

~~C.S.H. 620~~

21, 1952

31418

No. 26 of 1951.

# In the Privy Council.

## ON APPEAL FROM THE COURT OF APPEAL OF MALTA.

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

BETWEEN

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

AND

ANTONIO GRECH, PAOLO GRECH, CARMELO GRECH,  
EMMANUELE GRECH, LUCY GRECH, GIUSEPPA BONELLO,  
BARBARA BALDACCHINO and DOLORES MUIET - - - *Respondents*  
*(Plaintiffs)*

### CASE FOR THE RESPONDENTS.

1. This is an appeal from a Judgment of the Court of Appeal of Malta (Borg, President, Camilleri and Harding J.J.), delivered on 21 April 1950 dismissing with costs an appeal of the above-named Appellant (hereinafter called "the Appellant") from a Judgment of the Commercial Court of Malta (Montanaro Gauci, J.) delivered on 10 May, 1949.

Record,  
pp. 65-74.

Record,  
pp. 47-52.

2. The circumstances giving rise to the judgments aforesaid were as follows:—

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(A) The Respondents are the surviving children of Francesco Grech who died on 15 March 1928, and his wife Ersilia. Exhibits pp. 12-15

(B) The said Francesco Grech was one of the children of Vincenzo Grech, who died on 23 June 1929, and Barbara Grech who died on 5 October 1913. Exhibits p. 26.

(C) After the death of the said Vincenzo Grech disputes arose over the devolution and administration of the property of the said Vincenzo and Barbara Grech and proceedings were commenced by the said Ersilia Grech in her capacity as *Curatrix ad litem* on behalf of her then infant children the respondents herein.

Exhibits  
pp. 5-11.

- (D) The contending parties in the said proceedings agreed to settle the said proceedings out of Court and were authorised to do so by a Decree given on 11 December 1931 by the Civil Court of Malta, First Hall, ordering that a Contract should be signed by the contending parties in the form approved by the Court.
- (E) The said Contract was signed by the contending parties on 25 April 1932 and provided (*inter alia*) that the parties thereto agreed that the estate of the said Vincenzo Grech devolved upon them in equal shares as in cases of successions *ab intestato*, that is to say, one ninth upon the children of the said Francesco Grech and the remaining eight ninths upon other issue of the said Vincenzo Grech in manner therein specified And that the intestate inheritance of the said Vincenzo Grech's first wife, Barbara, devolved upon the children of the said Francesco Grech in respect of one-eighth and as to the remainder thereof should be treated as devolving upon other issue of the said Vincenzo Grech in manner therein specified And the said Contract proceeded as follows:—
- “ Wherefore the parties proceed to the liquidation of the estates of the said Vincenzo and Barbara Grech, which comprise only the goodwill and leasehold of the Cinema Savoia and the Wines and Spirits shop at Numbers Five and Four, Piazza Sant'Anna, Sliema, together with the over-lying premises, used as a Club, and together with the effects and equipment thereof—the whole of the value of Four Hundred Pounds. 20
- “ The Appearers declare that the aforesaid estates shall be left unpartitioned and that they appoint the said Emmanuele Grech and Alfredo Debono administrators of the aforesaid Cinematograph and Wines and Spirits Shop in the interests of all concerned. 30
- \* \* \* \*
- “ The Administrators shall render to the interested parties an account of their administration once every quarter.
- “ Further the Administrators shall pay to Ersilia Grech *nomine* not less than Ten shillings a month pending final settlement at the end of each quarter.”
- (F) The said Emmanuele Grech, who was appointed one of the Administrators of the estates of Vincenzo and Barbara Grech is the present Appellant.
- (G) The said Alfredo Debono, who was appointed the other Administrator, died on 1st March, 1942, leaving as his children and heirs, 40

Carmelo Debono, Joseph Debono, Mary Lanzon, Amelia Bonnett, Doris Mifsud, Frank Debono and Walter Debono (hereinafter called "the Debono Defendants").

- (H) It is agreed by all parties that since the date of the said contract of 25 April 1932, which was enrolled on 25 April 1932 no accounts have been rendered by the Appellant by himself or in conjunction with the said Alfredo Debono in accordance with the provisions of the Contract.

3. By a Judicial Letter dated 2 August 1946, addressed by the Respondents to the Appellant and the Debono Defendants (*inter alia*), after a recital of the said Contract of 25 April 1932, and a recital that on the death of the said Alfredo Debono Carmelo Debono took over the administration of the estate of the said Vincenzo Grech as *negotiorum gestor*, the Appellant and the Debono Defendants were called on to render accounts of the administration of the estate of the said Vincenzo Grech from the date of the said Contract to the date of the said Judicial Letter. Exhibits,  
pp. 110-11.

4. By a Writ of Summons dated the 2nd November 1946 in the Commercial Court of Malta the Respondents claimed against the Appellant and the Debono Defendants a true and faithful account of the administration of the said Cinematograph and shop during the period from 25 April 1932 to the date thereof in terms of Article 289 *et seq.* of the Laws of Procedure and in default that the Respondents themselves might be authorised to present a duly sworn statement of accounts according to law, with costs including the costs of the said Judicial Letter. Record,  
pp. 1-3.

5. The Appellant's contentions in the Commercial Court were that after the signing of the said Contract of 25 April 1932 a further agreement was entered into by all the heirs of the said Vincenzo and Barbara Grech, including the said Ersilia Grech on behalf of her infant children, that in recompense for all their rights in the properties in question they should be paid the sum of eight shillings per day and that these payments had been continuously made since the agreement.

6. The Respondents' contentions in the said Court were that no such agreement as last aforesaid had been signed by the said Ersilia Grech or by the Respondent Guiseppa Bonello, who at that time was the only one of the Respondents who was of age, and that even if such an agreement had been signed by the said Ersilia Grech, it would have been unlawful for her to sign the same without the authorisation of His Majesty's Civil Court, Second Hall, as at that time all the Respondents except the said Guiseppa Bonello were under age. In answer to this last contention the Appellant contended that there was no evidence that the Respondent had accepted the inheritance of Vincenzo and Barbara Grech, so that no such authorisation as aforesaid could have been obtained or was required.

Record,  
pp. 10-25.

7. Between the 21st March 1947 and the 18th February 1949 evidence, both oral and documentary, together with divers exhibits, were adduced before the Commercial Court and on the 18th February 1949, the said Court concluded taking the evidence.

Record,  
pp. 47-52.

8. The learned Judge delivered his judgment on the 10th May 1949 and held:—

- (i) that a dispute concerning the inheritance of the said Vincenzo and Barbara Grech was settled between the parties concerned by the said Contract of 25 April 1932;
- (ii) that the Court could not rely on the Appellant's evidence; 10
- (iii) that the said Ersilia Grech had not signed any such further agreement as is mentioned in paragraph 5 of this Case;
- (iv) that if she had signed such an agreement her act in doing so would have been null and void, as the assignment of the property constituting the common estate devolving upon the minors would have amounted to an act of alienation or to something which was beyond her powers without the authorisation of the Court, and that no evidence had been produced to show that such authorisation had ever been sought or obtained;
- (v) that at the time of the alleged further agreement the Respondents 20 were vested with the succession, in that Ersilia Grech on their behalf had been authorised by the competent Court to appear for the purpose of liquidating and determining the estate, effecting a settlement out of Court and appointing the Appellant and the said Alfredo Debono administrators;
- (vi) that in view of certain irregularities in the conduct of the Appellant and the said Alfredo Debono it was not possible for the Appellant and the Debono Defendants to maintain that they had duly rendered accounts or that they had no accounts to render.

Record,  
p. 52.

The learned Judge therefore allowed the Respondents' claims and gave the Appellant and the Debono Defendants two months to comply with them and ordered the Appellant to pay one half of the costs and the Debono Defendants to pay the other. 30

Record,  
pp. 53, 57-61.

9. The Appellant and the Debono Defendants appealed from this Judgment to the Court of Appeal of Malta by a Note of Appeal dated 17 May 1949 and by a Petition dated 31 May 1949. The Appeal was heard by Sir George Borg President, Camilleri and Harding JJ. on 21 April 1950, when they affirmed the decision of the learned Judge as against the Appellant and allowed the appeal of the Debono Defendants.

10. On behalf of the Appellant the contentions put forward in the Commercial Court were repeated in the Court of Appeal and in addition it was contended (relying upon the judgment of the Court of Appeal in Malta in *Libreri v. Coleiro and others*, Collection of Judgments Vol. XXIX, part I, p. 1203) that the claim for rendering of accounts was inadmissible as to do so would be a taking out and apportioning of part of an inheritance that is *universum jus*. On behalf of the Debono Defendants it was contended that the action of the Respondents was barred by the lapse of time. Record,  
pp. 58-60.

11. All the contentions of the Appellant were rejected by the Court of Appeal in its judgment. The learned Judges were of opinion that the said Ersilia Grech had accepted the Respondents' inheritance on their behalf and that she had been duly authorised to do so by the Civil Court of Malta, First Hall, which had concurrent jurisdiction with the Court of Voluntary Jurisdiction (the Civil Court of Malta, Second Hall), the Court having power to dispense with the acceptance being made with the benefit of inventory, and further that it had not been established that the said Ersilia Grech had signed any such further agreement as aforesaid on behalf of the Respondents, which in any case she had no right to do. The Court of Appeal held that the Respondents' claim was not for a partition of the whole or part of the inheritance but for the observance on the part of the Appellant and the said Alfredo Debono of the obligations which they had undertaken by the said Contract of 25 April 1932 and that the action was an action *ex contractu*, not an action *comuni dividendo*. The Court of Appeal allowed the appeal of the Debono Defendants and reversed the judgment of the Commercial Court so far as they were concerned, but dismissed the Appellant's appeal and affirmed the said judgment so far as he was concerned, but directed that the period of two months allowed to the Appellant in that judgment should run from 21 April 1950. Record  
pp. 65-74.

12. The Court of Appeal of Malta on 21 May 1951 gave the Appellant final leave to appeal to the Judicial Committee of His Majesty's Privy Council. Record,  
pp. 84-85.

13. The Respondents humbly submit that the said judgment of the Court of Appeal of Malta is right and ought to be affirmed and that this Appeal ought to be dismissed with costs for the following amongst other

## REASONS.

1. Because the Appellant is liable to account to the Respondents in the manner claimed in the said Writ of Summons.

2. Because he is liable so to account as one of the persons who by the said Contract of 25 April 1932 was appointed to administer the estates of the said Vincenzo and Barbara Grech in the interests of (*inter alios*) the Respondents.

3. Because he is liable so to account by reason of the fact that he has administered and dealt with the assets of the said estates in which the Respondents (*inter alios*) are entitled to beneficial interests.

4. Because he is liable so to account under the express terms of the said Contract.

5. Because the learned trial Judge held as a fact that the said Ersilia Grech had not signed any such further agreement as is alleged by the Appellant.

6. Because the evidence failed to establish that the said Ersilia Grech ever signed any such further agreement as aforesaid. 10

7. Because, if the said Ersilia Grech had signed any such further agreement as aforesaid on behalf of the Respondents, her act in doing so would have been null and void without the authorisation of a competent Court under the Civil Code section 216 and there is no evidence that she was ever so authorised.

8. Because the principles expounded *Libreri v. Coleiro & Others* are not applicable to the present case by reason of the facts:— 20

- (a) that the estates of the said Vincenzo and Barbara Grech were determined and liquidated by the said Contract of 25 April 1932;
- (b) that the relief claimed in this action is not for the partition or apportionment of the inheritance;
- (c) that the present action is *ex contractu* and is not an action *comuni dividendo*.

9. Because the Judgments of the Commercial Court and the Court of Appeal as regards the Respondents' claim against the Appellant were right and ought to be affirmed. 30

DENYS B. BUCKLEY.

In the Privy Council.

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**ON APPEAL**  
*FROM THE COURT OF APPEAL OF  
MALTA.*

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BETWEEN :

EMMANUELE GRECH (Defendant) - *Appellant*

and

ANTONIO GRECH AND OTHERS  
(Plaintiffs) - - - - - *Respondents.*

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**Case for the Respondents.**

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