D) whether the contracts of letting the Cinematograph situate at 5 Tower Road, Sliema, now known as the Alhambra Cinematograph, was a letting of the business and the goodwill thereof then carried therein by the Plaintiffs or whether it was the letting of the building without the business and without goodwill ;
- (E) whether on the introduction of Talking Cinematograph shows a new goodwill was created by the Defendants as Lessees ;
- pp. 71 and 75.
- (F) whether if a new goodwill was created as alleged by the Defendants it fell into the ownership of the Plaintiffs in accordance with paragraphs 8 and 7 respectively of the contracts of 29th July 1930 and 2nd July 1934 ; 40

(G) whether on the expiry of the specific term of the Lease, namely six years plus the optional period of a further six years, the said cinematograph business and premises with effects and equipment reverted to the possession of the Lessors—the Respondents—without the necessity of a notice to quit.

3. The material facts are as follows :—

10 By a contract enrolled in the Records of Dr. Ettore Francesco Vassallo on the 29th day of July 1930, Giuseppe Mangion acting as Executor of Vincenzo and Carmela Axisa leased to Alfredo Zammit for a period of two years obligatory and two years optional, the Axisa Cinematograph at No. 5 Tower Road, Sliema, Malta, together with the effects that were included in the lease, and by a contract made subsequently on the 2nd day of July 1934 in pursuance of a Compromise of a suit then pending before His Majesty's Commercial Court between Alfredo Zammit and G. Mangion the said premises and Cinematograph were leased by the Plaintiffs to the Defendants for a period of six years obligatory and six years optional at a Rental of £195 per annum payable quarterly in advance.

p. 71.  
Exhibit "A."

p. 75.  
Exhibit "C."

20 4. The said contract included, inter alia, a covenant (number 4) providing that the benefit of all improvements made and those that may be made shall go to the landlords without any right of compensation therefor; a covenant (number 7) whereby the Tenants bound themselves not to suspend cinematograph shows and other performances except during the months of July, August and September or on good and sufficient grounds, and this in order not to impair the Goodwill of the Cinema Axisa.

p. 77.

p. 78.

30 5. The Defendants continued in occupation of the said premises and business and on the expiry of the first period of six years exercised their option to continue their tenancy for another period of six years which expired on the 31st day of July 1946.

6. During the said period of occupation the Defendants who had carried on the business of silent cinematograph shows, introduced Talkie Cinematograph shows.

7. The Plaintiffs by a Judicial Letter dated the 26th day of March 1947 informed each of the Defendants that it was not the intention of the Plaintiffs to grant an extension of the Lease of the said Cinematograph, goodwill and equipment and called upon the Defendants, and each of them, to surrender and hand over the said premises on 30th April 1947 together with the goodwill improvements and equipment.

p. 86.

8. The Defendants refused and still refuse to vacate the said premises and business and/or to hand over the equipment set out in the Inventory.

9. On the 3rd day of May 1947 the Plaintiffs issued a Writ of Summons against the Defendants to show cause why an order should not

p. 1.

be made directing them to surrender the Axisa Cinematograph and to hand over to the Plaintiffs the premises together with the Benches, Projectors and all other equipment therein.

p. 14. 10. On Trial of the issues raised by the parties in His Majesty's Commercial Court one of the Defendants Emmanuele Grech submitted the following matters in Defence—

(A) That the claim should have been filed before the Rent Regulation Board.

(B) That the present goodwill belongs to the Defendants because the Defendants, acting with the consent of the Plaintiffs, 10 converted what used to be a silent Cinematograph into a "Talkie."

11. The other Defendants objected to the Jurisdiction of the Court and submitted the same pleas in Defence and in addition alleged that the matter in issue concerns the tacit extension of a lease of bare premises devoid of goodwill.

pp. 19 and 24.

12. The Court dismissed the Defendants' plea of incompetence and allowed the Plaintiffs' claim for the eviction of the Defendants from and the surrender of the Cinematograph giving the Defendants 15 days in which to evacuate the premises and return to the Plaintiffs such items in the Inventory as are still to be found at the cine talkies bar all others 20 and bar the benches and piano.

p. 27.

13. On the 26th day of May 1948 the Defendants appealed to the Court of Appeal, Malta, deeming themselves aggrieved by the said Judgment which they allege wrongly held that Ordinance XXI of 1931 (Chap. 109, Revised Edition of the Laws of Malta) is applicable only to halls used as Cinematographs to the exclusion of buildings leased together with the goodwill of a Cinematograph.

14. They further submitted that the premises are to-day different in every material respect from those originally leased to them and that the premises were now a "shop" licensed to sell wines and spirits and 30 other refreshments.

pp. 32 to 38.

15. The Court of Appeal, on the 29th day of November 1948, dismissed the Defendants' Appeal and affirmed the Judgment of His Majesty's Commercial Court with costs against the Appellants saving that the period of 15 days in which to vacate should run from the 29th day of November 1948.

16. The Court of Appeal in dismissing the Defendants' Appeal held that it was established in evidence that by the contract of 29th July 1930 the premises in question were leased to the late Alfred Zammit as a Cinematograph. That all improvements should be left to the benefit 40 of the Property without any right on the part of the tenant to any compensation therefor: and that the Tenant undertook not to suspend Cinematograph performances in order not to impair the goodwill and therefore concluded that the said Alfredo Zammit had leased a going concern and not just a building for use as a Cinematograph.

The Judgment continued :—

“ Subsequently by deed enrolled in the Records of the aforementioned  
 “ Notary on the 2nd July 1934, a compromise was made in respect of the  
 “ dispute that arose between the parties and the predecessors of the  
 “ Defendants were granted a new lease of the Axisa Cinematograph.  
 “ It was so leased to them in the state in which it was at the time, without  
 “ prejudice to the goodwill and for the period of six years obligatory and  
 “ six years optional. Other conditions were that the cinematograph  
 “ was to be given another name, subject to the proprietors’ approval, and  
 10 “ that the performances were not to be suspended except in the summer  
 “ months or on good and sufficient grounds.

“ It was further agreed that all improvements should go to the benefit  
 “ of the proprietors without any right on the part of the tenants to any  
 “ compensation therefor. Meantime the Axisa Cinematograph had been  
 “ converted into a Talkies and the benches had been replaced by arm-  
 “ chairs. And this explains why it is laid down in the contract that the  
 “ ‘ Axisa ’ cinematograph was being leased ‘ in its present state and as it  
 “ stands.’ Apart from the fact that the conversion into a ‘ Talkie ’  
 “ was but a development of the cinematographic industry, the second  
 20 “ contract granted the lease of a cinematograph that had already been  
 “ converted into a ‘ Talkie,’ together with the goodwill as a ‘ Talkie ’  
 “ and with a name of its own—which had to be changed into another, it is  
 “ true, but changed subject to the approval of the proprietors.

“ What was given out on lease was not a building in which to run a  
 “ ‘ Talkies,’ but a ‘ Talkies ’ together with the goodwill thereof, so much  
 “ so that it was stipulated that the performances should not be suspended  
 “ so as not to impair the goodwill. The lease therefore was in respect of a  
 “ business concern, as distinct from a building destined for use as a cinema-  
 “ tograph. And once that is so, the lease does not come within the  
 30 “ provisions of Ordinance No. XXI of 1931, regulating the re-letting of  
 “ urban property. That law affects halls which are used as cinematographs.  
 “ In the case at issue, however, the lease was in respect of a hall or building  
 “ together with the goodwill thereof and in the state in which it was to be  
 “ found at the time—that is to say, together with the improvements that  
 “ had been introduced and subject to the condition regarding the  
 “ continuance of the performances ; and the lease of business concerns  
 “ is not envisaged in that Ordinance.”

17. The relevant articles of the Civil Code of Malta published in the  
 Revised Laws of Malta 1942, namely, articles 1655, 1656 and 1657 are as  
 40 follows :—

“ A contract of letting and hiring ceases on the expiration  
 “ of the term expressly agreed upon and it shall not be necessary for  
 “ either of the contracting parties to give notice to the other.”

“ With regard to rural tenements or movables, the contract  
 “ shall cease on the expiration of the term, even though such term  
 “ is presumed as provided in section 1621.”

“ With regard, however, to urban tenements, when the duration  
 “ of the lease is presumed as provided in section 1621 the contract  
 “ shall not cease on the expiration of the term unless either of the

“ parties gives notice to the other at least one month before, if the  
“ presumed duration of the lease is for one year or fifteen days before  
“ if such duration is for less than one year.”

p. 38. 18. The Court of Appeal affirmed the Judgment given by H.M. Commercial Court on the 4th day of May 1948 and dismissed the Defendants' Appeal with costs saving that the period of 15 days decreed should begin to run from the 29th day of November 1948.

19. The Respondents submit that the Judgment of the Court of Appeal in Malta is right and ought to be affirmed and this Appeal dismissed with costs for the following among other

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### REASONS.

- (1) Because the terms of the two contracts relating to the Tenancy of 5 Tower Road, Sliema, Malta, dated the 29th day of July 1930 and the 2nd day of July 1934, express the intention of the Lessors and Lessees in letting a Cinematographic business its goodwill and the building together with effects and equipment therein belonging to the Lessors.
- (2) Because the issues arising out of the said contracts of letting were within the jurisdiction of the ordinary Courts 20 as held by His Majesty's Commercial Court and by the Court of Appeal.
- (3) Because the Court of Appeal was right in Law in holding that goodwill attached to the said premises as a cinematograph at the time of the letting, and that it was retained by the Lessors.
- (4) Because the Court of Appeal was right in holding that the change from a silent film to a Talkie was a development of the film industry and that no new goodwill was thereby created. 30
- (5) Because the Courts in Malta were right in holding that on the termination of the lease the Lessors were by law entitled to possession of the building, goodwill, effects and equipment as decreed.
- (6) Because the concurrent findings of fact and of Law of both Courts in Malta are correct.

RICHARD O'SULLIVAN.

W. D. ROBERTS.

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**In the Privy Council.**

ON APPEAL FROM THE COURT  
OF APPEAL, MALTA.

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BETWEEN

JOSEPH ZAMMIT BONETT and Others  
*Appellants*

and

JOSEPH AXISA and Others *Respondents.*

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CASE FOR THE RESPONDENTS.

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