

~~CJ4 22.~~

21, 1952

No 26 of 1951

In the Privy Council.

31419

ON APPEAL

FROM THE COURT OF APPEAL, MALTA.

UNIVERSITY OF LONDON  
W.C.1.

21 JUL 1953

INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN :

EMMANUELE GRECH - -

*Appellant*  
*Defendant*

and

ANTONIO, PAOLO, CARMELO, EMMANUELE,  
LUCY, GIUSEPPA, THE WIFE OF CARMELO  
BONELLO, BARBARA, THE WIFE OF CARMELO  
BALDACCHINO, AND DOLORES, THE WIFE OF  
JOSEPH MULIET, BROTHERS AND SISTERS  
GRECH, THE WIVES ACTING WITH THE  
CONSENT AND CONCURRENCE OF THEIR  
RESPECTIVE HUSBANDS

*Respondents*  
*(Plaintiffs).*

CASE FOR THE APPELLANT.

RECORD.

1. This is an appeal from the judgment of the Court of Appeal, Malta, dated the 21st April 1950, which in part allowed and in part reversed the judgment of the Commercial Court of Malta of the 10th May 1949.

pp. 65-74  
47-52

2. By a Writ of Summons issued in the said Commercial Court on the 2nd November 1946, the Respondents summoned the present Appellant together with Carmelo Debono, Joseph Debono, Mary Lanzon (nee Debono), Doris Mifsud (nee Debono), Frank Debono and Walter Debono—a minor represented by his mother Marianna, widow of Alfred Debono—to appear before the said Commercial Court and there—every necessary declaration being preferred and any expedient direction being given:

pp. 3-5

“Whereas by contract enrolled in the Records of Notary Giovanni Azzopardi on the 25th April 1932, the Plaintiffs, and the other heirs of Vincenzo and Barbara Grech, appointed the Defendant Emmanuele Grech and the late Alfred Debono administrators of the good-will and

leasehold of the Cinema Savoia at No. 5, and of the Wines and Spirits shop at No. 4, Piazza Sant'Anna, Sliema, together with the overlying premises, then used as a Club, and together with the effects and equipment thereof—which, since converted into The Majestic Theatre by Emmanuele Grech and Alfred Debono, comprised and still comprise the joint estate of the said Vincenzo and Barbara Grech, who died, respectively, on the 23rd June, 1929, and the 5th October, 1913;—and whereas, on the death of Alfred Debono, which took place on the 1st March 1942, the Cinematograph and Wines and Spirits shop continued to be administered by Emmanuele Grech, jointly with the Defendant Carmelo Debono, personally as well as on behalf of the other Defendants, his brothers and sisters, who likewise succeeded to the estate of Alfred Debono;—and whereas during the period from 25th April, 1932, the date on which the aforesaid contract was entered into, to the present day, no account was ever rendered to the Plaintiffs in respect of the administration of the Cinematograph and Shop above-mentioned, either by the late Alfred Debono, or by the Defendant Emmanuele Grech or the other Defendants, brothers and sisters Debono—**10** notwithstanding service of a Judicial Letter dated 2nd August, 1946:—said Defendants to shew cause why an Order should not be made directing them to render to the Plaintiffs, within such time as shall be established by the Court, a true and faithful account of their administration of the Cinematograph and Shop aforesaid during the period from 25th April, 1932, to the present day—in terms of Article 289 *et seq.* of the Laws of Procedure;—and, in default, why the Plaintiffs should not be authorized themselves to present a duly sworn statement of accounts according to law.” **20**

Exhibits  
pp. 110-111

“ With Costs, including the costs of the Judicial Letter dated 2nd August, 1946.”

Exhibits  
pp. 5-11

3. Under the terms of the said contract of the 25th April, 1932, made **30** under the authority of the Civil Court, First Hall, the inheritance of the said Vincenzo and Barbara Grech (the common ancestors of the contending parties) had been determined as consisting solely of the good-will and leasehold property of the said cinema and shop, valued at £400. The parties agreed not to partition the property, but to entrust the administration of the business to Emmanuele Grech (the present Appellant) and to the late Alfred Debono, who undertook to render an account of their administration quarterly and to pay Ersilia Grech (the Plaintiffs' mother) who was acting on behalf of her then minor children, Antonio, Paolo, Carmelo, Emmanuele, Lucy, Barbara and Dolores Grech (all of whom appeared as Plaintiffs in the present action) and of Maria **40** and Alexander Grech (who were not parties to the present action) not less than 10/- a month, pending final settlement at the end of each quarter.

Exhibits  
p. 6, ll. 27-29  
and p. 7,  
ll. 14-19

4. The said contract had been executed after the issue of a Writ of Summons (No. 1066 of 1929) under which Ersilia Grech, acting in her said capacity,

prayed that an Order should be made for the evaluation and liquidation of the joint personal estate of Vincenzo and Barbara Grech—saving that “subsequent to the evaluation and liquidation of the said estate the party lawfully entitled to appear on behalf of the minors aforesaid shall file an application before His Majesty’s Civil Court, Second Hall, praying for the appointment of Tutors duly authorized to accept the inheritance with the benefit of inventory and to effect the partition thereof in separate proceedings.”

5. It is common ground in this case that no such application was ever filed before the Second Hall of the Civil Court for the appointment of Tutors or for the acceptance of the said inheritance with the benefit of an inventory as required by Maltese law.

6. Subsequent to the said contract, two further contracts were entered into and were filed by the Defendants in the said Commercial Court:—

(1) Contract dated 4th July, 1932, whereby Vincenzo Galea described as the “landlord” and Carmelo Galea, as special attorney of Raffaele Psaila, the other joint landlord, leased to Emmanuele Grech and Alfredo Debono jointly and *in solidum* as from the 1st January 1933 for the period of eight years obligatory and a further successive period of eight years, at the option of the tenants, the house at No. 5 Piazza Sant’Anna, Sliema, together with the courtyard annexed thereto which was used as a cinematograph and together with the adjoining shop on either side, at the rent of £95 per annum, payable quarterly in advance. Among the other conditions contained in the lease, there was a condition binding the tenants “to relieve the landlords of all liability arising out of any claim on the part of the heirs of Vincenzo Grech respecting the lease of the aforesaid property which lease, still unexpired, was granted to the heirs aforesaid by deed entered into on the 2nd February 1925.”

Exhibits  
pp. 104-106

(2) Contract dated 18th August 1932 whereby, with reference to the said contract of 4th July 1932, Emmanuele Grech and Alfredo Debono “acknowledged and recognized Edgardo Baldacchino, Alfredo Axisa and Alfredo Zammit as co-tenants and joint holders of the tenancy of the said cinema and shop, under the partnership styled “The Sliema Cinema Union” which was constituted on the 15th January 1932. By the said contract, the parties, who described themselves as “sole partners” in the said “The Sliema Cinema Union,” undertook to pay to the heirs of Vincenzo Grech “the sum of 8/- a day during the whole period of the lease of the aforesaid property.”

Exhibits  
pp. 107-109

7. The deed of the 2nd February, 1925, referred to under paragraph 6 (1) hereof, concerned the lease of the said cinema and shops by the landlords to Vincenzo Grech “with effect from the 1st February 1925 for the period of eight years obligatory and a further successive period of eight years at the option of

Exhibits  
pp. 16-18

the tenants” at the annual rent of £76—for the said cinema and shops—and at the annual rent of £6—for a small adjacent plot of land.

pp. 7-10 8. By their Statements of Defence dated the 27th and 29th November 1946 respectively, the Defendants contended in substance that:—

Subsequently to the contract of the 25th April, 1932, another contract had been entered into between the Plaintiffs and all the other heirs of Vincenzo and Barbara Grech it being therein stipulated that the Plaintiffs should be paid by the Defendants the sum of eight shillings per day “in recompense of their rights respecting the premises mentioned in the Writ of Summons” That the said amount of compensation had been regularly paid to the Plaintiffs as shown by the respective receipts filed in Court. It therefore followed that the Defendants were under no obligation to render any accounts whatsoever. 10

pp. 7-8 and 9-10;

9. To the said Statements of Defence, two Declarations were appended by the Defendants to the effect that “following the contract referred to in the Writ of Summons, all the heirs of Vincenzo and Barbara Grech had entered into an agreement whereby the Defendant Emmanuele Grech, together with the late Alfredo Debono, should pay to the said heirs the sum of eight shillings per day in “requit of all their rights in the concern in question.” In actual fact, that sum of eight shillings per day had been paid to them by the Defendants for the last nine years, and the Plaintiffs have always taken their share without raising any objection—either before or after attaining their majority. At the time the agreement was entered into, the business showed very little profit and the heirs greatly benefited by the transaction. So far as the Plaintiffs are concerned, however, it would seem that they have now come to consider it possible for them to secure a higher recompense than that payable to them under the agreement—a view which is not shared by the other parties who still adhere to the agreement in question.” 20

pp. 31-33 and pp. 36-38

10. By their “Notes of Submission” dated the 16th March and 28th May 1948, the Defendants further contended:— 30

(1) that no evidence had been produced to show that the Plaintiffs had accepted in 1932 their inheritance of the said Vincenzo and Barbara Grech. The Writ of Summons of 1929 and the deed of the 25th April 1932 related merely to the liquidation of a joint estate, a procedure pre-ordained to the minors’ acceptance thereof;

(2) that in default of such acceptance on the part of minors, the whole inheritance was represented by the heirs who had attained their majority in accordance with section 896 of the Maltese Civil Code, and these had entered into the agreement referred to under paragraph 8 hereof; 40

(3) that in answer to the Plaintiffs’ contention that the contract of the 25th April 1932 afforded clear evidence that the Plaintiffs had duly

accepted the said inheritance, the Defendants submitted that it was only in the Second Hall of the Civil Court that minors could accept an inheritance and then only under benefit of inventory (section 889 of the Code) and that discharge of administrative functions does not imply acceptance of an inheritance (section 893 of the Code);

10 (4) that at the time the Defendants took over the premises, an agreement was entered into by virtue of an appropriate instrument and that the monthly accounts produced, signed by all the parties concerned, left no room for doubt that the terms of that agreement had been duly complied with;

(5) that the Defendants should not be made to suffer because they were unable to produce the said agreement due to the fact that the Notary who had drawn it up had since died and that the house in which it was presumably kept had been destroyed by enemy action.

11. In corroboration of their contention that they had duly paid to the Plaintiffs the rent or "compensation" due on the premises concerned, the Defendants filed in the Commercial Court thirty-nine Statements signed by the heirs of Vincenzo and Barbara Grech amongst whom are included the Plaintiffs or their representatives, for the period from the 1st August 1932 down to March 1947. Exhibits pp. 29-103

20 None of the said heirs, other than the Plaintiffs, did ever dispute the payment of the said rents or "compensation."

12. By a judgment delivered on the 10th May, 1949, the learned Judge of the Commercial Court (the Hon. Mr. Justice A. J. Montanaro Gauci) held: — pp. 47-52

(1) That it was established in evidence that a dispute pending before H.M. Civil Court, First Hall, concerning the inheritance of Vincenzo and Barbara Grech had been settled between the parties concerned by the contract of 25th April 1932;

30 (2) that the contention of the Defendants, Emmanuele Grech and the successors of Alfredo Debono that a further agreement had been drawn up whereby the good-will and leasehold in question were assigned to Emmanuele Grech and Alfredo Debono in consideration of the payment as rent of 8/- a day and that the agreement had been signed by the Plaintiffs' mother, Ersilia Grech, could not be accepted by the Court;

(3) that even assuming that Ersilia Grech had signed the agreement, her acceptance would have been null and void as she could not alienate the common estate devolving upon her minor children without the authorization of the competent Court and no evidence whatever had been produced to show that such authorization had ever been sought or obtained;

(4) that although it was a fact that Ersilia Grech had received payment of her share of the sum of 8/- a day, as shown by the statements produced by the Defendant Emmanuele Grech, she had given a likely explanation as to the origin and reason of that payment, namely, that the money was given to her in consideration of the fact that she had been deprived of her tenure of the shop in question;

(5) in the circumstances, therefore, it was hardly possible for the Defendants to maintain that they had duly rendered accounts and that they had no accounts to render to the Plaintiffs;

(6) on these grounds, the Court allowed Plaintiffs' claims and gave the Defendants two months within which to comply therewith. Costs to be borne as to one moiety by the Defendant Emmanuele Grech and one moiety by the other Defendants. 10

p. 53 13. Against this judgment, the Defendants entered an appeal to the Court of Appeal, Malta, on the 17th May 1949.

p. 60, ll. 36-41 Exhibits p. 110 In addition to the contentions submitted by them in their previous "Notes" (referred to in paragraph 10 hereof), the Defendants further submitted that, so far as the children and heirs of Alfredo Debono were concerned, Plaintiffs' action was barred by the lapse of one year in terms of the Statute of Limitations (section 2262 of the Civil Code). In fact, Alfredo Debono had died on the 1st March 1942 and the first Judicial Letter for the rendering of accounts was served upon the Defendants on the 2nd August, 1946. 20

p. 64 and Exhibits pp. 111-112 14. The Defendants further filed in the Court of Appeal on the 24th February 1950, an official copy of the lease agreement dated 12th April 1926 whereby Vincenzo Grech had sub-let to Emmanuele Grech "the building situate at Number Four, Piazza Sant'Anna, Sliema, used as a cinematograph and known as "Cinema Savoia," together with the goodwill thereof and all the effects to be found therein. For the period of four years obligatory, with effect from the 11th August next, and a further successive period of three years optional. At the rent of 5/- per day, payable quarterly in advance." This lease agreement was never determined and is consequently still in force under the provisions of the Malta "Rent Regulation Ordinance" (Ordinance No. XXI) of 1931. 30

pp. 65-74 15. The Court of Appeal, composed of His Honour Sir George Borg, President, and Camilleri and Harding, J.J., delivered judgment on the 21st April 1950 and held:—

(1) That the agreement entered into by virtue of the contract of the 25th April 1932 left no room for doubt that Ersilia Grech had accepted her children's inheritance on their behalf and that she had been duly authorised to that end by the First Hall of the Civil Court. The acceptance was not made with the benefit of inventory, but it was within the powers of the Court to exempt her therefrom (section 160 (1) of the Civil Code). 40

(2) That the evidence produced ruled out the possibility that the Plaintiffs-Respondents had ever signed any such deed of agreement, subsequent to the agreement of the 25th April 1932, as maintained by the Appellants-Defendants.

10 (3) That the Appellants' submission that the demand for the rendering of accounts was inadmissible as it was unlawful to take out and apportion part of an inheritance that is *universum jus*, could not be accepted. The estates of Vincenzo and Barbara Grech were determined and liquidated by the deed of the 25th April 1932. Moreover, the claim of the Plaintiffs was not for the partition of the whole or part of the estates in question, but simply for the observance on the part of the Defendants Emmanuele Grech and Alfredo Debono of the obligations undertaken by them in that deed.

(4) That the plea set up that, in so far as the children and heirs of Alfredo Debono were concerned, the present action was barred by the lapse of one year after Alfredo Debono's death, should be upheld.

The Court of Appeal accordingly:—

20 (1) allowed the said plea of prescription and, in so far as the said children of Alfredo Debono were concerned, reversed the judgment appealed from and ordered that each party should bear its own costs in both the first and second instance, but that the Registry fees should be paid by the Plaintiffs-Respondents;

(2) dismissed the appeal entered by the Defendant Emmanuele Grech and, in so far as he was concerned, affirmed the judgment appealed from with costs—provided however that the period of two months allowed in that judgment should run with effect from the day of the judgment of the Court of Appeal.

30 16. As a result of the said judgment of the Court of Appeal, Emmanuele Grech remains now the only Appellant in the present appeal before His Majesty in Council.

17. The Appellant submits that the Judgment of the Court of Appeal of the 21st April 1950 is wrong and should be reversed with costs for the following, among other

## REASONS.

(1) BECAUSE the agreement of the 25th April 1932 was superseded by a subsequent contract under which the Appellant together with Alfredo Debono undertook to pay to the

heirs of Vincenzo and Barbara Grech the sum of eight shillings per day in recompense of all their rights in the cinema and shops in question.

(2) BECAUSE the said contract cannot now be produced owing to circumstances of *force majeure* but is conclusively proved by the receipts of rent or "compensation" signed by or on behalf of the said heirs amongst whom are included the Respondents.

(3) BECAUSE the Respondents are estopped by the said receipts from claiming that accounts should be rendered to 10 them in terms of their Writ of Summons.

(4) BECAUSE the existence of the said subsequent contract is further corroborated by the contract of the 18th August 1932 and by the other documents exhibited in the Record.

(5) BECAUSE the Court of Appeal was wrong in not giving any due weight or any weight at all to the lease of the 12th April 1926 which is still in force and under which the Appellant became the tenant of the cinema in question.

(6) BECAUSE by virtue of the said contracts, the Appellant ceased to be an administrator of the property concerned 20 and therefore no longer bound to render any accounts to the Respondents, but only bound to pay the agreed rents which were actually paid.

(7) BECAUSE the authorisation given by the Civil Court, First Hall, to Ersilia Grech to enter into the agreement of the 25th April 1932 did not amount to an acceptance of the succession of Vincenzo and Barbara Grech in so far as her minor children were concerned.

(8) BECAUSE it was only in the Second Hall of the Civil Court that the said minors could have accepted such an inheri- 30-  
ance and then only under benefit of an inventory and this was never done.

(9) BECAUSE further or in the alternative, the Respondents' action was misconceived since the profits and income deriving from the said cinema and shop formed part of the inheritance of Vincenzo and Barbara Grech and accordingly



the proper action should have been for the liquidation and partition of the assets composing the said inheritance which is deemed a *universum jus*.

(10) BECAUSE the judgments of the Commercial Court and of the Court of Appeal are against the weight of evidence and are wrong in fact and in law.

C. J. COLOMBOS.

## Genealogical Table

**VINCENZO GRECH = BARBARA GRECH**

Died 23rd June 1929

Died 5th October 1913

Emmanuele Grech (Appellant)	Francesco Grech = Ersilia n <sup>ee</sup> Galea  died 15th March 1928	Elena Grech married Giuseppe Camilleri	Carmelo Grech	Paolo Grech	Giuseppe Grech	Marianna Grech married Alfredo Debono	Maria Grech married Vittorio Psaila	Giuseppa or Giuseppina Grech	
Antonio Grech born 14th November 1917  (Respondent)	Paolo Grech born 14th August 1919  (Respondent)	Carmelo Grech born 13th November 1920  (Respondent)	Emanuele Grech born 11th November 1927  (Respondent)	Lucy Grech born 31st May 1923  (Respondent)	Giuseppa Grech married Carmelo Bonello born 30th December 1909  (Respondent)	Barbara Grech married Carmelo Baldacchino born 4th February 1916  (Respondent)	Dolores Grech married Joseph Muliet born 26th October 1924  (Respondent)	Maria Grech (Not a Party)	Alessandro Grech (Not a Party)

**In the Privy Council.**

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**ON APPEAL**

*FROM THE COURT OF APPEAL, MALTA.*

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**BETWEEN :**

**EMMANUELE GRECH (Defendant) - *Appellant***

**and**

**ANTONIO GRECH AND OTHERS**

**(Plaintiffs) - - - - Respondents.**

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**Case for the Appellant.**

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**MESSRS. DENTON HALL & BURGIN,  
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