In the Privy Council.

On Appeal from the Court of Appeal, Malta.

BETWEEN

JOHN COLEIRO Merchant nomine

PLAINTIFF (Respondent)

AND

The Honourable DOCTOR GIORGIO BORG OLIVIER and others Nomine

DEFENDANTS (Appellants)

RECORD OF PROCEEDINGS

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DOCUMENTS THE TRANSLATION OF WHICH HAS BEEN OMITTED

Record of Proceedings: Case Notices, Certificates of Service, Proces verbaux recording adjournments, Notes of the taking up of proceedings by the Hon. Dr. Carmelo Caruana and by Joseph Mifsud Bonnici during the absence from Malta of the Hon. Dr. Giorgio Borg Olivier and of the Hon. Edgar Cuschieri, O.B.E.; Note of the resumption of proceedings by the Hon. Dr. Giorgio Borg Olivier and the Hon. Edgar Cuschieri, O.B.E. on their return to Malta; sub-poenas and applications for same; Application of Defendants for exemption from giving security and subsequent relative documents.

Appendix: Case Notices; Certificates of Service; Proces verbaux recording adjournments; sub-poenas and applications for same; Exhibits 'A' to 'U' consisting of Customs Entries, Exhibit 'X' consisting of a letter asking for refund of the deposits, Exhibit 'Y' consisting of Post Office receipt of abovementioned letter.

In the Privy Council.

On Appeal from the Court of Appeal, Malta.

BETWEEN

JOHN COLEIRO Merchant nomine

PLAINTIFF (Respondent)

AND

The Honourable DOCTOR GIORGIO BORG OLIVIER and others Nomine

DEFENDANTS (Appellants)

RECORD OF PROCEEDINGS

DOCUMENTS

Translation

No. 1

Writ-of-Summons.

No. 1. Writ-of-Summons

Writ of Summons No. 854.

In His Majesty's Civil Court,
First Hall.

This twenty ninth day of October, 1951.
Filed by G. Galdes without Exhibits.

(signed) EDW. CAUCHI,
Deputy Registrar.

GEORGE VI

By the Grace of God King of Great Britain, Ireland, and the British Dominions beyond the Seas, Defender of the Faith.

BY OUR COMMAND, at the suit of John Coleiro, Merchant, on behalf of the Firm "Coleiro Brothers Limited" — YOU SHALL SUMMON — the Honourable Doctor Giorgio Borg

No. 1. Writ-of-Summons —*Continued*

Olivier, Prime Minister of Malta, representing the Government of Malta, and, for any interest they may have, Antonio Camilleri in his capacity as Collector of Customs and the Honourable Edgar Cuschieri, O.B.E., in his capacity as Treasurer to the Government of Malta; and as per Note of the 20 June 1952, the Honourable Doctor Carmelo Caruana, in his capacity as Acting Prime Minister and representing the Government of Malta, and Joseph Mifsud Bonnici in his capacity as Acting Treasurer to the Government of Malta, assumed the proceedings; and by Note of 25 October 1952, the Honourable Doctor Giorgio Borg Olivier, as Prime Minister of Malta, representing the Government of Malta, and the Honourable Edgar Cuschieri, O.B.E., in his capacity as Treasurer to the Government of Malta, resumed the proceedings in place of the Honourable Doctor Carmelo Caruana and Joseph Mifsud Bonnici nomine to appear before this Honourable Court at the Sitting to be held on the 29 November 1951 at 9 a.m.

And there; — whereas by a judgment given by this Honourable Court on 5 October 1951, in the cause "John Coleiro nomine versus Frank Agius nomine et", the plaintiff was given the time of one month within which, as from 5 October 1951, to contest the validity of Act No. XIV of 1950 — and whereas the said Act is null on the grounds that, contrary to the law of nature, it expropriates the deposits made by the plaintiff in the hands of the Collector of Customs in pursuance of Proclamation No. III of 1950, without compensation; that it lacks the requirements of substance and form necessary for its validity inasmuch as it was voted by the Members of Parliament upon untrue information and, as they themselves have admitted, without a proper appreciation on their part of its effect; and because the Legislative Assembly was not composed of forty Members and of other defects of procedure; that the said Act is contrary to Section 36 of the Malta (Constitution) Letters Patent, 1947 and encroaches upon the functions proper to the judicial authorities as the aforementioned cause had already been instituted and was sub judice — any requisite declaration and direction being premised — the plaintiff prayed that it be declared and adjudged that the said Act No. XIV of 1950 is, for the aforementioned reasons and for any other reason which may appear during the hearing of the cause, null and of no effect, and without prejudice to the aforementioned claim and in case of failure thereof, as Proclamation No. III of 1950 had no further effect so soon as the Legislative Assembly was dissolved and consequently the deposits made by the Firm

represented by the plaintiff after the dissolution of the Legislative Assembly were erroneously made and accepted and therefore were not levied and collected by the Collector of Customs in pursuance of Proclamation No. III of 1950 — the defendants should show cause why it should not be declared and adjudged that the deposits made by the Firm represented by the plaintiff after the dissolution of the Legislative Assembly and up to 24 September 1950, are not affected by the provisions of Act No. XIV of 1950 —

With costs against the defendants who are enjoined to appear to be examined on oath.

You shall further give the said defendants notice that if they wish to contest the claim they must, not later than two working days previous to the date fixed for the hearing of the cause, file their statement of defence according to law, and that in default of their so doing within the said time, and of their appearance on the day, and at the time and place aforesaid, the said Court will proceed to deliver judgment according to justice on the action of the said plaintiff on the said day, or on any subsequent day, as the Court may direct.

And after service by delivery of a copy hereof to the said defendant or their agents according to law, or upon your meeting with any obstacle in the said service, you shall forthwith report to this Our Court.

Given by Our aforesaid Civil Court, First Hall.

Witness Our faithful and well-beloved the Honourable Mr Justice T. Gouder, Doctor of Laws, Judge of Our said Court.

This thirty first day of October, 1951.

(signed) T. GOUDER.

No. 2. Plaintiff's Declaration in terms of the Laws of Procedure.

No. 2.

Plaintiff's Declaration in terms of the Code of Organization and Civil Procedure.

In His Majesty's Civil Court,
First Hall.

JOHN COLEIRO **nomine**
vs.
The Hon. Doctor GIORGIO BORG OLIVIER **nomine et.**

The Declaration of the plaintiff as required by law.

That by a writ of summons No. 825/1950 the plaintiff had sued the Government of Malta for the refund of the Customs duties paid by him in pursuance of Proclamation No. III of 1950.

Subsequent to the filing of the said writ of summons, Act. No. XIV of 1950 was passed and the defendants pleaded that as a result of the passing of that Act plaintiff's action was barred.

The plaintiff then set up the nullity of the said Act for the reasons mentioned in the present writ of summons, and the Court by judgment of 5 October 1950 decided that the procedure ought to be by way of a writ of summons and allowed the plaintiff time up to 4 November 1951 to file such a writ of summons: this explains the first claim made in the present writ of summons.

The second claim is based on the fact that Act No. XIV of 1950 applies to the Customs duties levied in accordance with Proclamation No. III of 1950; but that Proclamation ceased to have effect on the dissolution of the Legislative Assembly; and consequently duties continued to be deposited by the plaintiff and accepted by the Collector of Customs by mistake and not in accordance with the provisions of the said Proclamation.

Witnesses to confirm the declaration:—

The contending parties, all the Members of the Legislative Assembly who were present at the Sitting during which Act XIV of 1950 was passed; the Clerk to the Legislative Assembly to produce the minutes of that Sitting.

(signed) V. CARUANA, Advocate.
„ G. GALDES, L.P.

No. 3.

No. 3. Statement of Defence and Defendants' Declaration.

Statement of Defence by the Defendants.

In His Majesty's Civil Court,
First Hall.

JOHN COLEIRO, Merchant, **nomine**
vs.
The Hon. Doctor GIORGIO BORG OLIVIER **nomine et.**

Statement of the defendants the Honourable Doctor Giorgio Borg Olivier, Antonio Camilleri and the Honourable Edgar Cuschieri O.B.E. in their aforementioned capacity.

Respectfully sheweth:—

1. that the demand for a declaration of the nullity of Act No. XIV of 1950 is barred under section 39 of the Malta (Constitution) Letters Patent, 1947;

2. in any case, the claim is manifestly without any legal foundation, as none of the reasons alleged in the writ of summons, even if true, can affect the validity of the said Act;

3. none of the aforementioned reasons is founded in fact;

4. as regards the second claim it is, if anything, less founded than the first one having regard to the clear and categorical wording of the law.

Saving other pleas.

(signed) A. J. MAMO,
Acting Attorney General.

„ JOS. ELLUL, L.P.

This twenty fourth day of November, 1951.

Filed by J. Ellul, L.P. without exhibits.

(signed) U. BRUNO,
Deputy Registrar.

The declaration of the defendants **nomine.**

As regards the facts, the defendants make reference to their submissions in the declaration filed by them in the cause "John Coleiro versus Frank Agius **nomine et"** (writ of summons No. 825/1950 still pending before this Honourable Court).

No. 3. Statement of Defence and Defendants' Declaration. —*Continued*

Act No. XIV of 1950 was validly passed by the Legislative Assembly and it satisfies all the formal requirements prescribed by law.

In regard to the reasons on which the plaintiff bases his demand for a declaration of the nullity of the said Act, the least that can be said is that they are utterly unfounded in law and contrary to all principles of constitutional law.

As to the second claim, the law is so clear that it intended to appropriate all the deposits made in the hands of the Collector of Customs up to 25 September 1950, in view of the proposal to increase the duties which was not in fact implemented, that it is difficult to understand why such claim has been made by the plaintiff at all. Suffice it to quote the wording of the Act which lays down that those deposits "shall to all intents and purposes whatsoever be conclusively deemed to have been lawfully levied and collected as aforesaid and such amounts shall be, and they are hereby irrevocably vested in and appropriated to the Government."

Witnesses:—

The contending parties to give evidence regarding the facts of this cause. The witnesses mentioned by the plaintiff and those mentioned in the principal cause for the same purpose. The plaintiff to be examined on oath.

(signed) A. J. MAMO,
Acting Attorney General.

„ JOS. ELLUL, L.P.

No. 4. Decree Allowing Filing of Notes.

No. 4.

Decree Allowing Parties Time for Filing Notes.

JOHN COLEIRO **nomine**
vs.
The Honourable Doctor GIORGIO BORG OLIVIER **nomine et**

This twenty ninth day of November, 1951.

Professor V. Caruana for the plaintiff submitted his arguments against the plea on bar of the action.

Professor A. J. Mamo for the defendants submitted his arguments in reply.

Professor V. Caruana made a rejoinder.

The Court,

Orders that the record of the cause and the judgment referred to in the writ of summons be attached to the record of this cause.

The cause is adjourned to the 17 January, 1952; the right is given to the plaintiff to file a note of submissions — subject to inspection by the defendants — up to 13 December 1951: the defendants shall have the right to file a note in reply up to December 1951.

(signed) J. MICALLEF,
Deputy Registrar.

No. 5

Note of Submissions of Plaintiff.

In His Majesty's Civil Court,
First Hall.

Writ of Summons No. 854G/1951.

JOHN COLEIRO, Merchant on behalf of the firm "Coleiro Brothers Ltd."

vs.

The Hon. Dr. GIORGIO BORG OLIVIER **nomine et.**

Note of Submissions of plaintiff.
Respectfully sheweth:

That as appears from the decision given by this Court on the 5 October, 1951 in the other cause between the parties, the plaintiff had challenged the validity of Act No. XIV of 1950 in that cause, and the defendants had submitted that the question whether that law was valid or not could be determined in that same cause.

That that Court had concurred that the question could be discussed and determined in that cause but had held that "owing to its delicate nature it would be better that that question be dealt with and determined on a separate action".

No. 5. Plaintiff's Note of Submissions. —*Continued*

That that judgment is binding as regards the defendants.

That, therefore, there is no doubt that the proceedings on the part of the plaintiff to impugn the validity of that law were commenced before the lapse of one year and that the present cause should be considered as being one and the same thing with the preceding cause and that consequently the plea of extinguishment of the action set up by the defendants is untenable.

(signed) V. CARUANA, Advocate.

„ G. GALDES, L.P.

This 13 December, 1951.

Filed by G. Galdes, L.P. without exhibits.

(signed) U. BRUNO,
Deputy Registrar.

No. 6. Defendants' Note of Submissions.

No. 6.

Note of Submissions by Defendants.

In His Majesty's Civil Court,
First Hall.

Writ of Summons No. 854G/1951.

JOHN COLEIRO, Merchant, on behalf of the firm "Coleiro Brothers Ltd."

vs.

The Hon. Dr. GIORGIO BORG OLIVIER, Prime Minister of Malta, representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI, in his capacity as Collector of Customs and the Hon. EDGAR CUSCHIERI O.B.E. as Treasurer to the Government of Malta.

Note of Submissions of defendants.

Respectfully sheweth:—

In the first place it is to be observed that all the arguments submitted by the plaintiff in the oral discussion of this plea

before this Honourable Court, in the course of which reference was made to "prescription", "litis pendentia", "principles of contra non valentem agere", "practice and jurisprudence of our Courts", etc. etc., have not been as much as mentioned to in the Note of Submissions now filed by the plaintiff. The defendants think that they can legitimately infer from this silence that even in the opinion of the plaintiff himself those arguments have not in fact any relevance and that all searches made by the plaintiff have not produced any authority which he could invoke in support of those arguments.

On the contrary, the plaintiff has in his Note limited himself to one argument, that is that this cause should be considered as one and the same thing with the previous cause and that consequently it ought to be said that the proceedings to impugn the validity of Act No. XIV of 1950 were begun before the expiry of one year from the day of commencement of that law.

To see how entirely devoid of foundation is the contention of the plaintiff and how, conversely, the two causes are separate judicial entities, it is sufficient to look at the 'names' of the two causes. In the first one the defendants are "Frank Agius as Collector of Customs and others"; in **this** cause the defendants are the Prime Minister and others: two Ministers who were defendants in the first cause, are not parties to **this** cause. It is true that in both causes the respective defendants are sued, in the last resort, to represent the Maltese Government: but in this case this has no importance, because, as was held by His Majesty's Court of Appeal in the case "Onor. E. Mizzi noe vs. Onor. Prof. Bartolo" (30th June 1933 — Law Reports Vol. XXVIII P. I, p. 463): "Every Parliamentary Minister is constituted as an autonomous organ to direct the Department or Departments of which he is placed in charge and to represent the State in regard to all functions proper to that Department or those Departments". Even when there were not as yet any Ministers, our jurisprudence had affirmed several times that for the purposes of the judicial representation of Government, whether as plaintiff or defendant, there is no promiscuity or identity among the several Heads of Department and the Lieutenant Governor or Chief Secretary to Government.

This doctrine makes it clear that a plaintiff in a cause cannot himself choose at pleasure the person whom he desires to sue for the Government. Every Minister (or Head of Department) is **to the exclusion of every other,** the lawful

No. 6. Defendants' Note of Submissions. —Continued

representative of the Government in regard to matters falling within the sphere of functions of his Ministry or Department: the Prime Minister, on the other hand, as such represents the Government in judicial matters which do not fall within the sphere of interest of any particular Department but are of general interest. The principle is that every Minister represents different juridical and judicial interests according to the nature of the case.

This was well realised by the plaintiff who in **this** cause has chosen as defendants **different** persons from those whom he sued in the first cause.

Now, in the humble submission of the defendants it is absurd to say that under these circumstances the present proceedings can ever be **one and the same thing** with the previous proceedings — even if, having regard to the ultimate interest of the plaintiff, there is some relation between them. Not even in the case of "litis pendentia" in the strict sense of the word or of connection of causes — which absolutely is not the case here — is there a merger or fusion of the proceedings and each cause remains a separate and autonomous judicial entity. Thus e.g. in the case "Spiteri Debono vs. Darmanin" (Law Reports Vol. XXVII P. III, p. 488) it was held: "The connection (between two causes) does not give rise to their unification nor legally bring about the transfer of jurisdiction in regard to an action which is within the exclusive jurisdiction of the civil tribunal, **even when, as in the present case, the plaintiff has done no more than resubmit by way of action the pleas already raised by him in the cause instituted first."**

In our case not only have the two causes different parties for the reasons above submitted, but the two causes are also separate and distinct inasmuch as in each cause the Government is sued in a different personality or capacity. The first causes has for its object the restitution of a sum of money which the Collector of Customs was holding as a deposit: in other words that cause is concerned with an act "jure gestionis". **This** cause has for its object a declaration of nullity of a law passed by the Legislative Assembly, in other words the most typical and essential matter concerning the exercise of 'jus imperii'. It is a doctrine of our Courts that these two personalities of the Government are separate and distinct and therefore it makes no sense to say that a cause directed against the Government in one of those capacities can be one and the same thing with another cause directed against the Government in its other capacity.

If the contention of the plaintiff were good, that would mean that the defendants in **this** cause, or at any rate the defendant the Prime Minister who, as already stated, was not a party to the other cause, would be debarred from and denied the right to set up the pleas they considered proper and would be bound by what took place or did not take place in the other cause. Even in the abstract the contention of the plaintiff appears at once without any foundation when one considers that an incident like the present one could easily have concerned and concern two different **Courts.** It is a mere accident for the purposes of the point in dispute that the two causes in our case are before the same Court, the presiding Judge only being different. Let us assume that in proceedings before the Courts of Magistrates a question arises as to the validity of a law (or a question of the nullity of a contract or any other question within the competence of the Superior Courts) and that that Court suspends the proceedings until that question is decided by the competent Court: can any one think for one moment that the proceedings before the Superior Court are one and the same thing with the proceedings before the Inferior Court?

Or, again, let us suppose that the question of the nullity of the law arises in a cause between two private citizens and that the Court suspends the proceedings until one of the parties obtains a decision from the competent Court upon proceedings 'ad hoc': in such proceedings the Government, naturally, would be a party. Must we then say, as the plaintiff says, that if these proceedings 'ad hoc' are commenced after one year, they are but one and the same thing with the previous proceedings?

The truth is that whenever a Court suspends the proceedings before it until other proceedings are instituted for a decision on a point in issue, these proceedings simply because they are **other** proceedings, are necessarily a separate cause and a judicial organism by itself. This is so even when the parties are the same: but it is very much more so when the parties are different.

By way of analogy the defendants desire to make reference to the case "Zammit versus Zammit" decided by this Hon. Court on the 18th May, 1934 (Law Reports Vol. XXVIII P. II, p. 600). In that case an action for the rescission of a contract was held to be barred by prescription by the expiration of two years, notwithstanding that the question of the nullity of the contract had already been raised in the form of a plea in

No. 6. Defendants' Note of Submissions. —*Continued*

another cause which was still pending, and this in spite of the fact that the two causes were between the same parties. Finally, the defendants would wish to submit this:— According to Section 39 of the Malta (Constitution) Letters Patent 1947, the validity of a law made by the Legislative Assembly "shall not be questioned in any legal proceedings commenced after the expiration of one year from the date on which the law comes into operation" (saving an exception which is not relevant to this case). This provision obviously refers to **a formal and direct impugnment** in proceedings **which have for their object and may also have as their direct result** a declaration of the invalidity of the law. It may be that the defendants in the other cause, when the nullity of the law **was mentioned,** had said that the incident could also, for the purposes of that cause, be decided by that same Court. But apart from the legal correctness or otherwise of that opinion and apart from the fact that, as has already been submitted, all that is irrelevant to the present defendants, it is certain that the **plaintiff,** the same plaintiff and in the same capacity as in the present proceedings did not really in that cause question the validity of the law but only **prayed for time to institute an action 'ad hoc'** in order that the law may be declared void (see judgment of 5 October): and the Court in that cause finally agreed with him and held that — even though it could itself hear and determine the question of validity — nevertheless on account of the nature of the question involved, it was better that that question be decided upon a separate action 'ad hoc'. This means that **in those other proceedings** the question of the invalidity of the law not only has not yet been really raised within the meaning of the Constitution but in fact is never to be raised. The plaintiff now says in his note that the decision of the other Court is binding on the parties. This is true in regard to himself only. In fact that Honourable Court did no more in effect than grant him what he had asked for i.e. to institute legal proceedings whereby **he would commence to impugn the law.**

That judgment was given on the 5th day of October when there still remained **thirteen days** within which the plaintiff could have instituted these proceedings. It is hardly necessary to point out that the mere fact that that judgment gave to the plaintiff the time of one month so that he might, if he so thought fit, bring before the competent Court (sic) the necessary action does not mean that the Court could in any way extent the time fixed by the Constitution, which time is one of strict limitation and peremptory: indeed, the plaintiff himself in his note does not claim that there was or could be any similar ex-

tension. To be sure, in the humble opinion of the defendants, the time fixed by the Constitution which is intended to ensure that after the lapse of a certain time there cannot be any longer even the possibility of doubt as to the validity of laws, is a matter 'pubblici juris' and the plea deriving from the expiration thereof may be taken notice of by the Court itself 'ex officio'.

The plaintiff had all the time even after the said judgment to bring himself into line with the Constitution. Indeed he had this time even before, because properly speaking, if he had wanted he could have instituted the present action even a year ago without the necessity of any leave and without asking for any time from any Court.

(signed) A. J. MAMO,
Deputy Attorney-General.

„ VINC. A. DEPASQUALE,
Crown Counsel.

„ JOS. ELLUL,
Crown Solicitor.

This twenty seventh day of December, 1951.

Filed by J. Ellul, L.P.

(signed) S. BUGEJA,
Deputy Registrar.

No. 7.
Judgment of H.M. Civil Court First Hall.

No. 7.

Judgment of Her Majesty's Civil Court, First Hall.

HER MAJESTY'S CIVIL COURT
(First Hall)

Judge:—

The Honourable Mr. Justice A. MAGRI, B.Litt., LL.D.

Sitting of
Saturday, 25 October, 1952.

JOHN COLEIRO, Merchant, on behalf of the Firm "Coleiro Brothers Limited"

vs.

The Honourable Doctor GIORGIO BORG OLIVIER, LL.D., Prime Minister of Malta, representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI, in his capacity as Collector of Customs, and the Honourable EDGAR CUSCHIERI, O.B.E., as Treasurer to the Government of Malta.

The Court,

Upon seeing the writ of summons filed by the plaintiff, whereby after premising that by a judgment given by the said Court on 5 October 1951 in the cause "John Coleiro **nomine versus** Frank Agius **nomine et"** he was given the time of one month as from 5 October 1951 within which to contest the validity of Act No. XIV of 1950 — and that the said Act is null on the grounds that, contrary to the law of nature, it expropriates the deposits made by him in the hands of the Collector of Customs in pursuance of Proclamation No. III of 1950, without compensation; that it lacks the requirements of substance and form necessary for its validity inasmuch as it is voted by the Members of Parliament upon untrue information and, as they themselves have admitted, without a proper appreciation on their part of its effect; and because the Legislative Assembly was not composed of forty members and of other defects of procedure; that the said Act is contrary to Section 36 of the Malta (Constitution) Letters Patent, 1947, encroach-

ing upon the functions proper to the judicial authorities as the aforementioned cause had already been instituted and was **sub judice** — any requisite declaration and direction being premised — the plaintiff prayed that it be declared and adjudged that the said Act No. XIV of 1950 is, for the aforementioned reasons and for any other reason which may appear during the hearing of the cause, null and of no effect, **and without prejudice to the aforementioned claim and in case of failure thereof,** as Proclamation No. III of 1950 had no further effect as soon as the Legislative Assembly was dissolved and consequently the deposits made by the firm represented by plaintiff after the dissolution of the Legislative Assembly were erroneously made and accepted and therefore were not levied and collected by the Collector of Customs in pursuance of Proclamation No. III of 1950 — plaintiff prayed that it be declared and adjudged that the deposits made by the firm represented by the plaintiff after the dissolution of the Legislative Assembly and up to 24 September 1950 are not affected by the provisions of Act XIV of 1950.

With costs against the defendants who were enjoined to appear to be examined on oath.

Upon seeing the statement of defence of the defendants **nomine** in which they pleaded that (1) the demand for the declaration of the nullity of Act No. XIV of 1950 is barred under Section 39 of the Malta (Constitution) Letters Patent, 1947; (2) in any case the claim is manifestly without any legal foundation as none of the reasons alleged in the writ of summons, even if true, can affect the validity of the said Act; (3) none of the aforementioned reasons is founded in fact; and (4) as regards the second claim it is, if anything, less founded than the first having regard to the clear and categorical wording of the law;

Upon seeing the Notes of Submissions **'hinc inde'**;

Upon seeing all other pleadings in the present cause;

Upon seeing the record of proceedings "John Coleiro, Merchant, **nomine versus** Frank Agius **nomine et"** still pending before this Court and adjourned **'sine die'** on 5 October 1951, in order that the plaintiff may, if he so wishes, institute before the competent Court the appropriate action of impugnment therein mentioned;

Upon hearing counsel for both parties;

No. 7. Judgment of H.M. Civil Court First Hall. —*Continued*

Considers in regards to the plea in bar of the action set up by the defendants —

That according to Section 39 of the Malta (Constitution) Letters Patent: "The validity of any law made under Section 22 of these Letters Patent or of any provision of any such law shall not be questioned in any legal proceedings commenced after the expiration of one year from the date on which the law comes into operation, except on the ground that the law or provision as the case may be, deals with a matter with respect to which the Assembly has no power to make laws". It does not appear that there is any question that Act No. XIV of 1950 was passed by the Legislative Assembly within its competence and that the said Act came into operation on 18 October 1950 with the assent thereto of His Excellency the Governor;

That the defendants submitted that that Act was impugned only by the present writ of summons filed on 29 October 1951, that is, after the expiration of the period of one year allowed by the Constitution for that purpose and consequently plaintiff's action is barred;

That plaintiff, however, contends that his right to impugn that Act is still valid, as in the other cause (which stands adjourned **'sine die'**) he had raised the question of the nullity of the said law and that cause should be considered as one and the same thing with the present cause;

That as no minute was registered in the record of that cause in regard to this incident, it is proper to rely on what was stated by the Court (presided over by a different Judge) in its judgment of 5 October 1951. It was stated in that judgment that the plaintiff had submitted that every provision of that law is of no effect as that law was invalid; and he consequently requested that he be given time within which to institute an action **'ad hoc'** to obtain a declaration of the nullity of the law. The defendants on their part pointed out "that there is no reason why the action contemplated by the plaintiff should be instituted and the question whether the law is valid or not can be determined in this same cause". The Court then said that "although this question can also be discussed and determined in the present cause, it appears that, having regard to the important issue involved, it would be better that the question be dealt with upon a separate action and on its own merits"; the Court therefore ordered that further hearing in that cause be suspended and allowed the plaintiff a period of one month so that, if he so wished, he could take action to impugn the said Act before the competent Court;

That the first cause cannot, as the plaintiff contends, be considered as one and the same thing with the present cause:—

(1) because, apart from the fact that the contending parties are different, it is certain that the objects of the two causes are totally different: in fact, while in the first cause the plaintiff claimed back the amounts deposited by him in the hands of the Collector of Customs, in the present cause the plaintiff is claiming that the abovementioned Act be declared null and of no legal effect, and, subordinately, that it be adjudged that those deposits are not affected by the provisions of the said Act;

(2) because, in the preceding cause, although the plaintiff intimated his intention of impugning that Act, he did not in fact impugn it in that cause and limited himself to asking for time within which to impugn the Act in question by a separate action: and this he is doing only in the present cause;

(3) because, on the date the Act was impugned, the legal time available for the purpose had already expired, and the existence of the other cause can in no way have any bearing on the running of that time which is a time of absolute limitation according to the criteria laid down by text-writers and judicial precedents. As was held by the Court of Appeal in the case "Sammut **versus** Notary Pellegrini Petit" determined on 10 January 1920: "when the law fixes a period within which an act is to be executed, that period rather than being one of prescription is a period of absolute limitation in the sense that after the expiry thereof that act will no longer be admissible. Text-writers lay down the dinstinctive criterion in this that if the provision of law which prescribes a time for the exercise of a right does not expressly say that that time is one of prescription or that time has not the characteristics of prescription, then that time is one of absolute limitation". (Law Reports XXIV. 1. 276). According to 'Giorgi': "when the provision of law which lays down a time for the exercise of a right, is not included under the title dealing with prescriptions, and does not expressly state that it is a time of prescription, it should be considered as being one of absolute limitation or forfeiture of the right rather than one of prescription" (Obbligaz. Vol. VIII p. 225 and p. 271), which principle has also been adopted by this Court (Law Reports XXIX. II. 976). Finally, another criterion may be inferred from the purpose of the provision of law concerned, for if such a provision was introduced for a public purpose, it cannot be a term of prescription but one of absolute limitation;

No. 7. Judgment of H.M. Civil Court First Hall.

That when these tests are applied to the abovementioned Section 39, it will be found that the period therein mentioned is a term of absolute limitation to which the rules of prescription are inapplicable, especially as regards the causes which prevent, interrupt or suspend the running of such time. In fact, prescription is based on the assumption of negligence on the part of the creditor, whereas in the case of absolute limitation the question of such negligence is entirely irrelevant (Giorgi, op, cit. p. 225, p. 369 and Law Reports XXV. II. 391), and this to such an extent that a waiver in anticipation of the plea of absolute limitation is not admissible (Troplong. Prescription p. 48), and in the present case the waiver of this plea is inadmissible as it regards a right which the State is exercising **"jure imperii"** (Law Reports I. 398);

That the fact that by the abovementioned judgment of 5 October 1951 the plaintiff was given a period of one month to impugn the law and that this cause was instituted within that period, has no value; since as only thirteen days remained for the expiry of the statutory year, it must necessarily be understood that the period of one month given to the plaintiff was a **"maximum"** subject to plaintiff's obligation to conform himself to the law; otherwise it would be possible to evade the law which does not even allow the judicial authority to extend periods which are of a peremptory nature, as in the present case. (Section 103(1) Code of Organization and Civil Procedure);

That it cannot either be said, as the plaintiff contends, that the abovementioned judgment of 5 October 1951 constitutes a **'res judicata'** vis-a-vis the defendants who cannot go against it — because apart from the question whether the elements of **'res judicata'** apply or not, that judgment cannot bind them to the extent that it deprives them of the right (which up to that date had not arisen as the period of one year within which the law could be impugned had not yet elapsed) to set up the plea of limitation after the expiry of the said time.

For these reasons, allows the first plea of the defendants and consequently dismisses plaintiff's first claim. In view of the difficult points involved, each party is to bear its own costs; the Registry Fee however is to be borne by the plaintiff.

Puts off the case for further hearing on the other claims to the sitting of 21 November 1952.

(signed) S. BUGEJA,
Deputy Registrar,

No. 8.

No. 8. Plaintiff's Note of Appeal.

Note of Appeal of Plaintif Nomine.

In Her Majesty's Civil Court,
First Hall.

JOHN COLEIRO, Merchant, on behalf of the "Firm Coleiro Brothers Limited."

vs.

The Hon. Dr. GIORGIO BORG OLIVIER Prime Minister of Malta representing the Government of Malta, and for the interest which they may have, ANTONIO CAMILLERI, in his capacity as Collector of Customs and the Honourable EDGAR CUSCHIERI O.B.E., as Treasurer to the Government of Malta and by note of 20 June 1952 the Honourable Doctor CARMELO CARUANA as Acting Prime Minister and representing the Government of Malta, and JOSEPH MIFSUD BONNICI in his capacity as Acting Treasurer to the Government of Malta assumed the proceedings; and by note of 25 October, 1952, the Honourable Doctor GIORGIO BORG OLIVIER, as Prime Minister of Malta, representing the Government of Malta, and the Honourable EDGAR CUSCHIERI O.B.E., in his capacity as Treasurer to the Government of Malta, resumed the proceedings in place of the Honourable Doctor CARMELO CARUANA and JOSEPH MIFSUD BONNICI **nomine.**

Note of Appeal of plaintiff in his aforesaid capacity.

The said plaintiff appears and, feeling himself aggrieved by the judgment given by this Honourable Court in the above

No. 8. Plaintiff's Note of Appeal. —*Continued*

cause on the 25 October, 1952, hereby respectfully enters an appeal therefrom to Her Majesty's Court of Appeal.

(signed) V. CARUANA, Advocate.

„ G. GALDES, L.P.

This third day of November, 1952.

Filed by G. Galdes L.P. without exhibits.

(signed) U. BRUNO,
Deputy Registrar.

No. 9. Plaintiff's Petition.

No. 9.

The Petition of John Coleiro Nomine.

IN HER MAJESTY'S COURT OF APPEAL.

Writ of Summons No. 854/1951.

JOHN COLEIRO, Merchant, on behalf of the firm "Coleiro Brothers Ltd."

vs.

The Hon. Dr. GIORGIO BORG OLIVIER Prime Minister of Malta representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI, in his capacity as Collector of Customs and the Hon. EDGAR CUSCHIERI O.B.E., as Treasurer to the Government of Malta.

The Petition of the Said John Coleiro in his aforesaid capacity.

Respectfully sheweth —

That by writ of summons filed before the First Hall of Her Majesty's Civil Court, No. 854/1951, the plaintiff — after premising that by a decision of 5 October, 1951 in the cause "John Coleiro **noe.** versus Frank Agius **noe., et.**" he was allowed the time of one month to impugn the validity of Act No. XIV

of 1950 — whereas the said Act is null because contrary to Natural Law it expropriated the deposits made by him in the hands of the Collector of Customs in pursuance of Proclamation No. III of 1950 without compensation; and because the said Act lacks the requirements of form and substance necessary for its validity inasmuch as it was voted by the members of Parliament upon untrue information and without, as they themselves confirm, a proper appreciation on their part of its effect; and because the Assembly was not composed of forty members and of other defects of procedure — whereas the said Act is contrary to Section 36 of the Constitutional Letters Patent of 1947 and as that Act encroaches upon the functions proper to the judicial authorities as the aforementioned cause had already been instituted and was sub judice — any requisite declaration and direction being prefaced — prayed that it be declared and adjudged that the said Act No. XIV of 1950 is, for the aforementioned reasons and for any other reason which may appear during the hearing of the cause, null and of no effect, and without prejudice to the aforementioned claim and in case of failure thereof, as Proclamation No. III of 1950 had no further effect so soon as the Legislative Assembly was dissolved and consequently the deposits made by the firm represented by the plaintiff after the dissolution of the Legislative Assembly were erroneously made and accepted and therefore were not levied and collected by the Collector of Customs in pursuance of Proclamation No. III of 1950 — prayed that it be declared and adjudged that the deposits made by the firm represented by the plaintiff after the dissolution of the Legislative Assembly, and up to 24 September, 1950, are not affected by the provisions of Act No. XIV of 1950; costs to be borne by the defendants.

The defendants pleaded: (1) that the demand for a declaration of the nullity of Act No. XIV of 1950 is barred by the provisions of Section 39 of the Malta (Constitution) Letters Patent, 1947; (2) that, in any case, the claim is manifestly without any legal foundation, as no one of the reasons adduced in the writ of summons can affect the validity of the said Act; (3) that no one of the aforementioned reasons is founded in fact; and (4) that as regards the second demand is, if anything, less founded than the first one when one considers the clear and categorical wording of the law;

That Her Majesty's Civil Court, First Hall, by judgment of 25 October 1952 allowed defendant's first plea and consequently dismissed plaintiff's first demand ordering that, in view of the difficult points involved, each party was to bear

No. 9. Plaintiff's Petition. —*Continued*

its own costs — the Registry fee, however, to be borne by the plaintiff, and put off the cause for further hearing on the other claims to the sitting of 21 November, 1952;

The plaintiff feels aggrieved by the said judgment and has lodged an appeal therefrom to this Honourable Court by Note filed on 3 November, 1952.

That the ground of appeal is quite clear because the present cause must be considered as one with the other cause in the names "John Coleiro versus Frank Agius noe." which has been adjourned **'sine die'**, and all the reasons **'in contrario'** adduced in the judgment appealed from are not valid. In fact in both cases the parties are the same and this is true not only regarding the plaintiff but also regarding the defendant which in both cases is the Government: the party to a cause is the person represented and not that person's representative. It can neither be held that the merits of this cause are not included in the other cause because the merits of a cause do not consist only in the claims of the plaintiff but are made up also of the pleas of the defendant and of counter-claims of the plaintiff; in short of all that which forms the subject of the discussion and which it is necessary to decide so that the Court must dispose of the case. There is no doubt that the question regarding the validity of Act No. XIV of 1950 had been raised in that cause — this is all that is required by section 39 of the Constitution. Therefore the judgment of 5 October 1951 is binding on the defendants.

The time allowed to the plaintiff to proceed by way of writ of summons has always meant that the plaintiff is entitled to the whole of that time and not only to a part of it, as the first judgment appears to suggest when it says that that time was the maximum; in fact it has always been held that times fixed by a judgment may be extended, nor can it be accepted that the judgment was not binding in regard to the said time, both because a judgment is what it is even though, may be, it is unsound; and also because the defendants knew that the time of one month fixed by the judgment appealed from went beyond the expiration of one year from the commencement of the Act and they could therefore have appealed on this point.

Wherefore the petitioner, while producing the undermentioned security for the costs of these proceedings and while making reference to the evidence and reserving the right to produce further evidence, respectfully prays that the judgmnt given by Her Majesty's Civil Court, First Hall on the 25th October, 1952, be reversed and that, instead, a decision be given

accepting plaintiff's claims, with costs against the defendant both of first instance and of this appeal.

No. 9. Plaintiff's Petition. —*Continued*

(signed) V. CARUANA, Advocate.
„ G. GALDES, L.P.

This 14 day of November, 1952.

Filed by G. Galdes, L.P., without exhibits.

(signed) J. DEBONO,
Deputy Registrar.

No. 10.

No. 10. Defendants' Reply.

Defendants' Reply.

IN HER MAJESTY'S COURT OF APPEAL.

Writ of Summons No. 854/1951.

JOHN COLEIRO, Merchant, on behalf of the firm "Coleiro Brothers Ltd."

vs.

The Hon. Dr. GIORGIO BORG OLIVIER Prime Minister of Malta representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI, in his capacity as Collector of Customs and the Hon. EDGAR CUSCHIERI O.B.E. as Treasurer to the Government of Malta.

The reply of the Respondent's **nomine.**

Respectfully sheweth:—

The appellant bases his appeal on the ground that, as he says, "the present cause must be considered as one with the other cause" (sic) "John Coleiro versus Frank Agius nomine" and in support of this ground of appeal the appellant submits that:—

(a) the parties in the two causes are the same;

No. 10. Defendants' Reply. —*Continued*

(b) the merits of this cause are comprised in those of the other cause;

(c) the question of the validity of Act No. XIV of 1950 was raised in the other cause;

(d) the time given to the appellant to institute this cause was entirely available to him, indeed it could have been extended, and constitutes a **res judicata** for the respondents.

Both in the judgment appealed from and in the Notes of Submissions filed by the respondents before the Court of first instance there is already a reply to each and everyone of the submissions of the appellant. But the respondents desire, respectfully, to add the submissions hereunder.

In the first place the respondents submit that, for the appellant to succeed in his contention, it is necessary that he should make good **not only someone or some only** of his submissions above listed but **all** those submissions and **every one** of them cumulatively, so that, if he fails even in respect of one of them, the whole of his contention must fail. But, as in the submission of the respondents, not only cannot the appellant discharge that burden but not even one of his submissions is legally maintainable. In fact:—

(a) If the parties in the two causes were truly the same, in other words if there was — and it is this that is necessary — juridical identity of the defendant, it is not explainable why **the appellant himself** has chosen as defendants in the two causes different persons. The Government is a complex juridical persona and represents varied and distinct interests. To everyone or group of such interests there corresponds a different legal representation. That is why our case law has many times affirmed that a plaintiff cannot choose promiscuously any public officer to represent the Government as defendant not even if such public officer be the Prime Minister or, under Crown Colony Administration, the Lieutenant Governor. If this were not so and if what the appellant says were true, in a case for instance concerning the Medical and Health Department the plaintiff could sue as defendant the Statistician or the Superintendent of the Printing Office; or in a case of succession duty, the Director of the Approved School or the Director of Agriculture. In every case the supposed representation would be for the Government; nevertheless there would clearly be grounds for a plea as to the capacity of the defendant (vide Section 789 of the Code of Organization and Civil Pro-

cedure which lays down the cases in which such plea cannot be raised in regard to certain public officers.)

This shows that, as regards the Government, in order that it can be said that as defendant in two causes it is the same, it is necessary that in both causes the representation concerns the **identical juridical interest** purported to be represented by the defendant. And in order to decide whether this is the case regard must be had to the **claim** (res), based on the **specific cause of action (causa petendi)** which in both causes must refer to the identical juridical object, which is something different from the motive or ultimate practical purpose of the plaintiff.

In the present case not only is this not the case, but the Government in the two causes is sued in two different **personalities,** those known to our jurisprudence as the one, **"juris gestionis"** and, the other, **"juris imperii";**

(b) The merits of a cause are not, as the appellant says, "all that which forms the subject of the discussion". The discussion, the pleas and counter pleas are necessary so that the Court can **decide** the merits of the cause, but are not **those merits.** The merits are the claim taken together with the cause of action specified by the plaintiff which cannot be changed. These are the 'res' and the 'causa petendi' which are essential conditions, together with the identity of the person, so that there can be identity of proceedings and consequently of the 'judicatum'. Now it is sufficient to look at the two writs of summons to observe at once the difference in the merits of the two causes.

As the respondents have already had occasion to submit, the mere connection of the merits or subject of a cause with the merits or subject of another cause does not in any way bring about a fusion of the two causes into one procedural organism. This appears clear also from section 796(3) of the Code of Organization and Civil Procedure which indeed requires that a separate judgment shall be given in respect of each cause;

(c) The appellant says that "there is no doubt that the question as to the validity of Act No. XIV of 1950 was raised in the first cause". This, in the first place, is against the facts, and in the second place is wholly irrelevant. The question as to the validity of the said law was **mentioned** in the other cause, but the **appellant himself** did not want to **raise it** — that is to say formally to submit it for decision — in that cause, so much so that he prayed and insisted that the Court should suspend

No. 10. Defendants' Reply. —*Continued*

those proceedings until he instituted **another cause in which** he would raise the said question. By its judgment the Court in the first cause gave to the appellant, who was the plaintiff, that which **he** had asked for.

But even if, for the sake of argument, the validity of the law had in fact been questioned in the first cause — and "questioned" in the sense in which that word is used in the Constitution — this would have been wholly irrelevant. With **that** cause, which is still pending before another Court, we have nothing to do in this appeal which is concerned **only** with the **other** cause which the plaintiff wanted to institute and has instituted; and in **this** cause, which alone is before this Honourable Court, there is no doubt that the question of the validity of the law has been raised after the expiration of one year from its commencement — and this, to quote the same words used by the appellant, "is all that is imposed by Section 39 of the Constitution".

As to the submission of the appellant that "the judgment of the 5th October 1951 constitutes a **'res judicata'** for the defendants", this is true only in the sense that both in regard to those who were defendants in **that** cause and in regard to the appellant who was the plaintiff in that cause, the question of the validity of the Act can no longer be raised in **that** cause, because the operative part of that judgment — the only part which constitutes the 'judicatum' — has decided that that question was to be raised **in another cause.** But that judgment can in no way prevent the respondents in **this** cause from availing themselves of the remedies which are competent to them according to law, apart from that judgment;

(d) With regard to the time allowed by the Court in the other cause for the appellant to institute this cause, it is, with all due respect, misleading for the appellant to say that "the time fixed . . . . . so that (a party to a cause) may proceed by separate action has always meant that that party was entitled to the whole of that time" and that — as the appellant goes on to say — "it has always been held that those times fixed by judgment may be extended". These assertions are misleading because they are without any foundation and bear no relation to the facts of the present case. In fact, so that the appellant may invoke in his favour that which is alleged to have been "always" done, he must at least begin to show that what has been "always" done was in cases which have some analogy with the present case. Everyone knows, because the law itself says it, that, generally, **procedural** times, legal or

judicial, when they are not peremptory, may be enlarged for good cause, shown. But no one has ever dreamt that a time given by a Court in order that e.g. the plaintiff in a cause may proceed in regard to some incident in the proceedings by a separate cause 'ad hoc', can in any way keep alive or bring back to life a substantive right of that plaintiff which, by the time he institutes the separate cause, will have been extinguished — for instance by prescription or by forfeiture or some other reason of extinction vis a vis the defendant in such cause.

Precisely because, as the appellant says, judicial times are **as such** capable of enlargement, they do not constitute **'res judicata'** either for the Court which allows them or for the parties in the cause to whom they are allowed. They are not as a rule an element of the operative part of the judgment. Certainly at any rate the time was not an element of the operative part of the judgment in the present case. If, for instance, the appellant had not instituted this cause within the time of one month given to him by the Court **and the year prescribed by the Constitution had not yet expired,** he could have for good cause obtained an extension of that time from the same Court. This however does not mean that the said time — or any other similar time — **suspends or interrupts a time in regard to a substantive right — a time, moreover the lapse of which involves a forfeiture and concerning a matter 'publici juris' which in the meantime was running and has expired**. It is absurd to imagine that those among the respondents who were defendants in the first cause could have thought of appealing from a time given to the appellant which they knew, as the appellant also undoubtedly knows, could never affect prejudicially any right which they had according to law, apart from that judgment. No alleged acquiescence on their part in that time could alter or amend the Constitution.

For these reasons and for those given in the judgment appealed from the respondents respectfully submit that that judgment deserves to be affirmed with costs against the appellant.

(signed) A. J. MAMO,
Deputy Attorney General.
„ JOS. ELLUL, L.P.

Today, the twenty second day of November, 1952.

Filed by Jos. Ellul, L.P. without documents.
(signed) J.N. CAMILLERI,
Deputy Registrar.

No. 11.
Judgment of H.M. Court of Appeal.

No. 11.

Judgment of Her Majesty's Court of Appeal.

HER MAJESTY'S COURT OF APPEAL
(Civil Hall)

Judges:—

His Honour L. A. CAMILLERI, LL.D., Chief Justice
The Honourable Mr. Justice A. J. MONTANARO GAUCI, LL.D.
The Honourable Mr. Justice W. HARDING, B.Litt., LL.D.

Sitting of
Friday, 6 February, 1953.

Writ of Summons No. 854/1951.

JOHN COLEIRO, Merchant, on behalf of the Firm "Coleiro Brothers Limited."

vs.

The Honourable Dr. GIORGIO BORG OLIVIER, Prime Minister of Malta representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI in his capacity as Collector of Customs and the Honourable EDGAR CUSCHIERI, O.B.E., as Treasurer to the Government of Malta.

The Court,

Upon seeing the writ of summons filed by the plaintiff in the Civil Court First Hall, whereby, after premising that by a judgment given by the said Court on 5 October, 1951, he was given the time of one month as from 5 October, 1951, in the suit "John Coleiro **nomine versus** Frank Agius **nomine et"** to contest the validity of Act No. XIV of 1950 — and that the said Act is null on the grounds that, contrary to the law of nature, it expropriates the deposits made by him in the hands of the Collector of Customs in pursuance of Proclamation No. III of 1950, without compensation; that it lacks the requirements of substance and form necessary for its validity inasmuch as it was voted by the Members of Parliament upon untrue information and, as they themselves have admitted, without a proper appreciation on their part of its effect, and because the Legislative Assembly was not composed of forty members and of other defects of procedure; that the said Act is contrary to

Section 36 of the Constitutional Letters Patent of 1947, and encroaches upon the functions proper to the judicial authorities as the aforementioned cause had already been instituted and was sub judice — any requisite declaration and direction being prefaced — the plaintiff prayed that it be declared and adjudged that the said Act XIV of 1950 is, for the aforementioned reasons and for any other reason which may appear during the hearing of the cause, null and of no effect, **and without prejudice to the aforementioned claim and in case of failure thereof,** as Proclamation No. III of 1950 had no further effect so soon as the Legislative Assembly was dissolved and consequently the deposits made by the firm represented by the plaintiff after the dissolution of the Legislative Assembly were erroneously made and accepted and therefore were not levied and collected by the Collector of Customs in pursuance of Proclamation No. III of 1950 — the plaintiff prayed that it be declared and adjudged that the deposits made by the firm represented by the plaintiff after the dissolution of the Legislative Assembly and up to 24 September 1950 are not affected by the provisions of Act No. XIV of 1950; costs to be borne by the defendants who were enjoined to appear to be examined on oath.

Upon seeing the statement of defence of the defendants **nomine** in which they pleaded that (1) the demand for a declaration of the nullity of Act No. XIV of 1950 is barred by the provisions of Section 39 of the Malta (Constitution) Letters Patent 1947; (2) in any case, the claim is manifestly without any legal foundation, as no one of the reasons adduced in the writ of summons, even if true, can affect the validity of the said Act; (3) no one of the aforementioned reasons is founded in fact; and (4) as regards the second claim it is, if anything, less founded than the first one when one considers the clear and categorical wording of the law.

Upon seeing the judgment given by that Court on the 25 October 1952 allowing defendants' first plea and consequently dismissing plaintiff's first claim and ordering that, in view of the difficult points involved, each party was to bear its own costs — the registry fee however to be borne by the plaintiff, and putting off the cause for further hearing on the other claims to the sitting of the 21 November 1952, that Court having considered, in regard to the plea in bar of the action, set up by the defendants —

That according to Section 39 of the Malta (Constitution) Letters Patent: "The validity of any law made under section 22

No. 11. Judgment of H.M. Court of Appeal. —*Continued*

of these Letters Patent or of any provision of any such law shall not be questioned in any legal proceedings after the expiration of one year from the date on which the law comes into operation, except on the ground that the law or provision, as the case may be, deals with a matter with respect to which the Assembly has no power to make laws." It does not appear that there is any question that Act No. XIV of 1950 was passed by the Legislative Assembly within its competence and that the said Act came into operation on the 18 October 1950 with the assent thereto of His Excellency the Governor. The defendants submitted that that Act was impugned only by the present writ of summons filed on 29 October 1951, that is, after the expiration of the period of one year allowed by the Constitution for that purpose and consequently plaintiff's action is barred; the plaintiff, however, contends that his right to impugn that Act is still valid, as in the other cause (which stands adjourned **'sine die')** he had raised the question of the nullity of the said law and that cause should be considered as one and the same thing with the present cause. As no minute was registered in the records of that cause in regard to this incident, it is proper that one should have recourse to what has been stated by that Court, (presided over by a different Judge) in its judgment of 5 October 1951. It was stated in that judgment that the plaintiff had submitted that every provision of that law is of no effect as that law was invalid, and he consequently requested that he be given time within which to institute an action **'ad hoc'** to obtain a declaration of the nullity of that law. The defendants on their part pointed out "that there is no reason why the action contemplated by the plaintiff should be instituted and the question whether the law is valid or not can be determined in this same cause".

The Court then said that "although this question can also be discussed and determined in the present cause it appears that, having regard to the important issue involved, it would be better that the question be dealt with upon a separate action and on its own merits"; the Court therefore ordered that further hearing in that cause be suspended and allowed plaintiff a period of one month so that, if he so wished, he may take action to impugn the said Act before the competent Court. The first cause cannot, as the Plaintiff contends, be considered as one and the same thing with the present cause —

1) because, apart from the fact that the contending parties are different, it is certain that the objects of the two causes are totally different: in fact, while in the first cause the plaintiff claimed back the amounts deposited by him in the hands of

the Collector of Customs, in the present cause the plaintiff is claiming that the abovementioned Act be declared null and of no legal effect and, subordinately, that it be adjudged that those deposits are not affected by the provisions of the said Act;

2) because, in the preceding cause, although the plaintiff intimated his **intention** of impugning that Act, he did not in fact impugn it in that cause and limited himself to asking for time within which to impugn the Act in question by a separate action: and this he is doing only in the present cause;

3) because, on the date the Act was impugned, the legal time available for the purpose had already expired, and the existence of the other cause can in no way have any bearing on the running of that time which is a time of absolute limitation according to the criteria laid down by text writers and judicial precedents. As was held by the Court of Appeal in the case "Sammut versus Notary Pellegrini Petit" determined on 10 January, 1920 "when the law fixes a period during which an act is to be executed, that period rather than being one of prescription is a period of absolute limitation in the sense that after the expiry thereof that act will no longer be admissible. Text-writers lay down the distinctive criterion in this, that if the provision of law which prescribes a time for the exercise of a right does not expressly say that that time is one of prescription or that time has not the characteristics of prescription, then that time is one of absolute limitation". (Law Reports XXIV. I. 276). According to **'Giorgi'**: "when the provision of law which lays down a time for the exercise of a right, is not included under the title dealing with prescriptions, and does not implicitly state that it is a term of prescription, it should be considered as being one of absolute limitation or forfeiture of the right rather than one of prescription" (Obbligaz. Vol. VIII p. 225 p. 371), which principle has also been adopted by this Court (Law Reports XXIX. II. 976). Finally, another criterion may be inferred from the purpose of the provision of law concerned, for if such a provision was introduced for a public purpose, it cannot be a term of prescription but one of absolute limitation. When these tests are applied to the abovementioned Section 39, it will be found that the period therein mentioned is a term of absolute limitation to which the rules of prescription are inapplicable, especially as regards the causes which prevent, interrupt or suspend the running of such time. In fact prescription is based on the assumption of negligence on the part of the creditor, whereas in the case of absolute limitation the question of such negligence is entirely

No. 11. Judgment of H.M. Court of Appeal. —*Continued*

irrelevant (Giorgi, op. cit. p. 225, p. 369 and Law Reports XXV. II. 391), and this to such an extent that a waiver in anticipation of the plea of absolute limitation is not admissible (Troplong. Prescription P. 48), and in the present case the waiver of this plea is inadmissible as it regards a right which the State is exercising **'jure imperii'** (Law Reports XXXI. I. 398). The fact that by the abovementioned judgment of 5 October, 1951, the plaintiff was given a period of one month to impugn the law and that this cause was instituted within that period, has no value, since as only thirteen days remained for the expiry of the statutory year, it must necessarily be understood that the period of one month given to the plaintiff was a "maximum", subject to plaintiff's obligation to conform himself to the law; otherwise it would be possible to evade the law which does not even allow the judicial authority to extend periods which are of a peremptory nature, as in the present case, (Section 103(1) Code of Organization and Civil Procedure). It cannot either be said, as the plaintiff contends, that the abovementioned judgment of 5 October 1951 constitutes a **'res judicata' vis a vis** defendants who cannot go against it — because apart from the question whether the elements of **'res judicata'** apply or not, that judgment cannot bind them to the extent that it deprives them of the right (which up to that date had not arisen as the period of one year within which the law could be impugned had not yet elapsed) to set up the plea of limitation after the expiry of the said time.

Upon seeing at fol. 22 the note of appeal of plaintiff **nomine,** and his petition at fol. 24, whereby he prayed that the judgment of the Court of first instance be reversed and that his claims be allowed.

Upon seeting at fol. 29 the reply of the defendants **nomine** who pray that the judgment appealed from be affirmed.

Upon hearing the arguments of Counsel:

Considers:—

For a better understanding of the question to be decided by this Court on this appeal, it is expedient to recapitulate the anteceding proceedings which have led up to this question;

On 12 October 1950, the plaintiff **nominee** filed a writ of summons against the Collector of Customs, the Minister of Industry, the Minister of Finance and the Treasurer to Government in which he claimed the refund of the sum of fifteen thousand two hundred and one pounds and six pence (£15,201. 0. 6) with interest, representing deposits of duties

effected by the plaintiff firm in the hands of the defendants sued in the writ of summons, that is to say the Collector of Customs, which claim the plaintiff **nomine** based on the premise that although His Excellency the Governor had on the 25 May 1950 issued a Proclamation in accordance with Chapter 99 of the Laws of Malta, proclaiming that the Minister of Finance had given notice of a Bill to increase the import duties, nevertheless that Bill had lapsed and fallen through as the Legislative Assembly had been dissolved, — in the meantime the plaintiff firm had already effected the deposit of the sum abovementioned corresponding to the proposed increase of duty. Against these claims the defendants **nomine** had set up two pleas, one, that plaintiff's claim was untenable as the money in question did not belong to the plaintiff but to the public, and the other, that in any event the action was barred by subsection (2) of Section 2 of this Act the appropriation of the duties was made to operate notwithstanding any **judicial proceedings instituted by any interested person prior to the commencement of the Act.**

Faced with this plea of limitation of action which, if upheld, would have destroyed the action **'a planta pedis'**, the plaintiff retorted by saying that every provision of the abovementioned Act (Act No. XIV of 1950) was null; if the said Act was null, then of course plaintiff's action would not have been barred in virtue of the Section above quoted.

The Civil Court, First Hall, by its decision of 5 October 1951, suspended the further hearing of the proceedings before it and gave to the plaintiff **nomine** a period of one month so that, if he so wished, he could **institute the action** of impugnment of that Act mentioned by him.

We now come to the present cause:—

The plaintiff **nomine,** by writ of summons filed on 29 October, 1951 against the Prime Minister in representation of the Government against the Collector of Customs and the Treasurer, prayed — for the reasons premised in that writ of summons — that a declaration be given that the said Act (No. XIV of 1950) is null, and, in the event of his first claim not being accepted, that it be declared that the deposits made by the plaintiff firm after the dissolution of the Legislative Assembly are not, for the reasons stated by him, affected by the provisions of that Act.

In their statement of defence abovementioned the defendants **nomine,** pleaded, **inter alia,** that the claim for a declara-

No. 11. Judgment of H.M. Court of Appeal. —*Continued*

tion of nullity of Act No. XIV of 1950 is barred under Section 39 of the Malta (Constitution) Letters Patent, 1947.

The Court below, as has already been stated, allowed this plea of the defendants **nomine.**

This is now the point which is to be decided by this Court, **that is to say, whether plaintiff's action, in that part of it whereby the validity of Act No. XIV of 1950 is being challenged, is barred in view of Section 39 of the Letters Patent.**

The said Section runs as follows:—

"The validity of any law made under Section 22 of these Letters Patent or of any provision of any such law, shall not be questioned in any legal proceedings commenced after the expiration of one year from the date on which the law comes into operation" 10

The defendants **nomine** contend that as Act No. XIV of 1950 came into force on 18 October 1950, and as the present writ of summons was filed on 29 October 1951, therefore, by the expiration of the period of one year mentioned in section 39 of the Letters Patent, the action has been extinguished.

From the discussion and from the written pleadings it appears that the plaintiff **nomine,** in order to rebut this plea, has raised these points:— 20

(1) The question of nullity was raised in due time, because it was raised in the other cause abovementioned "Coleiro **nomine** versus Agius **nomine";**

(2) By its decision of 5 October 1951, the Civil Court First Hall gave to the plaintiff **nomine** the time of one month from that date, and plaintiff instituted the action within that time;

(3) That decision is binding between the parties who are in reality the same, and therefore the defendants in the present cause are precluded by the said judgment from raising the plea of extinguishment of action, once the plaintiff **nomine** has instituted this action within the time fixed by that judgment. 30

For reasons of convenience the first point will be dealt with last.

As regards the **second** point, the Court considers it untenable, as the time of one year prescribed by the Letters Patent, is law, and the Courts cannot vary it and thus neutralize the law. Logically it should be understood that the Court allowed the time of one month, always provided that time allowed by 40

it was within the limits of the term prescribed by law as a term of absolute limitation in a matter affecting public order, as is the stability of laws. This was not the case of a judicial time which could be extended for a just cause, but a term of absolute limitation established by law.

As regards the third point, this also is untenable. Apart from any question whether there are not the elements of **eaedem personae** or **eadem res** or the element of **eadem causa petendi,** it is certain, — even if one were to take a broad view of the binding force of **'res judicata'** on the strength of the maxim **tantum judicatum quantum disputatum,** — that this particular point — that is whether the action for the nullity of Act No. XIV of 1950 was barred under Section 39 of the Malta Constitution — is a **new** point, which was not raised in the other cause, in which that judgment was given and which, in view of that judgment or rather in view of the incident provided for by that judgment, could not be raised in that cause. Consequently there cannot be a judgment precluding the plea in bar of the action now set up by the defendants' **nomine,** because a judgment cannot cover a point which was not raised and which is not then the case of raising.

The true **"punctum saliens"** is that involved in the **first** point. To determine this point one must first of all establish the meaning of the word "question" in the phrase "shall not be **questioned** in any legal proceedings", occurring in Section 39 of the Letters Patent.

This expression is not usual in the legal terminology of Maltese statutory laws, because in the Maltese Codes, when a term of prescription or of absolute limitation of action is established, the wording used is different from that of Section 39 abovementioned, as one can see for example from Sections 571, 572, 1070, 1481, 1550, 2258, and others of the Civil Code, Chapter 23. For this reason no assistance, for the purpose of ascertaining the precise meaning of the word "questioned" in the phrase "shall be questioned in any legal proceedings" can be derived from the legal phraseology of Maltese laws, at any rate from that used in the Maltese "basic Codes".

In any event this is not a case of extensive interpretation. In fact Section 39, at the same time as it rules out any questioning of the validity of a law after the expiration of one year, is also limiting to that period the right of the subject to pursue any right, to which he may consider himself entitled, by challenging the validity of a law. Consequently the restrictive character of the law requires that the interpretation thereof

No. 11. Judgment of H.M. Court of Appeal. —*Continued*

shall not be extensive but literal. (See judgment given by H.M. Civil Court in re "Axisa vs. Gatt," 7 April 1902).

In the English legal system, however, the word "question", as well as the similar one "dispute", occur in various laws. In Wharton's Law Lexicon the word "question", as a transitive verb, is included in the terminology reported in that book, and explained as "to impugn". As regards judgments delivered by the English Courts it does not seem easy to find a judgment **"ad hoc"**, but, if one consults judgments dealing with laws containing the phrase "if any question arises . . . . . " or the phrase "in case of any dispute arising . . . . . " one finds that **question** or **dispute** mean "contention" — there **is a question** or a **dispute** when there is a "contention" or when there is "difference of opinion" formally raised in judicial proceedings — there is **dispute** when there are "matters in difference" — when there is "a proposition made by one party and rejected by the other" (see the cases reported, passim, in Burrows "Words and Phrases Judicially Defined" **voce** "Dispute" and "Question"). One may add that in the Maltese version of the Letters Patent it is said that "is-siwi ta' xi liġi . . . ma għandu jitqanqal . . . ". Now from what has been said it is clear that in the cause 'Coleiro vs. Agius' abovementioned the plaintiff **nomine** had challenged the validity of Act No. XIV of 1950. It is clear, in other words, that the validity was "questioned", that it was disputed, that there was a contention regarding the validity or otherwise of the law, that there was a difference of opinion between the plaintiff **nomine** who was challenging the law as **null** and the Government who maintained that the law was valid, — that one of the contending parties was formulating a "proposition" (that of invalidity) which "proposition" the other contending party was rejecting.

Counsel for the Crown submitted in the oral discussion that this question was only **mentioned** in that cause. This assertion is utterly unfounded. Although in the cause "Coleiro vs. Agius" for some reason or other and rather contrary to the procedure usually followed, no minute **'ad hoc'** was recorded, it abundantly appears from other parts of the record that the question was formally raised and not only mentioned. In fact, at the very first sitting held on 11 November 1950, (see page 30 of the record) the plaintiff **nomine** in order to repel the plea that the action then brought by him was barred under subsection (2) of Section 2 of Act No. XIV of 1950, raised the point of nullity of that Act. This appears not only from the minute at fol. 30 where it is stated: "This cause is adjourned to 25 November 1950 **for a direction by the Court"** (and what this

direction was emerges from the tenor of the direction which was, in fact, subsequently given), but appears also from the very application made by the Crown in that cause during the adjournment in which precisely it is stated that the plaintiff **nomine** had alleged the nullity of the Act. For various legitimate reasons, that cause was adjourned several times, each time so that a direction be given: indeed the minute recorded in the sitting of 25 June 1951 is even more illuminating as it says: "for decision on the preliminary plea": these are words which cannot but show that the question had been not only mentioned as Counsel for the Crown contends, but formally raised. This would have been sufficient, but there is even more, because in the decision subsequently given by the First Hall (5 October 1951) the Judge used these very words: "that on the second plea raised by the defendants, namely the plea that plaintiff's action is now barred by operation of the law itself (Act No. XIV of 1950), the **plaintiff submitted that** every provision of that law is of no effect as that law is not valid . . . . " words these which do not leave any room for doubt that the plaintiff **nomine** had raised the point of the validity of the law in terms of Section 39 of the Letters Patent.

It should be added that the fact that, until then, the plaintiff **nomine** had raised the issue of the nullity of the Act as a counter plea, does not in any way diminish the efficacy of the impugnment for the purposes of Section 39 of the Letters Patent, because the impugnment was equally taking place in legal proceedings and because in the Maltese system the impugnment of a law may be made by means of a plea, saving the Court's right to suspend the further hearing of the cause if it deems that it would be better that an action **'ad hoc'** be instituted (see by analogy Section 755 of Chapter 15, and Section 1270 of Chapter 23 of the Revised Edition).

It is difficult to understand how Counsel for the Crown can now contend that the point of nullity had been only **mentioned** in that cause when he himself insisted that it be **determined** in that same cause: it necessarily stands to reason that that point was being formally raised. In fact in the judgment it is stated: "The defendants submitted that there is no reason why the action contemplated by the plaintiff should be instituted and **the question whether that law is valid or not can be determined in this same cause."**

Why was Counsel for the Crown praying that the issue of nullity be determined in that cause — why did the Court deal with the question whether that issue should be decided in that cause or on an action instituted for the purpose — if that issue

No. 11. Judgment of H.M. Court of Appeal. —*Continued*

had been only **mentioned** as Counsel for the Crown now contends? This apart from the fact that whoever reads in good faith the contents of the application of the defendants **nomine** in that cause at fol. 31 should convince himself without any hesitation that in the opinion of the defendants themselves that issue was being formally raised.

The truth is that that issue had been raised and that the validity of the law had been "questioned" within the meaning of Section 39 of the Letters Patent. The question whether it was expedient that that issue be decided in that same cause or on an action instituted for the purpose was only a matter of **form** which in no way affects the real fact that the validity of Act. No. XIV of 1950 was being disputed.

Counsel for the Crown also submitted that what was done in the other cause is irrelevant, inasmuch as there were not the ingredients of identity of the object **(eadem res),** cause of action **(eadem causa petendi)** and person **(eadem persona),** and this cause cannot be considered as one and the same thing with the other cause. This submission is of importance for the defendants **nomine** because if the time of one year is calculated from the present action then it has expired and the defendants **nomine** would succeed on the issue of the extinction of action which precisely, by this submission, they are seeking to maintain.

This point also raised by the defendants **nomine** is unfounded. In fact it is not the case of requiring the concurrence of the elements of **res judicata** nor the case of enquiring whether this cause is one and the same thing with the previous one. But it is sufficient to remark that, in the present cause, a decision is to be given on the same point of the invalidity of Act No. XIV of 1950 already raised in the other cause and a decision on that point is to be given in this cause not because the point was not raised in the other cause but because, as a matter of **form,** the First Hall (by its decision of 5 October, 1951,) already referred to, held (quote): "that although that point could also be discussed and decided in this cause it appears to be better, having regard to the delicate nature of the matter, that that point be dealt with by a separate action and on its own separate merits and, therefore, it is proper to suspend the further discussion and decision on the claims made in the Writ of Summons until the competent authority pronounces judgment on the validity of the law in an action which the plaintiffs will institute". This means that in order that the First Hall may proceed on the second plea raised by the

defendants **nomine** in **that** cause (the plea that is to say that the claim for the restitution of the duties was barred by Section 2 of Act No. XIV of 1950) it has to wait until in **this** cause a decision is given on the point raised in **that** cause regarding the invalidity of Act No. XIV of 1950. As a consequence the present cause and the other one are so strictly connected that the other cause is to remain in suspense until the present cause is disposed of and until a solution is given to the point raised in that first cause. In other words, the present cause is the **form** whereby the point already raised in the former cause is brought for judicial decision.

It would be antijuridical, if not immoral, if merely because, solely as a matter of form, the First Hall decided that the issue of nullity, although it could be discussed and determined in the cause in which it had been raised, would better be brought forward by an action "**ad hoc**", one were to accept the contention of the defendants **nomine** that the time should be reckoned with reference to the date of the action and not to the date on which the issue of nullity was in fact raised in the previous cause, in order that it be declared that the action is barred: when this was not the case when that issue was raised in the previous cause.

Counsel for the Crown also sought to maintain his contention by saying that the defendants summoned in the one cause are different from those in the other cause. Independently, however, of the theory of separate judicial representation in regard to each government department and apart from the diversity in the persons summoned as defendants — a diversity which was necessitated by the difference in the nature of the claims — there always remains the substantial fact that this cause is but the submission for judicial decision, in the form ordered by the Court, of that same point already raised in the other cause and which, in order that that cause may proceed, has to be decided in this cause. There is also the fact that in both causes the party interested, although differently represented, is the Crown as defendant.

Therefore this Court is of opinion that the action is not barred, because the issue of the nullity of Act No. XIV of 1950 was raised — for the purposes and within the meaning of Section 39 of the Letters Patent — on 11 November 1950 (fol. 30 of the record of the other cause) barely one month after the commencement of that Act, which came into force on 18 October 1950.

No. 11. Judgment of H.M. Court of Appeal. —*Continued*

The Court is also of opinion that the record should be referred back to the First Court for the hearing of the case on the merits in order that there may be the benefit of a first instance and eventually of an appeal in regard to the first claim.

For these reasons the Court allows the appeal, reserves the judgment appealed from, and declares that the action in regard to the first claim is not barred and refers back the record to the First Court for the hearing on the merits of the first claim and, if it will be the case, the other claims. The costs of both instances are to be borne by the defendants **nomine.**

(signed) J. MICALLEF,
Deputy Registrar.

No. 12. Defendants' Petition for Leave to Appeal to H.M. in Council

No. 12.

Defendants' Petition for Leave to Appeal to Her Majesty In Council

IN HER MAJESTY'S COURT OF APPEAL.

JOHN COLEIRO, Merchant, on behalf of the Firm "Coleiro Brothers Ltd."

vs.

The Hon. Dr. GIORGIO BORG OLIVIER, Prime Minister of Malta, representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI in his capacity as Collector of Customs, and the Hon. EDGAR CUSCHIERI, O.B.E., as Treasurer to the Government of Malta.

The Petition of defendants the Honourable Doctor Giorgio Borg Olivier, Antonio Camilleri and the Honourable Edgar Cuschieri, O.B.E., in their abovementioned capacity.

Respectfully sheweth:—

That by writ of summons No. 854/1952 filed in Her Majesty's Civil Court, First Hall, the plaintiff premised — that by a judgment of 5 October 1951, in the cause "John Coleiro **nomine** versus Frank Agius **nomine et"** he was given the time of one month within which to contest the validity of Act XIV of 1950 — and that the said Act is null on the grounds that con-

trary to the law of nature, it expropriates the deposits made by the plaintiff in the hands of the Collector of Customs in pursuance of Proclamation No. III of 1950, without compensation; that it lacks the requirement of substance and form necessary for its validity inasmuch as it was passed by the Members of Parliament upon untrue information and, as they themselves admitted, without an appreciation on their part of its purport, and as the Legislative Assembly was not composed of forty Members and as the procedure followed was incorrect; that the said Act is contrary to Section 36 of the 1947 Constitution; that it encroaches upon the functions proper to the judicial authorities as the aforementioned cause had already been instituted and was sub judice — any requisite declaration and direction being premised — the plaintiff prayed that it be declared and adjudged that the said Act No. XIV of 1950 is, for the aforementioned reasons and for any other reason which may appear during the hearing of the cause null and of no effect, and without prejudice to the aforementioned claim and in case of failure thereof, as Proclamation No. III of 1950 ceased to have effect as soon as the Legislative Assembly was dissolved and consequently the deposits made by the Firm represented by plaintiff after the dissolution of the Legislative Assembly were made and accepted by mistake and consequently were not levied and collected by the Collector of Customs in pursuance of Proclamation No. III of 1950 — the plaintiff prayed that it be declared and adjudged that the deposits made by the Firm represented by him after the dissolution of the Legislative Assembly and up to 24 September 1950, are not affected by the provisions of Act No. XIV of 1950; costs to be borne by the defendants;

The defendants pleaded: (1) that the claim that Act No. XIV of 1950 is null is barred under Section 39 of the Malta (Constitution) Letters Patent, 1947; (2) that, in any case, that claim is manifestly without any legal foundation, as none of the reasons alleged in the writ of summons, even if true, can affect the validity of the said Act; (3) that none of the aforementioned reasons is founded in fact; and (4) that, as regards the second claim, this, if anything is still less founded than the first one having regard to the clear and categorical wording of the law;

That Her Majesty's Civil Court, First Hall, by judgment of 25 October 1952, allowed defendants' first plea and consequently dismissed plaintiff's first claim and ordered, in view of the delicate points involved, each party to bear its own costs

No. 12. Defendants' Petition for Leave to Appeal to H.M. in Council —*Continued*

— the Registry fee, however, to be borne by the plaintiff, and put off the cause for further hearing on the other claims to the Sitting of 21 November 1952;

That the plaintiff felt himself aggrieved by the said judgment and entered an appeal therefrom to this Honourable Court by a note filed on 3 November 1952;

That the plaintiff, by the petition filed before this Honourable Court on 14 November 1952, prayed that the judgment given by the First Hall of Her Majesty's Civil Court, on 25 October 1952, be reversed, and that his claim be allowed — with costs of both causes against the defendants;

That by judgment of 6 February 1953, this Honourable Court allowed the appeal, reversed the judgment given by the First Court, and declared that the action, arising out of the first claim is not barred, and remitted the record to the First Court for it to deal with the merits of the first claim and, if necessary, of the other claims, with costs of both causes against the defendants **nomine;**

That the defendants feel themselves aggrieved by the judgment given by this Honourable Court on 6 February 1953 and asked for leave to appeal therefrom to Her Majesty the Queen in Her Privy Council;

That the amount involved in the cause exceeds by far five hundred pounds;

For the foregoing reasons the applicants **nomine** respectfully pray that this Honourable Court may be pleased to grant them leave to appeal from the said judgment given on 6 February 1953, to the Judicial Committee of Her Majesty's Privy Council for a reversal of the said judgment in regard both to the merits and to costs.

(signed) A. J. MAMO,
Deputy Attorney General.
„ JOS. ELLUL, L.P.

This twentieth day of February, 1953.

Filed by Jos. Ellul, L.P. without exhibits.

(signed) J. DEBONO, Deputy Registrar.

Her Majesty's Court of Appeal.

The Court,

Upon seeing the petition orders that it be put down for hearing in the list of causes for the Sitting of 2 March, 1953.

(signed) S.BUGEJA, Deputy Registrar.

No. 13.
Plaintiff's Reply.

No. 13.

Plaintiff's Reply.

IN HER MAJESTY'S COURT OF APPEAL.

Writ of Summons No. 854/1951

JOHN COLEIRO, Merchant, **nomine**
vs.
The Hon. Doctor GIORGIO BORG OLIVIER **nomine et.**

The reply of the said John Coleiro **nomine.**

Respectfully sheweth:—

That the leave asked for cannot be granted at this stage, as the judgment delivered by this Honourable Court on 6 February 1953, is not final on the merits.

(signed) V. CARUANA, Advocate.
„ G. MANGION, L.P.

This twenty eight day of February, 1953.

Filed by G. Mangion L.P. without exhibits.

(signed) SALV. BUGEJA,
Deputy Registrar.

No. 14. Decree Granting Conditional Leave to Appeal.

No. 14.

Decree granting conditional leave to appeal.

HER MAJESTY'S COURT OF APPEAL

(Civil Court)

Judges:—

His Honour L. A. CAMILLERI, LL.D., Chief Justice
The Honourable Mr. Justice A. J. MONTANARO GAUCI, LL.D.
The Honourable Mr. Justice W. HARDING, B.Litt., LL.D.

Sitting held on
Monday, 16 March, 1953.

JOHN COLEIRO, Merchant, on behalf of the Firm "Coleiro Brothers Limited."

vs.

The Hon. Doctor GIORGIO BORG OLIVIER, Prime Minister of Malta representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI in his capacity as Collector of Customs and the Honourable EDGAR CUSCHIERI O.B.E., as Treasurer to the Government of Malta.

The Court,

Upon seeing the petition of the said defendants the Honourable Doctor Giorgio Borg Olivier, Anthony Camilleri and the Honourable Edgar Cuschieri in their above mentioned capacity, who ask for leave to appeal to the Judicial Committee of Her Majesty's Privy Council from the Judgment given by this Court on 6 February 1953 in this cause;

Upon seeing the reply of the plaintiff John Coleiro, Merchant **nomine** who opposed that request on the ground that the judgment of this Court of 6 February 1953 is not final;

Upon examining the record of this cause;

Upon hearing counsel for both parties;

Considers:—

That defendants' request, contained in the said petition, is based on section 2 (a) of the Order-in-Council of 22 Novem-

ber 1909 as amended by Order in Council of 5 November 1942. According to that section "an appeal shall lie as of right from any final judgment of the Court where the matter in dispute on the Appeal amounts to or is of the value of five hundred pounds sterling or upwards. . . . . ."

In order that leave to appeal as of right to Her Majesty's Privy Council may be granted it is necessary, according to the said provision, that the judgment from which leave to appeal is sought, should be definitive and final. The said judgment of this Court of 6 February 1953 cannot be considered as definitive and final because it does not prevent the further hearing of the cause on the merits and because these merits have not so far been adjudged upon (vide judgment of this Court of 13 December 1926 in **re** "Dr Pullicino **noe.** versus Salvatore Grixti **noe et"** Law Reports Vol. XXVI, Part I, Sec. II, page 144; and another judgment of this Court of 10 March 1952 in **re** "Colonel Stephen Borg versus Gustavo Romeo Vincenti A. & C.E." and another reported by Bentwich (The practice of the Privy Council in Judicial Matters, 1937, Edit. p. 105), in **re** "Standard Discount Co. versus La Grange" (1877) 3 C.P.D. page 71, per Barett, L.J., which says — "No order, judgment or other proceeding can be final, which does not at once affect the status of the parties for whichever side the decision may be given, so that, if it is given for the plaintiff, it is conclusive against the defendant, and if it is given for the defendant, it is conclusive against the plaintiff";

Considers:—

That during the hearing counsel for the defendants submitted that this is a proper case for granting leave to appeal to the Judicial Committee of the Privy Council under paragraph (b) of the said Section 2 of the Order in Council abovementioned. This paragraph lays down that an appeal lies at the discretion of the Court, from any other Judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved in the Appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council for decision;

That the judgment of this Court of 6 February 1953 is based on the interpretation given to the provisions of Section 39 of the Malta (Constitution) Letters Patent, 1947; and the point decided, which refers to an important provision of the Constitutional Charter is, in the opinion of the Court, of such importance that it warrants the exercise of the discretionary power conferred on this Court by the said paragraph (b) of Section 2

No. 14. Decree Granting Conditional Leave to Appeal. —*Continued*

of the Order in Council of the 22 November 1909, notwithstanding that that judgment of 6 February 1953 is not definitive and final;

For these reasons:—

In the sense of the premises only allows the request of the defendants **nomine,** and grants them conditional leave to appeal from the judgment of this Court of 6 February 1953 to Her Majesty's Privy Council fixing the time of one month within which they should enter into the security contemplated in Section 4 of the said Order in Council in the sum of three hundred pounds and the time of three months for the preparation of the Record and the dispatch thereof to the Judicial Committee in accordance with the aforesaid Section 4. Costs hereof reserved to be provided for on the order for final leave to appeal.

(signed) J. MICALLEF,
Deputy Registrar.

No. 15 Assumption of Proceedings by the Hon. Dr. Paul Boffa.

No. 15.

Assumption of Proceedings by the Honourable Dr. Paul Boffa.

JOHN COLEIRO, Merchant, **nomine**

vs.

The Hon. Doctor GIORGIO BORG OLIVIER **nomine et.**

Note of the Honourable Doctor Paul Boffa, as Acting Prime Minister of Malta;

Whereby the said the Honourable Doctor Paul Boffa assumes the proceedings in the present cause in lieu of the Honourable Doctor Giorgio Borg Olivier, Prime Minister of Malta.

(signed) J. J. CREMONA
Crown Counsel.

This 29 May, 1953.

Filed in Court by Dr. J. J. Cremona, Crown Counsel, without exhibits.

(signed) EDWARD CAUCHI,
Deputy Registrar.

No. 16
Defendants' Application for Final Leave to Appeal.

No. 16.

Application of Defendants Praying for Final Leave to Appeal To Her Majesty in Her Privy Council.

JOHN COLEIRO, Merchant, **nomine.**

vs.

The Honourable Doctor GIORGIO BORG OLIVIER, Prime Minister of Malta, representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI, in his capacity as Collector of Customs, and the Honourable EDGAR CUSCHIERI, O.B.E., as Treasurer to the Government of Malta.

The Application of the Honourable Doctor Paul Boffa, as Acting Prime Minister of Malta, representing the Maltese Government, Anthony Camilleri and the Honourable Edgar Cuschieri, O.B.E., in their aforementioned capacity;

Respectfully sheweth:—

That this Honourable Court by decree of 16 March 1953, given on the application of the Defendants' **nomine** for leave to appeal to Her Majesty's Privy Council from the judgment given by this Honourable Court on the 6 February 1953, ordered the Defendants to prepare the translation of the Record and the printing thereof;

That the translation of the Record has been approved by the contending parties and it has been filed in the Registry of this Honourable Court by a Schedule of Deposit on 8 June, 1953;

Wherefore the Defendants **nomine** respectfully pray that this Honourable Court may be pleased to order that the abovementioned cause be put down on the list for hearing in order that final leave to appeal may be granted.

(signed) A. J. MAMO,
Deputy Attorney General.
„ JOSEPH ELLUL, L.P.

This 8 June, 1953.

Filed by Joseph Ellul, L.P. without exhibits.

(signed) J. CAMILLERI CACOPARDO,
Deputy Registrar.

No. 17
Decree
Granting Final
Leave to
Appeal.

No. 17.

Decree Granting Final Leave to Appeal.

Her Majesty's Court of Appeal
(Civil Hall)

Judges:—

His Honour L.A. Camilleri, LL.D., Chief Justice
The Honourable Mr. Justice A. J. Montanaro Gauci, LL.D.
The Honourable Mr. Justice W. Harding, B.Litt., LL.D.

Sitting held on Friday, 19 June, 1953.

JOHN COLEIRO, Merchant, for the OLIVIER, Prime Minister of Malta, Firm Coleiro Brothers Limited.

vs.

The Honourable Doctor GIORGIO BORG OLIVIER, Prime Minister of Malta, representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI, in his capacity as Collector of Customs and the Honourable EDGAR CUSCHIERI, O.B.E., as Treasurer to the Government of Malta, and per Note of 29 May, 1953, the Honourable Doctor PAOLO BOFFA, as Acting Prime Minister of Malta who assumed the proceedings in lieu of the Honourable Doctor GIORGIO BORG who is absent from Malta.

The Court,

Upon seeing the application of the Defendants **nomine**, submitting that the translation and the printing of the Record are ready, and praying that final leave to appeal to Her Majesty's Privy Council be granted;

Upon seeing the Decree of 16 March 1953, granting to the Defendants **nomine** conditional leave to appeal to Her Majesty's Privy Council from the judgment given by this Court on 6 February 1953, and reserving to provide as to the costs by the Decree granting final leave to appeal;

Allows the application of the Defendants **nomine** and

No. 17 Decree Granting Final Leave to Appeal. —*Continued*

grants them final and definite leave to appeal to the Judicial Committee of Her Majesty's Privy Council from the judgment given by this Court. The costs of the present Decree and of the Decree granting conditional leave are to be borne by the Defendants **nomine**, saving their right to recover the whole or part thereof from the Plaintiff if so ordered by the Judicial Committee of Her Majesty's Privy Council.

(signed J. MICALLEF,
Deputy Registrar.

No. 18 Resuming of Proceedings by the Hon. Dr. Giorgio Borg Olivier.

No. 18.

Resuming of Proceedings by the Hon. Doctor Giorgio Borg Olivier.

JOHN COLEIRO, Merchant, for the Firm Coleiro Brothers Limited.

vs.

The Honourable Doctor GIORGIO BORG OLIVIER, Prime Minister of Malta, representing the Government of Malta, and, for the interest which they may have, ANTONIO CAMILLERI, in his capacity as Collector of Customs and the Honourable EDGAR CUSCHIERI, O.B.E., as Treasurer to the Government of Malta.

Note of the Honourable Doctor Giorgio Borg Olivier, Prime Minister of Malta, representing the Government of Malta.

That, in the aforementioned capacity, he resumes the proceedings in lieu of the Honourable Doctor Paul Boffa.

(signed) A. J. MAMO,
Deputy Attorney General.

„ JOSEPH ELLUL, L.P.

This 23 June, 1953.

Filed by Joseph Ellul, L.P., without exhibits.

(signed) S. BUGEJA
Deputy Registrar.

APPENDIX

HIS MAJESTY'S CIVIL COURT, FIRST HALL.

JOHN COLEIRO, Merchant, **nomine**

vs.

FRANK AGIUS, **nomine et.**

No. 1.

No. 1.
Writ of
Summons

Writ-of-Summons.

In His Majesty's Civil Court

First Hall.

This 12 October, 1950.

Filed by G. Galdes, L.P. with 23 exhibits.

(signed) J. MICALLEF
Deputy Registrar.

GEORGE VI

By the Grace of God, King of the United Kingdom and Ireland and of the British Dominions beyond the Seas, Defender of the Faith.

By Our Order and at the suit of John Coleiro, Merchant, on behalf of the Firm "Coleiro Bros. Ltd." — You shall summon— Frank Agius, in his capacity as Collector of Customs, the Honourable Dr. Carmelo Caruana in his capacity as Minister of Commerce, the Honourable Dr. John Frendo Azopardi, in his capacity as Minister of Finance, and the Honourable Edgar Cuschieri O.B.E., in his capacity as Treasurer to the Government of Malta, all of them to represent the said Government of Malta, to appear before our said Court at the sitting to be held on 11 November 1950 at 9 a.m.

And there — whereas by Proclamation No. III of 1950 His Excellency the Governor of Malta proclaimed, for the purposes of Chapter 99 of the Laws of Malta, that the Minister of Finance had given notice of a Bill to amend the Import and Export Duties Ordinance (Chapter 122) and that a copy of that Bill was lodged in the Office of the Clerk to the Legislative Assembly;

And whereas, in accordance with the provisions of the said Chapter 99 of the Laws of Malta, the plaintiff Firm has, on several occasions in connection with the importation of wine from that date onwards, in addition to paying the duty chargeable under the law then in force, deposited with the defendant Agius **nomine** various sums amounting in the aggregate to £15,201 as may be seen from exhibits marked A. B. C. D. E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T. U:

No. 1. Writ of Summons —*Continued*

And whereas from the first sitting of the Legislative Assembly, which was held after the aforementioned date, more than four months have elapsed and the law to increase the duty has not been passed and the Bill has fallen through as the Legislative Assembly was dissolved; and as, consequently, the plaintiff is entitled to the refund of the said deposits with 3% interest from the day of each deposit; and as the demands made by him both orally and by means of a letter dated 28 September 1950 (Document X) have not been acceded to — any requisite declaration and direction being premised — the defendants should show cause why they should not be condemned to pay and refund to the plaintiff the said amount of £15,201. 6s. 0d. with interest according to the said law.

With costs against the defendants who are enjoined to appear to be examined on oath.

You shall further give the said defendants **nomine** notice that if they wish to contest the claim they must, not later than two working days previous to the day fixed for the hearing of the cause, file their statement of defence according to law, and that in default of their so doing within the said time and of their appearance on the day, and at the time and place aforesaid, the said Court will proceed to deliver judgment according to justice on the action of the said plaintiff **nomine** on the said day, or on any subsequent day, as the Court may direct.

And after service by delivery of a copy hereof to the said defendants **nomine** or their agents according to law, or upon your meeting with any obstacle in the said service, you shall forthwith report to this Our Court.

Given by Our aforesaid Civil Court, First Hall, witness Our faithful and well beloved the Honourable J. Caruana Colombo, B.Litt., Doctor of Laws, Judge of Our said Court.

This fourteenth day of October, 1950.

(signed) J. CARUANA COLOMBO.

No. 2.
Declaration by Plaintif.

No. 2. Plaintiff's Declaration

In His Majesty's Civil Court
First Hall.

JOHN COLEIRO, Merchant, **nomine**
vs.
FRANK AGIUS **nomine et**

The declaration of the plaintiff in terms of law.

As appears from the writ of summons, His Excellency the Governor did on 25 May 1950 issue a Proclamation in terms of Chapter 99 of the Laws of Malta to proclaim that the Minister of Finance had given notice of a Bill to increase certain import duties.

Since that date the plaintiff has, besides paying the duties chargeable under the law in force, also deposited the amount corresponding to the proposed increase of duty in the hands of the Collector of Customs.

That Bill has not been passed and has fallen through as the Legislative Assembly was dissolved.

The plaintiff made a claim for the refund of the said deposit to the defendant Agius both by means of a letter dated 28 September 1950, filed with the writ of summons, as well as, previous to that date, orally, but he has received no official reply and has therefore had to file this writ of summons.

Witnesses:—

The plaintiff and Francis Coleiro to confirm the declaration.

(signed) V. CARUANA,
Advocate.

„ G. GALDES, L.P.

No. 3.
List of Exhibits filed with the Writ-of-Summons.

No. 3. List of Exhibits

Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, and U, — Customs Entries showing the amounts deposited by plaintiff Firm.

Exhibit X — Letter by plaintiff Firm of 28 September 1950

No. 3. List of Exhibits —*Continued*

sent through the undersigned asking for the refund of the deposits.

Exhibit Y — Post Office receipt of the letter abovementioned.

(signed) V. CARUANA,
Advocate.

„ G. GALDES, L.P.

No. 4. Statement of Defence and Defendants' Declaration.

No. 4.

Statement of Defence of the Defendants.

In His Majesty's Civil Court

First Hall.

JOHN COLEIRO, Merchant **nomine**
vs.
FRANK AGIUS **nomine et**

Statement of defence of the defendants in their respective capacity.

Respectfully sheweth:

That the plaintiff's claim is untenable because the money in question does not belong to the plaintiff but to the public by whom in fact it was paid, and because, in any event, the action is now barred by law.

The right is reserved to set up further pleas.

(signed) VINC. A. DEPASQUALE,
Crown Counsel.

„ JOS. ELLUL, L.P.

The Declaration of the defendants **nomine** in terms of law;

So soon as Proclamation No. III of 1950 was published and the plaintiff commenced depositing the amounts of increase of duty, he immediately raised the price of wine to his customers by an amount which, at least, corresponded to such increase of duty. Consequently the amounts in question, although originally paid by the plaintiff, and deposited in his name, were in fact borne by the consumers of his wine in the shape of a higher

price. The plaintiff, therefore, is now in effect claiming the refund of amounts which actually do not belong to him. In such a case the aphorism applies, with added force, **"nemini licet locupletari cum aliena jactura".**

In any event this cause is to-day barred by Act No. XIV of 1950 which, in the interest of the exigencies of justice and to safeguard the public in general, has vested the amounts in question in the Public Exchequer.

And the plaintiff was aware that this was about to be done before he hastily instituted these proceedings.

Witnesses:—

1. The defendants to give evidence on the facts of this cause.
2. Paul Zammit, Grazio Abela, Joseph Vella, Emmanuele Bonello, Joseph Saliba, Paul Mercieca, wine retailers, to state that the plaintiff Firm increased the price of wine sold to them after the publication of Proclamation No. III of 1950.
3. The plaintiff to be examined on oath.

(signed) VINC. A. DEPASQUALE,
Crown Counsel.
„ JOS. ELLUL, L.P.

This seventh day of November, 1950.

Filed by Jos. Ellul L.P. without exhibits.

(signed) U. BRUNO,
Deputy Registrar.

No. 5.

Defendants' Application.

In His Majesty's Civil Court
First Hall.

JOHN COLEIRO, Merchant **nomine**
vs.
FRANK AGIUS **nomine et**

The application of the defendants **nomine.**

Respectfully sheweth:—

That at plaintiff's request this cause was adjourned to the 25th of this month in order that the Court may rule whether it

No. 5. Defendants' Application. —*Continued*

should stay the proceedings until the plaintiff takes action before the competent Court to obtain a declaration of the invalidity of Act No. XIV of 1950 or whether this same Honourable Court should adjudicate on the alleged invalidity as an incident of these present proceedings.

The applicants opposed plaintiff's request for a stay of the proceedings also because the plaintiff did not show any **legal** grounds upon which at least **'prima facie'** he could challenge the validity of the said Act, and it was evident that no Court should stay proceedings in such a case upon a mere allegation of the invalidity of a law which has in its favour a presumption of validity;

The only sort of ground mentioned by the plaintiff on which he thinks the abovementioned Act is invalid was its alleged 'iniquity' or 'immorality';

In order that there shall not be even the appearance of such a ground — though even if such ground were real it would have been irrelevant — and, in any case, for the purposes of the first plea set up by the applicants which, if substantiated, could render useless any further enquiry, the applicants respectfully pray that this Honourable Court, before giving any ruling as aforesaid, be pleased to allow the applicants to produce evidence that in actual fact the plaintiff increased the price of wine to his customers at least in proportion to the increase of duty.

(signed) A. J. MAMO,
Deputy Attorney General.
„ JOS. ELLUL, L.P.

This 15th day of November, 1950.

Filed by Joseph Ellul L.P. without exhibits.

(signed) J. DEBONO
Deputy Registrar.

His Majesty's Civil Court
First Hall.

Judge:—
The Honourable J. CARUANA COLOMBO, B.Litt., LL.D.

The Court,

Upon seeing the application;

Allows the request.

This the sixteenth day of November, 1950.

(signed) J. DEBONO
Deputy Registrar.

No. 6.

Judgment of H.M. Civil Court — First Hall.

His Majesty's Civil Court

First Hall.

Judge:—

The Hon. Mr. Justice J. CARUANA COLOMBO, B.Litt., LL.D.

Sitting of the
5th of October, 1951.

JOHN COLEIRO, Merchant, on behalf of the firm 'Coleiro Brothers Ltd.'

vs.

FRANK AGIUS, in his capacity as Collector of Customs, the Honourable Doctor CARMELO CARUANA, in his capacity as Minister of Commerce, the Honourable Doctor JOHN FRENDO AZOPARDI, in his capacity as Minister of Finance, and the Honourable EDGAR CUSCHIERI O.B.E. in his capacity as Treasurer to the Government of Malta.

The Court,

Upon seeing the writ of summons whereby the plaintiff in his aforementioned capacity — after premising that by Proclamation No. III of 1950 His Excellency the Governor of Malta had proclaimed, in accordance with Chapter 99 of the Laws of Malta, that the Minister of Finance had given notice of a Bill to amend the Import and Export Duties Ordinance (Chapter 122) and that a copy of that Bill had been lodged in the Office of the Clerk to the Legislative Assembly; and that, in accordance with the provisions of the said Chapter 99 of the Laws of Malta, the plaintiff Firm had, on several occasions in connection with the importation of wine from the said date onwards, in addition to paying the duty chargeable under the law then in force, deposited with the defendant Agius **nomine** various sums amounting in the aggregate to £15,201, as may be seen from the exhibits marked A. B. C. D. E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T. U; whereas from the first sitting of the Legislative Assembly, which was held after the said date, more than

No .6. Judgment of H.M. Civil Court, First Hall. —*Continued*

four months had elapsed, and the law to increase the duty had not been passed and the Bill had fallen through as the Legislative Assembly had been dissolved; and therefore the plaintiff is entitled to the refund of the said deposits with 3% interest from the day of each deposit; and whereas the demands made by him both orally and by means of a letter of the 28 September, 1950 (Exhibit X) had not been acceded to; the plaintiff prayed that, — any requisite declaration and direction being premised — the defendants be condemned to pay and refund to him the said sum of £15,210. 6.0 with interest according to the said law. Costs to be borne by the defendants.

Upon seeing the declaration of the plaintiff and the exhibits filed by him with the writ of summons.

Upon seeing the statement of defence of the defendants in which they submit that the plaintiff's claim is untenable as the money in question does not belong to the plaintiff but to the public by whom in fact it was paid; and, in any event, the action is now barred by law — saving other pleas

Upon seeing the Declaration of the defendants.

Upon examining the record of the cause;

Upon hearing the arguments of plaintiff's counsel and of Crown Counsel for the defendants;

Considers:—

That, on the second plea set up by the defendants, namely that plaintiff's action is now barred by law, that is by Act No. XIV of 1950, the plaintiff submitted that every provision of that law is of no effect, inasmuch as that law is invalid, and, consequently the plaintiff requested that he be given time within which to institute an action **"ad hoc"** in order to obtain a declaration of the nullity of that law. The defendants pointed out that there is no reason why the action contemplated by the plaintiff should be instituted and the question whether the law is valid or not can be determined in this same cause.

Considers:—

That there is no doubt that what the plaintiff said he intended to do, that is to challenge the validity of an Act of the Legislative Assembly, involves a very important point of Constitutional Law. The plaintiff bases his contention on the grounds, among others, which he submitted orally, that that Act as a "Money Bill" might not have been passed by the Legislative Assembly in accordance with the provisions of the Letters Patent; and also that the same Act involves an inter-

ference by the Legislative power with the Judiciary, contrary to the general principles of the separation of powers;

That although this issue may also be argued and determined in these proceedings, nevertheless, having regard to its delicate nature, it seems that it would be better if the same be dealt with on a separate action and on its own merits and not as a counter-plea, to the plea of the defendants; it is therefore the case of suspending the further hearing and determination of the claims contained in the writ of summons until the competent tribunal will have adjudged on that issue upon an action which the plaintiff should institute regarding the validity or otherwise of the aforementioned law.

For these reasons:—

Directs and orders that further hearing in the present cause be suspended and allows the plaintiff a period of one month within which, if he so thinks, he may institute before the competent Court the action of impugnment mentioned by him, and for this reason adjourns the cause **'sine die'**, but so that it may be restored to the list of causes for hearing upon an application of the interested parties either after the period allowed as aforesaid shall have lapsed without the said action having been instituted or after the determination of the action which will be instituted.

Costs reserved.

(signed) J. DEBONO,
Deputy Registrar.