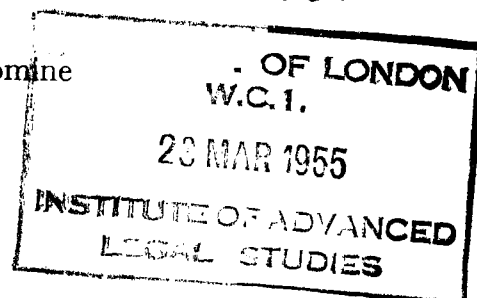


In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL,  
MALTA.

BETWEEN  
ANTONIO CASSAR TORREGGIANI *nomine*  
Plaintiff (*Appellant*)  
AND  
PAOLO & EMMANUELE PISANI  
Defendants (*Respondents*)

38089



RECORD OF PROCEEDINGS

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**DOCUMENTS THE TRANSLATION OF WHICH HAS BEEN OMITTED**


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· Sub-poenas, Certificates of Service, Case Notices.  
 Procés verbaux recording adjournments, etc.  
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**ERRATA CORRIGE** — Page 38 line 42 — "two foot single wall" *recte* "two foot party wall"

— Page 39 line 22 — "two foot single wall" *recte* "two foot party wall"

— Page 40 line 7 — "two foot single wall" *recte* "two foot party wall"

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# **DOCUMENTS**

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**IN H.M. CIVIL COURT, FIRST HALL.**

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In the Privy Council.

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

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BETWEEN

ANTONIO CASSAR TORREGGIANI nomine  
Plaintiff (*Appellant*)

AND

PAOLO & EMMANUELE PISANI  
Defendants (*Respondents*)

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**RECORD OF PROCEEDINGS**

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**DOCUMENTS**

*Translation.*

**No. 1.**

**Writ-of-Summons**

No. 1.  
Writ-of-  
Summons.

Writ-of-Summons No. 149/49.

Filed in H.M. CIVIL COURT,  
First Hall, by C. Vassallo L.P.  
with Four Exhibits, this 19th Feb-  
ruary, 1949.

(Sd.) J. Camilleri Cacopardo,  
D/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 Antonio Cassar Torreggia-  
ni, Merchant, in his capacity as Managing Director of Cassar Com-  
pany Limited (B) — YOU SHALL SUMMON — Paolo and Emma-  
nuele Pisani to appear before this Our Court at the Sitting to be held  
on the 18th March, 1949.

No. 1.  
Writ-of-  
Summons.  
—continued.

And there; — every necessary declaration being prefaced and any expedient direction being given: —

Whereas by schedule of pre-emption and respective deposit dated 26th June, 1948 (Exhibit A), the Plaintiff, in that capacity, exercised the right to recover from Defendants' possession, by reason of neighbourhood and any other lawful title whatsoever, the block of buildings at Church Wharf, Marsa, numbers 25 to 38 inclusive, with all the titles and appurtenances thereof, that at No. 32 being subject to an annual perpetual burthen for the celebration of Holy Mass — which property was sold to the Defendants, at the price of £15,200, 10 by virtue of deed enrolled in the Records of Notary Victor Bisazza on the 26th June, 1947; — and whereas the Defendants have failed to effect the re-sale of the property or to state what other lawful expenses should be deposited to their credit; — said Defendants to show cause why they should not be condemned to re-sell the property to the Plaintiff, in his aforesaid capacity, by reason of neighbourhood and any other lawful title whatsoever, within such short and peremptory period of time as shall be established by the Court — and this subject to the proviso that, in default within that specified time, the re-sale of the property shall be deemed so effected in pursuance of the judgment of 20 the Court — With Costs.

YOU SHALL SUMMON the Defendants so that a reference to their oath may made.

You shall further give the Defendants notice that if they want to contest the claim, they must, not later than two working days previous to the day fixed for the hearing of the cause, file a statement of defence according to law, and that, in default of such statement within the said period, and of their appearance on the day, at the hour and the place aforesaid, the Court will proceed to deliver judgment according to justice on the action of the Plaintiff nomine on the said 30 day, or any subsequent day, as the Court may direct.

And after service by delivery of a copy hereof upon said Defendants, or their agent according to law, or upon your meeting with any obstacle in the said service, you shall forthwith report to this 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 Twenty-first February, 1949.

(Signed) T. GOUDER.

**No. 2.**  
**Plaintiff's Declaration**

No. 2.  
Plaintiff's  
Declaration.

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani nomine  
v.  
Paolo and Emmanuele Pisani.

Plaintiff's Declaration.

Respectfully sheweth:—

10 The Plaintiff nomine is the owner of the St. George's Flour Mills at Church Wharf, Marsa, and of the adjoining fields, known as "l-Ghalqa ta' Xatt il-Qwabar" and "l-Ghalqa tal-Marsa."

The rain-water catchment of the roofs of the warehouses as well as of the fields abovementioned flows through a 'man-made' channel that first passes on the outside of the walls of the Flour Mills and then goes into the yards of the warehouses referred to in the writ-of-summons and the documents annexed thereto — bought by the Defendants and at present demolished through enemy action; and, through that channel, the water flows out underneath the warehouses and drains into the sea. (Vide report and plan drawn up by Mr. Edward Vassallo  
20 A. & C.E. — (Exhibit "D" and "E").

It has been consistently held that, where the water drains through channels or other constructions made by the act of man, the owner of the contiguous tenement is entitled to the right of pre-emption. (Section 1512. Civil Code, Revised Ed.) (Vide also Judgment, H.M. Court of Appeal, 10th May, 1948).

The Plaintiff has been informed by the Defendants that it is not their intention to surrender the property and he is therefore here seeking an order against them for the re-sale thereof according to law, subject to the obligation on his part of making the refund of any such  
30 sum as may be due to them in respect of lawful expenses incurred.

(Signed) G. M. CAMILLERI,  
Advocate.

,, C. VASSALLO,  
Legal Procurator.

Witnesses:—

The Plaintiff — to give evidence in substantiation.

The Defendants — so that a reference to their oath may be made.

Nicola Debono, Carmelo Cassar and Paolo Mifsud — to state in



evidence that the channel was constructed over thirty years ago and to give other evidence bearing on the case.

(Signed) G. M. CAMILLERI,  
Advocate.

„ C. VASSALLO,  
Legal Procurator.

No. 3.  
List of  
Exhibits.

### No. 3. List of Exhibits

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani nomine 10  
v.

Paolo and Emmanuele Pisani

List of Exhibits filed together with the Writ-of-Summons.

A. — Official copy of the Schedule of Pre-emption.

B. — Copy of the Deed constituting the Cassar Company Limited  
— referring to the capacity in which the Plaintiff is appearing in the  
case.

D. — Copy of the Report drawn up by Edward Vassallo  
A. & C.E.

E. — Plan annexed to “D” above. 20

(Signed) G. M. CAMILLERI,  
Advocate.

„ C. VASSALLO,  
Legal Procurator.

No. 4.  
Statement of  
Defence.

### No. 4. Statement of Defence

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani nomine  
v.

Paolo and Emmanuele Pisani 30

Defendants' Statement of Defence.

Respectfully sheweth:—

Plaintiff's claims are untenable: The water that collects in Plaintiff's property flows into the property bought by the Defendants following a natural water-course and not one created by the act of man.

Without prejudice to the foregoing, the channel mentioned by the Plaintiff reaches but one of the warehouses which it is sought to recover

from Defendants' possession, so that, at the most, it is only that particular warehouse that may be subject to recovery. On the other hand, if that channel gives rise to the exercise of the right of pre-emption, which it does not, then the title is resolute, in that the channel was made less than thirty years ago.

Without prejudice to other pleas.

(Signed) V. CARUANA,  
Advocate.

10

„ J. H. XUEREB,  
Advocate.

„ G. SCHEMBRI,  
Legal Procurator.

This 12th March, 1949

Filed by G. Schembri L.P. with one Exhibit. (\*)

(Signed) J. CAMILLERI CACOPARDO,  
Deputy Registrar.

## No. 5.

### Defendants' Declaration

No. 5.  
Defendants'  
Declaration.

In H.M. Civil Court, First Hall.

20

Antonio Cassar Torreggiani nomine  
v.  
Paolo and Emmanuele Pisani

Defendants' Declaration.

Respectfully sheweth:—

The property bought by the Defendants stands on a lower level than Plaintiff's field, so much so that the water collecting in that field flows into Defendants' property following the incline of the land and therefore in a natural way.

30 The channel by the side of Plaintiff's own property, collecting the rain-water falling on the roofs of the buildings now standing in one part of the field, as well as the overflow from the remaining part of that field, substitutes what was formerly a natural watercourse. That channel therefore cannot create rights exceeding those that existed previous to its construction, particularly when the channel lies in the property the owner of which seeks to exercise the right of pre-emption and when the owner of the adjoining property could not have become

(\*) *Vide* Report by Mr. G. R. Vincenti A. & C.E. — p. 21 (Exhibits).

No. 5.  
Defendants'  
Declaration.  
—continued.

aware of its existence — just as in fact no one had been aware of its existence up to the time the present dispute arose.

At all events, the channel was constructed within the last thirty years and may therefore be removed.

Finally, without prejudice to the foregoing, the channel in question only comes as far as one of the warehouses bought by the Defendants, and, therefore, it is only that one particular warehouse that may perhaps be subject to recovery.

The Defendants beg leave to submit an opinion which they obtained from Mr. G. R. Vincenti A. & C.E.

10

(Signed) VICTOR CARUANA,  
Advocate.  
„ J. H. XUEREB,  
Advocate.  
„ G. SCHEMBRI,  
Legal Procurator.

Witnesses: —

The Defendants — to give evidence in substantiation.

The Plaintiff — so that a reference to his oath may be made.

Plaintiff's witnesses and any other witnesses whom it may be necessary to call — to establish the date on which the channel was extended to reach up to the party wall between the one and the other property.

(Signed) VICTOR CARUANA,  
Advocate.  
„ J. H. XUEREB,  
Advocate.  
„ G. SCHEMBRI,  
Legal Procurator.

No. 6.  
Plaintiff's  
Minute.

**No. 6.**  
**Plaintiff's Minute**

30

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani nomine  
v.  
Paolo and Emmanuele Pisani

Plaintiff's Minute.

Respectfully sheweth:—

The rain-water catchment of the roofs of the St. George's Flour Mills has been flowing through channels made by the act of man, and

draining into the sea through other channels lying underneath Defendants' warehouses, ever since the year 1913.

As shown in "blue" in the plan filed at fol. 14, (\*) a channel lying in the yards of Defendants' warehouses, covered over by stone slabs, collects the water that flows down from Plaintiff's property through draining holes constructed in the party wall. Those draining holes are the act of man and were constructed more than thirty years ago.

(Signed) G. PACE,  
Advocate.

No. 6.  
Plaintiff's  
Minute.  
—continued.

10 The 18th March, 1949.

Filed at the Sitting by Dr. G. Pace without Exhibits.

(Signed) J. MICALLEF,  
D/Registrar.

---

**No. 7.**

**Decree ordering Enquiry in situ**

H.M. CIVIL COURT, FIRST HALL

The Honourable Mr. Justice T. Gouder LL.D.

Sitting held on Friday, the  
Fifth April, 1949.

No. 7.  
Decree order-  
ing Enquiry  
in situ.

20 No. 20

Writ-of-Summons No. 149/49

Antonio Cassar Torreggiani nomine  
v.

Paolo and Emmanuele Pisani

The Court,

Whereas it is necessary, for the better implementation of the case,  
that an enquiry be held *in situ*.

Orders that the enquiry be held this afternoon at 2.45 p.m.

Costs reserved.

30

(Signed) J. MICALLEF,  
D/Registrar.

---

(\*) *Vide* Exhibit "E" — p. 11.

**No. 8.**  
**Procés Verbal**

H.M. Civil Court, First Hall.

*In situ.*

5th April, 1949.

*Present:*

The Plaintiff, assisted by Counsel, Dr. G. Pace and Dr. G. M. Camilleri.

The Defendants, assisted by Counsel, Prof. V Caruana LL.D. and Prof. J. H. Xuereb LL.D.

10

The Court has heard the sworn evidence of the witness Paolo Mifsud.

The Court has taken note of the facts and circumstances as stated by the witness.

Defendants' property adjoins: (\*) G.F.E. along the extension marked G.F.E.H. and Plaintiff's property at E.H., which property forms part of the new warehouses.

The property on the side of Church Wharf, at and beyond A.D., is held by the Plaintiff on lease.

The old as well as the new draining holes in Plaintiff's warehouses are on the side of Plaintiff's field. 20

It is noted however that the roofs of the old warehouses are provided with water-spouts which are obviously intended to drain the water into the yard on the other side.

The Court notices a draining-hole, now being marked letter Z, at the place which was formerly a yard at the back of Defendants' warehouses; and another draining hole at the point now being marked Z (1).

It would appear that these holes drain the water into the channel along the line marked F (1), Z, Z (1), lying underneath Defendants' warehouses, which are now demolished. 30

The channel is wide open to view, saving that it is cluttered up with stone slabs from G to I in the yard of Defendants' property. A number of holes in the channel lead into Plaintiff's field.

(Signed) J. MICALLEF,  
D/Registrar.(\*) *Vide* Exhibit "E" — p. 11.

**No. 9.**  
**The Evidence of Paolo Mifsud**

No. 9.  
The Evidence  
of  
Paolo Mifsud.

*In situ.*

5th April, 1949.

Paolo Mifsud states on oath : —

I was one of the workmen employed in the construction of the new warehouses, extending from B to C in the plan filed at fol. 14 of the Record, which were built 23 or 24 years ago. Previously, the buildings covered the area between A and B. Before the construction  
 10 of the new buildings, this channel reached as far as B and bordered the buildings as far as D. I cannot say whether the channel turned again to reach as far as E, for when I started working on the site the foundations of the new warehouses had already been laid. When the warehouses were completed, we constructed an extension of the channel from B to C and, at right angles, from C to E. There I found an aperture in the wall between Plaintiff's property and the property of the Apap family — built up into warehouses. I communicated the channel with that aperture to give an outlet to the water collecting in the channel. We battened down the ground over the channel at B  
 20 to D. At the time I started working, I noticed that the rain-water falling on the roofs drained into the channel through a number of water spouts placed high along the wall at A to B. The water-spouts were in the same position then as now, but they were placed lower down — the roof having since that time been raised higher by about four courses. Other water-spouts were constructed in the wall B—C of the new warehouses. I am showing the Court the draining holes constructed almost at ground level along the whole length of the wall marked G.F.E. These draining holes are placed at intervals somewhat distant from each other. I show the Court three of the draining holes  
 30 and it may well be there are other draining holes at F which are concealed from view. I show the Court two other draining holes—possibly there are three in all — between E and F. I show the Court, at C, a hole that takes the water underneath the field C—F. This hole is connected with the communication made by me to allow the water in the channel marked A.B.C., before reaching E, to flow into the cistern nearby. The same communication permits the water to flow out if the cistern takes more than its holding capacity. I am unable to say whether that cistern collects water from anywhere else. I show the drain-pipes through which the water collecting on the roofs of the warehouses and of the adjoining buildings flows into the channel.

No. 9.  
The Evidence  
of  
Paolo Mifsud.  
—continued.

(The Court has inspected that part of the wall of the old building which, according to the witness, was raised higher at a later date; and noted that the wall was raised higher by seven courses, as shown by the newer stonework).

The length from B to C is 90 feet. The length from B to A is 114 feet.

I have had occasion to see for myself, here and there, various parts of the channel along the wall E, F, G, I. The channel goes through the yards at the back of Defendants' warehouses. I had occasion to notice also that the channel used to go through at E, H, D, in the yard 10 of the property which is held by the Plaintiffs but which is owned by other parties — the same yard into which the water of the roofs of the old warehouses is drained by means of the water-spouts seen by the Court.

(The Plaintiff, Chev. Antonio Cassar Torreggiani, informs the Court that the property belonged to the Apap family).

(Signed) J. MICALLEF,  
Deputy Registrar.

No. 10.  
The Evidence  
of Carmelo  
Cassar.

**No. 10.**  
**The Evidence of Carmelo Cassar**

20

In H.M. Civil Court, First Hall.

11th June, 1949.

Carmelo Cassar, produced by the Plaintiff, states on oath.—

I have been working for Mr. Antonio Cassar Torreggiani for the past 46 years. In 1914, we left Zebbug and went down to Marsa. A channel that collects the water falling on the roofs lies between Plaintiff's warehouses and the fields at the back of the warehouses, which fields are likewise Plaintiff's property. The water on the roofs is drained through water spouts into that channel. The channel is excavated in the rock by hand. It traverses the property, then turns sideways 30 and ends by the roadside. The channel goes through the yard of the warehouses which were formerly held by Mr. Bugeja. I have known of the existence of this channel for 34 years certain. Standing on the roof on occasion, I have seen the fields lying at the back of the warehouses and I never noticed any draining holes through which any water flowed out.

## CROSS EXAMINATION

No. 10.  
The Evidence  
of Carmelo  
Cassar.  
—continued.

The whole building of the Flour Mill was built by the Plaintiff, Mr. Antonio Cassar Torreggiani. First one warehouse was built and then two more at the back. The channel was there before the last two warehouses were built. At the time when those two warehouses were built, however, the channel was prolonged to go all round the building. I have no idea when the two warehouses were built, but it must have been about 27 years ago.

Read over to the witness.

10

(Signed) J. MICALLEF,  
D/Registrar.

---

No. 11.

**The Evidence of Nicola Debono**

No. 11.  
The Evidence  
of Nicola  
Debono.

In H.M. Civil Court, First Hall.

11th June, 1949.

Nicola Debono, produced by the Plaintiff, states on oath:—

I have been employed at Plaintiff's Flour Mill for 39 years. A yard lies between the Mill and the demolished buildings. The rain-water on Plaintiff's roofs flows into that yard through water spouts. These  
20 water spouts have been there ever since I can remember. We think the water falling into the yard finds its way into the channel lying alongside the whole length of the wall; and that thence the water flows into the sea through other channels that traverse the property and go as far as Church Wharf.

30

## CROSS EXAMINATION

So far as I know, the Plaintiff bought the whole building of the Flour Mill. I think the only building he bought separately is that at the back of the Church, detached from the Flour Mill and some distance away. The first warehouse by the side of the Mill — the rain-water catchment of the roofs of which flows into the yard — was there  
30 when the Plaintiff bought the property. It was built by the Plaintiff about 2 years after he bought the property — about 36 years ago. The other two warehouses were built by the Plaintiff about 25 years ago.

(Signed) NICOLA DEBONO.



No. 12.  
The Further  
Evidence  
of Carmelo  
Cassar.

**No. 12.**  
**The Further Evidence of Carmelo Cassar**

In H.M. Civil Court, First Hall.

11th June, 1949.

Carmelo Cassar, produced by the Plaintiff, states on oath:—

The water spouts on the roofs of the warehouses, through which the water runs into the yard between Plaintiff's property and the pre-empted warehouses, have been there for as long as I can remember. I have been in Plaintiff's employment for 46 years and I have been working at the Flour Mills at Marsa since 1914.

10

Read over to the witness.

(Signed) CARMELO CASSAR

„ J. MICALLEF,  
D/Registrar.

No. 13.  
Plaintiff's  
Evidence.

**No. 13.**  
**Plaintiff's Evidence**

In H.M. Civil Court, First Hall.

11th June, 1949.

The Plaintiff, Antonio Cassar Torregiani, states on oath:—

The St. George's Flour Mill was built in 1911. Two years later we built the first warehouse. Later, immediately after the end of the 1914-1918 war, we built the other two warehouses. The rain-water catchment of the roofs of the warehouses is drained, through water-spouts, into the yard that lies between the warehouses held by us on lease in the vicinity of Church Wharf. The water-spouts were placed in position at the time when the warehouses were built. The rain-water falling in the yard flows out through channels along the whole length of the wall of the warehouses and then finds its way into the sea through other channels that traverse the site and extend as far as Church Wharf. As a precaution against damp in the two warehouses which we built later, a ditch to collect the water from the adjoining field was excavated along the whole length of the wall of the two new warehouses.

20

30

The drain-pipe that lies in the channel by the old warehouse on the side of Plaintiff's property, through which flows the water collecting on the roofs of the rooms lying on the same level, was laid in position at the same time when the first warehouse was built in 1911.

I should explain that, in 1911, two small low-lying warehouses were built — those overlooking the shelter — and that the rain-water catchment of the roofs of those warehouses flows through drain-pipes into the ditch in my own property.

No. 13.  
Plaintiff's  
Evidence.  
—continued.

A high-ceilinged warehouse for the storage of corn was also built. Right from the start, the water falling on the roof of this warehouse was drained into the yard between my property and the pre-empted property through water spouts that can still be seen to this day

The ditch lies along the whole length of the wall. It was in fact  
10 completed when the other warehouses were built.

I cannot say exactly how and where the rain water collecting in the ditch used to find its way out. I am certain, however, I had no other conduits to carry that water.

When the other two warehouses were built after the 1914-1918 war, the ditch, as can still be seen today, was extended throughout the whole length of the wall of those warehouses.

#### CROSS EXAMINATION

The new warehouses built immediately after the end of the 1914-1918 war were erected on a site which I had bought a few years  
20 before — that is to say, on a site which I had acquired a few years before.

The two warehouses which I have described as “new warehouses” were built about 26 years ago. They were built quickly.

I doubt whether any part of those warehouses lies against the Apap warehouses.

The high-ceilinged warehouse for the storage of corn does not lie against the pre-empted property, but against other property (now belonging to me) which at the time the warehouse was built was the property of the same landlord who owns the pre-empted property.

30 The rain-water catchment of the high-ceilinged warehouse used to drain into the channel by the side of the pre-empted property.

The property adjoining the high-ceilinged warehouse, which I described as belonging to the one and the same owner, actually belonged to the several heirs of the original owner. It is now the property of the surviving children of George Degiorgio.

The several warehouses built on that property had the roofs in common, so much so that they had no separate access to the roof; there was one common access to one common roof.

Latterly, before they were destroyed, the warehouses used to be  
40 leased separately; there were tenants who held two of them on lease at the same time.

No. 13.  
Plaintiff's  
Evidence.  
--continued.

At the time I excavated the ditch in my property, I held the lease of four warehouses on the side of Church Wharf, which were separated from my own property by the yard I mentioned before. (Those warehouses do not form part of the pre-empted property).

I also held the lease of two other warehouses in the same block which were the property of John Apap.

The other four warehouses are still held by me on lease.

I relinquished the lease of the other two warehouses that belonged to John Apap. I had no further need of those two warehouses.

I was on very friendly terms both with John Apap and George 10  
Degiorgio.

I am unable to say — in fact, I cannot remember — whether I sought the consent of George Degiorgio before providing the warehouse roofs with water-spouts to drain the water catchment into the yard. I am certain, however, that if I had asked him, he would have agreed. I may have asked him — sometimes I think I did — but I am not quite certain.

It is not very long ago that I relinquished the lease of the two warehouses belonging to John Apap — I did so a little before the out-  
break of the last war. 20

The low-lying warehouses, the rain-water catchment of which flows through drain-pipes into the ditch, do not abut on the property of John Apap.

The warehouses were communicated with each other, including the four warehouses which I still hold on lease and all those which have been destroyed and in respect of which I have exercised the right of pre-emption; the communicating doors, though walled up, could still be seen.

I first took on lease four warehouses from George Degiorgio. The four warehouses were communicated with each other, but there was no  
communication between those four warehouses and the other two 30  
warehouses which I later took over on lease from John Apap

The communicating doors were walled up at the time I took over those two warehouses; and I opened the communicating doors again.

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**No. 14.**  
**The Further Evidence of Paolo Mifsud**

No. 14.  
The Further  
Evidence of  
Paolo Mifsud.

In H.M. Civil Court, First Hall.

11th June, 1949.

Paolo Mifsud, produced by the Plaintiff, states on oath:—

I have known the Flour Mill and the fields at the back for 23 years. On and off, I work for the Plaintiff for fairly long periods at a time. I first worked at the Mill as a miner and I have also worked there as a mason.



10

**No. 15.**  
**Decree appointing Technical Referee**

No. 15.  
Decree  
appointing  
Technical  
Referee.

H.M. CIVIL COURT, FIRST HALL

Judge:

The Honourable Mr. Justice T. Gouder LL.D.

No. 9

Writ-of-Summons No. 149/49

Sitting held on Saturday, the  
Eleventh June, 1949.

Antonio Cassar Torreggiani *nomine*

20

v.

Paolo and Emmanuele Pisani

The Court,

Whereas it is necessary to appoint a Technical Referee with instructions to enquire and report to the Court whether the rain-water catchment of the warehouses mentioned in the depositions given this day flows into the channel lying alongside the whole length of the warehouses, and, thence, through other channels that join up with the first channel, drains into the sea at Church Wharf. —

Appoints for the purpose, provisionally at Defendants' expense,  
30 Mr. Joseph Degaetani A. & C E., extending to him all the powers usually granted to Technical Referees, including the power to hear witnesses and to administer the oath to such witnesses according to law.

The Referee shall hold the first Sitting, the parties or their Counsel attending, on the 23rd June, 1949 at 3 p.m., and shall continue to hold further Sittings — on the day and at the time and place fixed at the previous Sitting — until he files his Report not later than the 30th June, 1949.

The case stands adjourned to that date.  
Costs reserved.

(Signed) J. MICALLEF,  
D/Registrar.

No. 16.  
Procés  
Verbal.

**No. 16.**  
**Procés Verbal**

Writ-of-Summons No. 149/49.

Antonio Cassar Torreggiani nomine  
v.

Paolo and Emmanuele Pisani 10  
14th November, 1949.

*In situ.*

Survey carried out at the area occupied by warehouses Nos. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38, Church Wharf, Marsa.

Present:—

Counsel for the Plaintiff, Dr. G. Pace and Dr. G. M. Camilleri.

The Defendant, assisted by Counsel, Prof. J. H. Xuereb LL.D.

The undersigned has carried out a survey of the field belonging to the Plaintiff to the rear of the above warehouses, with special reference to the draining system of the water-catchment of the roofs of 20 Plaintiff's property; and has also surveyed the water channels along those warehouses.

The parties have authorized the undersigned to carry out all such works as may be necessary in connection with the discharge of his task.

(Signed) M. BORG COSTANZI A. & C.E.

No. 17.  
Referee's  
Report.

**No. 17.**  
**Referee's Report**

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani nomine 30  
v.

Paolo and Emmanuele Pisani

The Report of the undersigned Technical Referee.

Respectfully sheweth:—

The Plaintiff, in the writ-of-summons, prayed that an Order be

made against the Defendants, directing them to re-sell to him, within a short and peremptory period of time, the property therein mentioned, in respect of which, by reason of neighbourhood and any other lawful title whatsoever, he exercised the right of recovery by virtue of the schedule of pre-emption and respective deposit filed at fol 5 of the Record — subject to the proviso that, in default within that specified time, the re-sale of the property shall be deemed effected in pursuance of the Court's judgment.

10 The property in question is that situate at Church Wharf, Marsa, Nos. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38. One of the tenements, that at No. 32, is subject to a perpetual burthen of £12 per annum for the celebration of Holy Mass.

20 After holding an enquiry *in situ*, and hearing certain witnesses, this Honourable Court, by Decree given on the 11th June, 1949, appointed a Technical Referee, Mr. Joseph Degeatani, Architect and Civil Engineer, with instructions to enquire and report to the Court whether the rain-water catchment of the warehouses that falls into the yard mentioned in the depositions given on the 11th June, 1949 flows into the channel lying alongside the whole length of the warehouses, and, thence, through other channels that join up with the first channel, drains into the sea at Church Wharf.

The Court, by Decree given on the 4th October, 1949 (fol 51), appointed the undersigned *vice* Mr. Degeatani and entrusted to him the same duties specified in the Decree dated 11th June, 1949.

30 Defendants' pleas, filed at fol. 16, are two in number; — the first plea is to the effect that the water that collected in Plaintiff's property flows into their property following a natural water-course and not as the result of 'the act of man;' and the second plea, set up without prejudice to the former, is to the effect that the water channel mentioned by the Plaintiff reaches *recte* passes through but one of the warehouses which it is sought to recover from their possession, so that, at the most, it is only that particular warehouse that may be subject to recovery — adding however that if that channel gives rise to the exercise of the right of pre-emption, the title is resolute in that the channel was made less than thirty years ago.

40 In the discharge of the task entrusted to him, the undersigned inspected and surveyed the property on several occasions. He also held an enquiry *in situ* together with Plaintiff's Counsel, Dr. Pace and Dr. Camilleri, and together with the Defendant and Defendant's Counsel, Professor Dr. Xuereb, at which, in agreement with the parties, he employed workmen to take up and unsurface where necessary the ground in the pre-empted property as well as the

ground in the yard of the warehouses lying to the north of that property.

Having so carried out the necessary investigations, the undersigned is now in a position to report as follows:—

In the first place, the undersigned would submit most respectfully that his terms of reference include a purely legal question which he feels he should not go into, namely, that arising out of the plea set up by the Defendants to the effect that the water reaches but one of the warehouses in question, and that, therefore, it is only that warehouse that may be subject to recovery. That question, in the humble opinion 10  
 of the undersigned, is a purely legal question which goes beyond the task with which he has been entrusted.

The two questions left to the enquiry of the undersigned, therefore, are the following, namely:—

1) Whether the rain-water catchment of the roofs of Plaintiff's warehouse does in fact fall into the yard, i.e. from the roofs of the warehouses standing in Plaintiff's property into the yard of the other warehouses adjoining, on one side, that property, and, on the other side, the property of which it is sought to recover possession.

2) Whether the rain-water catchment of the roof of Plaintiff's 20  
 warehouses does in fact flow into the channel lying alongside the wall of those warehouses, and, thence, through other channels that join up with the first channel, drains into the sea at Church Wharf.

In the first place, it is to be pointed out that Plaintiff's property did not at the outset cover the large area it occupies at present. It has in fact been stated in the evidence given before this Court that, at first, in the year 1913, only a single warehouse was built — that adjoining the yards of the warehouses lying to the north of the pre-empted property. The rain-water catchment of the roofs of that first warehouse to be built was, by means of spouts, or pieces of drain-pipe, made to fall into the 30  
 yard of the warehouses lying to the north. As the undersigned was able to ascertain when, on his instructions, the ground was un-surfaced, a channel goes through that yard and into the yard of the warehouses it is sought to recover, then joins a principal channel which, in turn, meets a central channel that reaches the sea after crossing Church Wharf.

It is further to be pointed out that, as was ascertained by the Court at the enquiry held *in situ* (fol. 27), the roof of the old warehouse, that built towards 1913, is provided with draining-holes which are obviously intended to drain the rain-water falling on that roof into 40  
 the yard mentioned in the preceding paragraph; and, at the same time, it was also ascertained by the Court that, in the yard of the pre-empted

warehouses, the wall standing between Plaintiff's property and the pre-empted warehouses in question is provided with draining-holes which lead to the channel alongside the whole length of the same wall on the side of the pre-empted property.

No. 17.  
Referee's  
Report.  
---continued.

The workmen engaged made various openings in the party wall between the pre-empted property and Plaintiff's property and it was possible clearly to establish that one part of that wall is a regular wall belonging to the new warehouses built by the Plaintiff about 27 years ago — marked by the Court by the letters E H D in the plan filed at fol. 14 — and the other part — marked letters E E F G H — a regular two foot wall which, most probably, was built by the owner of the pre-empted warehouses when he built those warehouses.

Plaintiff's field, to the west, lies on a level which is higher than that of the pre-empted warehouses and yard, which are on the same level with Church Wharf. It is most likely that, before the pre-empted warehouses were built, a rubble wall stood in the place of the present two-foot wall. So far as the evidence goes, that rubble wall does not appear to have been provided with draining-holes to allow the water collecting in Plaintiff's field to drain into the property lying at a lower level. It is therefore to be understood that, at that time, the water flowed into the low-lying property in a natural way, that is to say, in accordance with the principle, recognized by law, that the water of the overlying property has the right to flow naturally into the underlying property.

However, as the wall itself shows, when the owner of the warehouses at Church Wharf came to build the wall in the yards of those warehouses, he found himself under the necessity of collecting, in a channel alongside that wall, the water that flowed down from Plaintiff's field into the yard of the warehouses, which he wanted to build facing Church Wharf; and it is therefore to be presumed that he himself constructed, not only that water-channel, but also the various draining-holes at ground-level with Plaintiff's field, each of which is about one foot square and made according to technical principles, no doubt by the same workmen who constructed the wall for the owner of the warehouses at Church Wharf — which draining-holes, still to be seen today, lead to a conduit left in the thickness of the two-foot wall and descending vertically to join the water-channel in the warehouses, marked in blue on the plan at fol. 14.

These draining-holes are 'the act of man' and, therefore, the easement is other than an easement 'created by law' in terms of section 440 (1) of the Civil Code. Whereas the owner who built the wall himself constructed, at one and the same time, the draining-holes and water-



conduits in question, the Defendants cannot claim that the water from Plaintiff's field is coursing and flowing naturally: That water, in fact, goes first through the draining-holes, then through the channel marked in blue, constructed by the owner who built the pre-empted warehouses, and then, finally, through another channel likewise constructed for the purpose and draining into the sea.

The evidence taken, and, more especially, the evidence of Paolo Mifsud (fol. 28), has established that, at the time when the Plaintiff built the last warehouse to be built, an aperture or outlet existed in the two-foot wall at the back of the pre-empted warehouses, which were then the property of the Apap family. The witness Paolo Mifsud stated that he himself had joined — communicated — the channel in Plaintiff's warehouses with the aperture or outlet above-mentioned. The fact goes to show that the Apap warehouses and the two-foot wall together with the various draining-holes and conduits had been constructed a long time before, and, presumably, more than 30 years before the exercise of the right of pre-emption at issue: Saving proof to the contrary on Defendants' part. 10

In conclusion, the undersigned, answering the queries put to him, has the honour to submit as follows:—

1) The water collecting on the roof of the old warehouse, that constructed towards the year 1913, goes through spouts or pieces of drain-pipe and falls into the yard of the warehouse lying to the north of the pre-empted property and, thence, flows through the channel that is to be found in the yard of that property. 20

1) The water collecting on the roofs of the new warehouses, those built 26 or 27 years ago, flows through a channel which the Plaintiff constructed alongside the wall of the warehouses and which adjoins his own field: the water then flows down through a draining-hole in the two-foot party wall which, presumably, was built by the predecessor of the Defendants, and then continues on its way through the channel marked in blue on the plan filed at fol. 14. Apart from that, there are various draining-holes in the two-foot wall, which were regularly constructed at the time of Defendants' predecessor, and which, together with the conduits let into the thickness of the wall, amount to an "act of man" in the true sense of the word: These draining-holes drain the water from Plaintiff's field, which is contiguous to the pre-empted property, and are spaced at intervals throughout the length of the wall insofar as the pre-empted property abuts on Plaintiff's field. The water flows through the draining-holes into the channel marked in blue on the plan, lying close to the wall on the side of the pre-empted property, and thence into the sea through the central channel lying un- 30 40

derneath one of the warehouses — as shown in the plan at fol. 14.

3) Plaintiff's property is contiguous to the pre-empted property, that is to say, the warehouse is contiguous to the property marked "M.N." on the plan, and Plaintiff's field, lying to the north of Plaintiff's warehouses, is contiguous to all the pre-empted warehouses, bar those marked "M.N." as above.

(Signed) M. BORG COSTANZI A. & C.E.

This 12th December, 1950.

Filed by Mr. Borg Costanzi A. & C.E. without Exhibits.

10

(Signed) J. DEBONO,  
D/Registrar.

Sworn to by Mr. Borg Costanzi A. & C.E. in my presence, the 14th December, 1950.

(Signed) J. DEBONO,  
D/Registrar.

No. 17.  
Referee's  
Report.  
—continued.

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### No. 18.

### Decree ordering Enquiry in situ

H.M. CIVIL COURT, FIRST HALL

Judge:

20 The Honourable Mr. Justice J. Caruana Colombo B.Litt., LL.D.

Sitting held on  
10th February, 1951.

Writ-of-Summons No. 149/49.

Antonio Cassar Torreggiani nomine  
v.  
Paolo and Emmanuele Pisani

The Court,

On the Application of the contending parties for an enquiry to be held *in situ*. —

30 Allows the Application and orders that the enquiry be held on the 17th February, 1951, at 3.30 p.m., provisionally at the joint expense of the contending parties.

The parties and Mr. Borg Costanzi A. & C.E. shall attend.  
Costs reserved.

(Signed) J. DEBONO,  
Deputy Registrar.

No. 18.  
Decree  
ordering  
Enquiry  
in situ.

No. 19.  
Procés  
Verbal.

**No. 19.**  
**Procés Verbal**

H.M. Civil Court, First Hall.

17th February, 1951.

*In situ.*

*Present:*

The Plaintiff, assisted by Counsel, Dr. G. Pace.

The Defendants, assisted by Counsel, Prof. V Caruana LL.D. and Prof. J. H. Xuereb LL.D.

(Mr. Borg Costanzi A. & C.E., absent)

10

The Court, as at present presided over, has taken note of all the facts and circumstances relevant to the case, as recorded in the procès verbal dated 5th April, 1949.

The parties are agreed that, before the Plaintiff built the new warehouse, the "double" wall extending along the whole length of the field, separating the field and the warehouses, was provided with draining holes.

Some of the warehouses are the property of the Degiorgio family and are held by the Plaintiff on lease. The others are the warehouses in respect of which the right of pre-emption has been exercised.

20

(Signed) J. DEBONO,  
D/Registrar.

No. 20.  
Plaintiff's  
Minute.

**No. 20.**  
**Plaintiff's Minute**

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani nomine  
v.

Paolo and Emmanuele Pisani.

Plaintiff's Minute.

The Plaintiff hereby produces the following documents:—

30

1) Copy of Deed dated 18th January, 1911, whereby the Plaintiff bought the field "ta' Xatt il-Qwabar" — that is to say, showing that 4/5ths of the property were bought over forty years ago (Exhibit "A").

2) Copy of Deed dated 22nd July, 1911, whereby the Plaintiff bought the remaining 1/5th of the property (Exhibit "B").

3) Copy of Deed dated 17th April, 1922, effecting the conveyance of the property to Cassar Company Limited (Exhibit "C").

(Signed) G. PACE,  
Advocate.

No. 20.  
Plaintiff's  
Minute.  
—continued.

This 22nd February, 1951.

Filed at the Sitting by Dr. G. Pace with three Exhibits.

(Signed) S. BUGEJA,  
D/Registrar.

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**No. 21.**

**Defendants' Minute**

No. 21.  
Defendants'  
Minute.

10

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani nomine  
v.

Paolo and Emmanuele Pisani \_\_\_\_\_

Defendants' Minute.

Whereby the Defendants produce the annexed Note of Submission, together with an official copy of the Protest "Emmanuele and Paolo Pisani v. Antonio Cassar Torreggiani nomine" and copy of the contract enrolled in the Records of Notary Edoardo Calleja Schembri on the 4th June, 1932.

(Signed) V CARUANA,  
Advocate.

„ J. H. XUEREB.,  
Advocate.

The 29th May, 1951.

Filed by Prof. V. Caruana LL.D. and Prof. J. H. Xuereb LL.D.  
at the Sitting.

(Signed) J. DEBONO,  
D/Registrar.

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**No. 22.**  
**Defendants' Note of Submissions.**

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani nomine  
v.

Paolo and Emmanuele Pisani

Defendants' Note of Submissions.

Respectfully sheweth:—

1. On the merits, the question is whether the Plaintiff is entitled, by reason of neighbourhood, to exercise the right of pre-emption in respect of the property bought by the Defendants at Church Wharf, Marsa. 10

2. In the hearing of the case, the Plaintiff gave three reasons in support of the claim that he is entitled to the exercise of the right of pre-emption, namely: (a) the water catchment of the roofs of his own property that falls into the yard adjoining the pre-empted property; — (b) the water catchment of the roofs of his own property that collects in the channel which leads to the other channel lying partly in Plaintiff's field and partly in the pre-empted property; and (c) the water that flows into that channel through draining holes constructed in the party wall between the pre-empted property and Plaintiff's field. 20

It is however to be observed that, at the start, it was only the second reason that was mentioned by the Plaintiff in support of his claim, that is to say, the channel that comes out in the grounds of the warehouse at No. 28. This is clearly established by the Declaration accompanying the Writ-of-Summons as well as by the Report and the plan prepared in Plaintiff's own interests by Mr. E. Vassallo A. & C.E. (\*)

Subsequently, in the Minute filed on the 18th March, 1949, the Plaintiff put forward the third reason. As for reason number one, this was mentioned by the Plaintiff only in the oral proceedings. 30

3. It is also to be noted that, according to the instructions imparted to him, duly recapitulated in the Report filed in pursuance of those instructions, the Civil Engineer appointed by the Court had to take cognisance only of the first two reasons; in actual fact, however, he carried his enquiries further and dealt with the third reason.

4. The Defendants mention these facts mainly to show that the Plaintiff had not at first attached importance to all the reasons which he is now pressing forward and that he succeeded also in leading astray the

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(\*) *Vide* Exhibit "D" — p. 9.

Technical Referee appointed by the Court. At the same time, however, the Defendants are not regretful of the fact, since they are thus afforded an opportunity of studying various aspects of the matter.

No. 22.  
Defendants'  
Note of  
Submissions.  
—continued.

The questions so raised are dealt with hereunder :—

(a) The water catchment of the roofs of Plaintiff's property that falls into the yard adjoining the pre-empted property.

5. If at all, given the proper circumstances, it is only in respect of the warehouse immediately adjoining the yard that the right of pre-emption may be exercised in terms of section 1527 (i) of the Civil Code, for the warehouses in question must be considered separate property — as they are in actual fact. Actually, however, not even that particular warehouse is subject to the right of pre-emption: the warehouse is held by the Plaintiff on lease — in other words, it is not his property — and the contiguity required by law therefore fails. Further, even the easement as to eavesdrop to which the Plaintiff may be entitled in respect of a yard belonging to third parties — apart from the fact that it is contrary to the express provision of the law (section 482 *ibid*) — must be deemed non-existent: The Plaintiff, as the tenant, has suffered the easement to be exercised over the tenement and, therefore, that easement does not prejudice the owner of the tenement (section 502 *ibid*). The Plaintiff is still the tenant of the yard to this very day. And therefore Plaintiff's claim cannot be allowed on the ground of alleged neighbourhood, which does not exist in actual fact.

(b) The water catchment of the roofs of Plaintiff's property that collects in the channel which leads to the other channel lying partly in Plaintiff's property and partly in the pre-empted property.

As submitted in the Statement of Defence, the exercise of the right of pre-emption in respect of this particular tenement is subject to the restriction whereof in section 1527 (i) quoted above. Here too, however, Plaintiff's claim has no validity at law, for it has been established (a fact which the Judicial Referee has mentioned in his Report) that the channel in question, constructed against the provisions of section 482 and 440 (3) of the Civil Code, was constructed less than 30 years before the Protest entered on the 28th February, 1950 (Exhibit "A") and may therefore be removed — and the Defendants have every intention of taking the necessary steps for its removal if no other arrangement can be arrived at with the Plaintiff. — The foregoing is submitted without prejudice to the question as to whether, in the case where the easement is non-apparent, a similar right could have been acquired even if the period of 30 years had already elapsed.

(c) The water that flows into that channel through draining holes constructed in the party wall between the pre-empted property and Plaintiff's field.

7. The Judicial Referee has come to the conclusion that the easement is one created by the act of man, in that the water flows through holes made by the act of man in the party wall — notwithstanding that he expressed the opinion that, before the party wall was constructed, the water from Plaintiff's field flowed into the property of Defendants' predecessor-in-title in a natural way, i.e. by gravitation.

8. Naturally, it is not claimed that the party wall, complete with draining holes and all, is not the act of man. Nevertheless, it is maintained that the flow of water still follows its natural course and that it does not therefore constitute an easement created by the act of man, such as to give rise to the right of pre-emption (section 1512 (2) Civil Code). In fact, according to section 440 (1) *ibid*, tenements at a lower level are subject in regard to tenements at a higher level to receive such waters as flow naturally therefrom without the agency of man, whilst section 440 (2) lays down that it shall not be lawful for the owner of the lower tenement to do anything which may *prevent* such flow. The natural and logical conclusion to be drawn therefore is that the owner of the lower tenement is entitled to do whatever may be necessary not to impede or arrest such flow or fall, as did Defendants' predecessor when he constructed the party wall which, saving proof to the contrary, is to be deemed the property of the Defendants' in that it separates tenements of a different nature. 10

9. The foregoing is no more than the typical application of the aphorism "quod mihi prodest et tibi non nocet non est impediendum;" and the rational view is that the works done cannot alter the original relationship between the parties as long as the impediment, though in a different way, remains or may remain — as it would remain in the present case if it were to be held that the building of the party wall altered the nature of the easement in respect of the flow of water and that the owner of the lower tenement was subjecting his property to the exercise of a right of pre-emption that did not previously exist. 30

10. Apart from the fact that the institute of pre-emption demands restrictive interpretation, hindering as it does the free disposal of property — the general rule — it must be stated that an easement in respect of a flow of water may be termed an easement created by the act of man when it has contributed towards making the water *reach* the servient tenement, and therefore it is beside the point that the owner of the servient tenement may have done something or other in order that the water that *falls* or *flows* naturally into his property may be re- 40

ceived with the least detriment to himself — as in the case at issue: In fact, in these cases, the water continues to fall or flow naturally. The fact was emphasised in re “Levy Grech v. Grech” (H.M. Court of Appeal, 10th May, 1948 — quoted by the Plaintiff in the Declaration) where it was held that a flow of water existed as the result of an act of man by reason of the fact that the water in question *reached* from one tenement to the other through galleries (for the most part excavated by hand) and fissures (which had been connected with each other), apart from the fact that there was a natural slope or gradient due to the different level of the two tenements. (*Vide* para. 7 of the Report filed by Mr. Godwin Galizia A. & C.E., fol. 55 of the Record; and para. 13 of the Record filed by Mr. Pitré, A. & C.E., fol. 83 *ibid*).

11. In conclusion, the Defendants would submit that no reference to the easement mentioned in the Writ-of-summons is made in the Sale Contract produced by the Plaintiff (fol. 76 et seq.), or, in fact, in the other Sale Contract hereto annexed (Exhibit “B”), which perhaps the Plaintiff omitted to produce because it might have proved prejudicial to him in connection with the date of the construction or rather extension of his warehouses — which were not built leaning against the party wall in question, but exactly next to it, presumably to avoid payment of the respective charges: a further proof, this, that the wall is the sole property of the Defendants (cfr. para: 8 *supra*).

(Signed) V CARUANA,  
Advocate.  
„ J. H. XUEREB.,  
Advocate.

### No. 23. Plaintiff's Minute

No. 23.  
Plaintiff's  
Minute.

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani nomine  
v  
Paolo and Emanuele Pisani

Plaintiff's Minute.

The Plaintiff hereby produces the annexed Note of Submissions.

(Signed) G. PACE,  
Advocate.

This 29th May, 1951.

Filed at the Sitting by Dr. G. Pace with a Note of Submissions.

(Signed) J. DEBONO,  
D/Registrar.



No. 24.  
Plaintiff's Note of Submissions

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani

v.

Paolo and Emmanuele Pisani

Plaintiff's Note of Submissions.

Respectfully sheweth:

1. In their Note of Submissions, the Defendants claim that the party wall between the one and the other property, of "double" width, 10 was built by their predecessor with regular ashlar masonry *over fifty years ago*, and that the draining holes in question were made "with the agency of man." (section 440 (1) Civil Code). Those holes, however, were constructed by him *in his own* property.

2. The rubble wall that stood in the stead of the present party wall served Plaintiff's property, lying on a higher level, as a "support wall;" and, according to law (section 445 (c), a party wall built of loose stones, no higher than five feet from the ground, is the *common property* of the two owners (section 446 (1)).

3. Whereas Defendants' predecessor wanted to raise the common 20 wall higher than it was, and to build it of stronger material, he had the rubble wall pulled down and constructed in its stead the present wall at his own expense (section 452).

4. The upshot was that what was formerly a natural flow of water came to find its way into Defendants' property "with the agency fo man," i.e. through the various draining holes, each about two feet high and one foot wide, constructed in the new wall (section 440 (1)). In their Note of Submissions, the Defendants admit that the draining holes in question were made "with the agency of man," but they main- 30 tain nevertheless that the easement in respect of the natural flow has not been altered thereby.

5. It was established at the last inquest held by this Court that the draining holes are to be found not only in that part of the wall leaning against the demolished warehouses, but also in that part of it abutting on Plaintiff's Flour Mill, which stands as a separate building, or, to put it differently, which does not lean against the party wall. As stated, draining holes still exist in this part of the wall, some of them wide open and some temporarily choked up. The closed up draining holes were closed up less than thirty years ago, so that the Defendants have not yet acquired, by reason of prescription, the right to keep them

so closed up. These draining holes give on each and every warehouse wherever they are to be found in the party wall, and not, as the Defendants claim, on one single warehouse.

No. 24.  
Plaintiff's  
Note of  
Submissions.  
—continued.

6. The fact that, on his side of the property, and about three feet inside the party wall, the predecessor of the Defendants constructed a channel to drain the water coming out of these various holes, cannot be construed to mean that the easement exists only in respect of the warehouse wherein lies the main channel that takes the water seaward. The easement as to the artificial flow of water exists in respect of all the tenements of the Defendants that lie next to the draining holes where-  
10 from — “with the agency of man” — the storm water in Plaintiff's property is discharged.

7. The foregoing goes to establish the fact that the draining holes in question were made at the time when Defendants' predecessor rebuilt the party wall, and, to serve his own ends and purposes, raised it higher (presumably with the consent of Plaintiff's predecessor, and certainly with his acquiescence); and that therefore the draining holes have been in existence for more than the period of thirty years required by law for the provisions of section 494, 499 and 500 of the Civil Code to become operative.

20 8. The easement thus created is a *continuous* and *apparent* easement in terms of section 492 (2) and (4). Now, according to law (section 494 (b), continuous and apparent easements may be created by prescription, which is acquired by virtue of possession for a period of not less than thirty years, and, for the purposes of prescription, possession commenced with effect from the day on which the owner of the servient tenement constructed the draining holes and the owner of the dominant tenement entered into the enjoyment of the easement thus created (section 500).

30 9. The contiguity of the dominant and servient tenements is therefore established by the fact that the spouts made by the act of man are to be found in all the tenements.

40 10. If, at the present day, after the artificial flow has been in existence for more than thirty years, the Plaintiff were to seek to re-establish the natural flow — that is to say, if he were to insist that the water catchment in his property (which lies on a higher level) should be allowed to find its way down along the whole length of the field — it is certain the Defendants would resist the attempt. They would do so exactly because what was once a natural flow down the whole length of the field had with the agency of man been canalised in such a way as to  
make the water find its way out through determinate draining holes. For the very same reason, the Plaintiff, by virtue of prescription, as

now completed, is entitled to claim that the water be left to flow through those draining holes, and in no other way. It is therefore to be concluded that the easement is now an artificial easement and no longer an easement in respect of a natural flow of water — as it had been once upon a time.

11. According to law, the owner of the higher tenement may not do anything to render the easement more burdensome, and the owner of the lower tenement may not do anything to lessen the enjoyment of the higher tenement. Nevertheless, section 440 (1) (2) and (3) should be read in conjunction with each other. The Plaintiff is not claiming that, by reason of the draining holes, Defendants' predecessor had diminished the exercise of the easement, but he does maintain that, once Defendants' predecessor had constructed the draining holes in question, he, the Plaintiff, has now the right to claim that the water should be left to flow through those draining holes: And there you have what is required for converting a natural easement into an easement "created by the act of man." 10

12. Gianzana (*Digesto Italiano — Acque Private*, No. 1904, p. 128, col. 2) states: "In speaking of 'the agency of man', the legislator has in mind the work or construction whereby the water in the higher tenement is discharged into the lower." It is not just any kind of work that goes to alter the character of an easement created by law; it is necessary that the work is such as to curb or deviate the natural flow — as in the case at issue, where the water has been canalised into the channel made "by the act of man." 20

13. The precise rules governing the issue in the present case are set out in re "Levy Grech v. Grech" (Appeal, 10th May, 1948), quoted by the Plaintiff and again by the Defendants in their Note of Submissions. In that case, the tenements of the contending parties were at different level, that is, one tenement was on a higher level than the other, and the rain-water catchment of the higher tenement flowed into the lower through a man-made channel or gallery; and it was held that the channel or gallery had been constructed over thirty years before the case was brought on and that therefore the easement had been acquired by prescription — and that, in view of the nature of that easement, no title was required. 30

14. Further, the stone conduits or draining holes, made by Defendants' predecessor, represent the work or construction by reason of which the easement in question is a continuous and apparent easement. In fact, according to law (section 492 (2) (4) and section 494), that easement, continuous and apparent by reason of the fact that the water 40

flows through those man-made conduits or draining holes, was subject to acquirement and was in fact acquired by prescription.

No. 24.  
Plaintiff's  
Note of  
Submissions,  
—continued.

15. Apart from the easement of the draining holes, however, there is also the easement of eavesdrop, that is to say, of the rain-water that falls on the roofs of Plaintiff's property and thence flows into the channel in the yards of Defendants' property. It is not a fact that that eavesdrop was brought about by the Plaintiff otherwise than according to law, as the Defendants would maintain. The eavesdrop in question has been in existence since the year 1913, when the Plaintiff  
10 first bought the flour mill, the roofs of which, as established at the inquests held in situ, were so constructed as to allow the water they collected to flow through drain-pipes into the channel in the yards of Defendants' property. That water used to flow through a channel "made completely by hand" on the side of Defendants' property, and therefore the easement in respect thereof, that has been exercised since 1913, and even before, is an easement which is expressly included among the easements "created by the act of man" (section 492 (2) and is termed a *continuous* easement. And, obviously, by reason of the drain-pipes through which the water flows, it is also an *apparent* ease-  
20 ment.

16. That apart, there was also the man-made channel on the side of Plaintiff's field that originally collected the rain-water catchment of the roofs of the old part of the building and thence conducted it to another channel that used to run all round the buildings — the water then finding its way out through many similar draining holes in the wall which had been in existence since 1900. The Defendants claim they have the right to restrain the Plaintiff from draining the water in that manner, notwithstanding that he has not thereby rendered the easement any the more burdensome. If the Defendants feel that that  
30 argument may prevail because of the fact that the period of 30 years has not yet run its course, and that they are entitled to resist the acquirement by prescription of an easement in respect of the channel in question, then the Plaintiff is equally well entitled to adopt the same argument as against the Defendants in order to show that once all the draining holes in the party wall have been in existence for more than thirty years, and once the easement has always been exercised by means of those draining holes, he too has the right to the enjoyment thereof "by prescription"

The claim therefore rests on good and lawful grounds.

40

(Signed) G. PACE,  
Advocate.

No. 25.  
Judgment,  
H.M. Civil  
Court,  
First Hall.

**No. 25.**

**Judgment, H.M. Civil Court, First Hall**

HIS MAJESTY'S CIVIL COURT

First Hall

Judge:

The Honourable Mr. Justice J. Caruana Colombo B.Litt., LL.D.

No. 11

Writ-of-Summons No. 149/1949

Sitting held on Wednesday,  
the Thirty-first October, 1951.

Antonio Cassar Torreggiani, Mer- 10  
chant, in his capacity as Managing  
Director, Cassar Company Ltd. (B).

v.

Paolo and Emmanuele Pisani

The Court,

Upon seeing the Writ-of-Summons, whereby the Plaintiff, in his aforesaid capacity, premising: That by schedule of pre-emption and respective deposit dated 26th June, 1948 (Exhibit A), the Plaintiff, in that capacity, exercised the right to recover from Defendants' possession, by reason of neighbourhood and any other lawful title whatsoever, the block of buildings at Church Wharf, Marsa, numbers 25 to 38 20 inclusive, with all the titles and appurtenances thereof, that at No. 32 being subject to an annual perpetual burthen for the celebration of Holy Mass — which property was sold to the Defendants, at the price of £15,200, by virtue of deed enrolled in the Records of Notary Victor Bissazza on the 26th June, 1947; — and that the Defendants have failed to effect the re-sale of the property or to state what other lawful expenses should be deposited to their credit; — prayed that said Defendants be condemned to re-sell the property to him, in his aforesaid capacity, by reason of neighbourhood and any other lawful title whatsoever, within such short and peremptory period of time as shall be 30 established by the Court — and this subject to the proviso that, in default within that specified time, the re-sale of the property shall be deemed so effected in pursuance of the judgment of the Court — With Costs.

Upon seeing Plaintiff's Declaration.

Upon seeing the Exhibits produced together with the Writ-of-Summons.

Upon seeing Defendants' Statement of Defence, pleading that Plaintiff's claims are untenable: the water that collects in Plaintiff's property flows into the property purchased by them following a natural 40

water-course and not one created by the act of man. Without prejudice to the foregoing, the water channel mentioned by the Plaintiff reaches but one of the warehouses which it is sought to recover from their possession, so that, at the most, it is only that particular warehouse that may be subject to recovery. On the other hand, if that channel gives rise to the exercise of the right of pre-emption, which it does not, the title is resolute in that the channel was made less than thirty years ago. — Without prejudice to other pleas.

No. 25.  
Judgment,  
H.M. Civil  
Court,  
First Hall.  
—continued.

Upon seeing Defendants' Declaration.

- 10 Upon seeing the Exhibits produced together with the Statement of Defence.

Upon seeing the Decree given on the 5th April, 1949, ordering an inspection in situ to be held that same day.

Upon seeing the procès verbal of the inspection in situ held on the 5th April, 1949, on which occasion the Court also heard the evidence of the witness Paolo Mifsud.

Having heard the sworn evidence of the Plaintiff and of the witnesses produced by the Plaintiff.

- 20 Upon seeing the Decree given on the 11th June, 1949, appointing an Architect and Civil Engineer with instructions to enquire and report whether the rain-water that falls from the roofs of the warehouses into the yard mentioned in the evidence given on that day collects in an underground channel lying alongside the wall of the warehouses, and thence flows into the sea at Church Wharf by means of other channels that meet the first channel above-mentioned.

Upon seeing the Decree given on the 4th October, 1949, whereby another Civil Engineer was appointed in the stead of the Civil Engineer appointed by the Decree given on the 11th June, 1949.

- 30 Upon seeing the procès verbal of the inspection in situ held by the Judicial Referee on the 14th November, 1949.

Upon seeing the Report of the Judicial Referee, filed on the 12th December, 1950 and sworn to on the 14th December, 1951.

Upon seeing the Decree given on the 10th February, 1951, ordering an inspection in situ at the request of the parties.

Upon seeing the procès verbal of the inspection in situ above-mentioned, held on the 17th February, 1951.

Upon seeing the acts filed in the Record.

Having heard Counsel on both sides.

Having considered:

- 40 By schedule No. 79 dated 26th June, 1948, the Plaintiff exercised the right to recover from Defendants' possession, by reason of neighbourhood and any other lawful title whatsoever, the block of buildings

No. 25.  
 Judgment,  
 H.M. Civil  
 Court,  
 First Hall.  
 —continued.

mentioned in the Writ-of-Summons, which the Defendants had acquired by purchase, at the price of £15,200, by virtue of instrument entered in the Records of Notary Victor Bisazza on the 26th June, 1947. At one and the same time, the Plaintiff deposited to the credit of the Defendants the sum of £15,964. 5. 0., being: £15,200 in respect of the purchase price paid as above, and £764. 5. 0., interest thereon according to law from the date of the deed of sale to the date of the filing of the schedule of pre-emption.

The Plaintiff claims the right to exercise pre-emption on the ground that he is the owner of the St. George's Flour Mills, Church Wharf, Marsa, and of the land adjacent thereto — shown in the plan filed at fol. 14 of the Record; — that the rain-water catchment of the roofs of the St. George's Flour Mills and of the land adjacent thereto "flows through a water-channel *made by the act of man*," which first passes on the outside of the wall of the St. George's Flour Mills and thence into the yards of the warehouses bought by the Defendants; — and that the water collecting in that channel passes out underneath the warehouses and drains into the sea. 10

The Defendants have made no attempt to deny the existence of the water-channel in question or the lie of the water-course as above described — facts which the Court as well as the Judicial Referee had the opportunity to ascertain on the spot. Nevertheless, the Defendants submit that the water collecting in Plaintiff's property flows into the property purchased by them following a natural water-course and not one created by the act of man; — and that the water-channel in question reaches but one of the warehouses which it is sought to recover from their possession, so that, at the most, it is only that particular warehouse that may be subject to recovery. On the other hand, they contend, if that water channel gives rise to the exercise of the right of pre-emption, which it does not, the title is resolute in that the channel was made less than thirty years before. 20 30

In order the better to understand the question at issue, it is necessary to explain certain facts which have an important bearing thereon. According to the evidence produced, the property in respect of which it is sought to exercise the right of pre-emption abuts on Plaintiff's property on two sides, that is to say, that property adjoins, on one side, the St. George's Flour Mills, and, on the other side, a field lying at a higher level than that of the property it is sought to recover. According to traces still visible, the latter property, up to the time it was demolished in the last war, consisted of warehouses. A two foot single wall still stands between that property and the field owned by the Plaintiff, and, having regard to the manner of its construction, it is to be 40

presumed that Defendants' predecessors-in-title built that wall at the same time they built the warehouses. It is further to be presumed that a rubble wall had stood in the place of the present two foot wall. Evidently, at that time, the water collecting in Plaintiff's field flowed into the adjoining property it is now sought to recover, belonging to Defendants' predecessors. It would appear that, later on, at a time that goes back to more than thirty years ago, Defendants predecessors, wishing to build, as in fact they did build, warehouses on their property, felt the necessity, not only of replacing the former rubble wall  
 10 by the present wall, but also of arresting and diverting the water that used to come down from Plaintiff's field and overflow into their own property — so that they constructed the present water-channel and provided the new party-wall with a number of draining holes at ground level with Plaintiff's field, each about one foot square — still to be seen to-day. These draining holes, as has been ascertained *in situ*, and as the Judicial Referee has submitted in his Report, were made in conformity with technical requirements, presumably by the same men who constructed the wall. These draining-holes lead to the conduit left in the thickness of the wall and descending vertically to join the water-channel  
 20 to be found in the warehouses.

The Defendants submit that though the party wall as it stands at present, a two foot single wall provided with draining holes, is "the act of man", the overflow of water has remained natural. It does not therefore constitute an easement created by the act of man and does not give rise to the exercise of the right of pre-emption: The easements envisaged by law are those only which are created by the act of man or which consist in the right of way or water-course (section 1512 (2) of the Civil Code). However, as submitted by the Judicial Referee, the draining holes in question are "the act of man", and, because of them, the  
 30 water that previously overflowed into the property which the Plaintiff seeks to recover, came to be collected by means of conduits let into the thickness of the wall and thence diverted seaward by means of the channel constructed in that property.

It has been established that the other constructions mentioned above are "the act of man" and therefore constitute a continuous and apparent easement that may give rise to the exercise of the right of pre-emption (Collection of Judgments, Vol. XXXIII. i. 256) — as it has done in the present case where, furthermore, it has been proved that the constructions in question were completed more than thirty years  
 40 before the date of the filing of the schedule of pre-emption whereof in the writ-of-summons.



No. 25.  
 Judgment,  
 H.M. Civil  
 Court,  
 First Hall.  
 —continued.

The Defendants submit that the water-channel, together with the draining holes, reaches but one of the tenements in question, and that therefore it is only that tenement that may perhaps be recovered from their possession. The argument, however, is untenable. Other considerations apart, it was ascertained *in situ* on the 17th February, 1951 (fol. 75) that, before the Plaintiff built the new warehouse annexed to the Flour Mills, there were draining holes in the two foot single wall mentioned above, not only in that part of the wall adjoining the warehouses, but also in that part of it abutting on the St. George's Flour Mills — a fact in regard to which both parties are agreed. As rightly submitted by the Plaintiff, those draining-holes are such as to affect, not one, but each and every warehouse contiguous thereto — wherever the draining-holes are to be found in the party wall. 10

The Defendants submit further that the water-channel in question is a resolute title in that it was constructed less than thirty years before. The better to understand the point, it is necessary to explain certain other circumstances bearing on the case. As already mentioned, the property at issue adjoins, in part, the field belonging to the Plaintiff referred to above, and, in part, the building housing the St. George's Flour Mills, likewise owned by the Plaintiff. That building did not at the outset cover the large area it occupies at present. As stated, the Plaintiff, towards 1913, built a single warehouse adjoining the warehouses he is now seeking to recover from Defendants' possession. It appears that the rain-water catchment of the roofs of that first warehouse to be built was made to flow by means of pieces of drain-pipe into the yard of the adjoining warehouses. The water so drained passed through a channel constructed "by the act of man" on the side of the adjoining warehouses and, for the reasons above-mentioned, itself constituted a continuous and apparent easement which, having been in existence at least since 1913, gives rise, and has in fact given rise, to the exercise of the right of pre-emption on Plaintiff's part. 20 30

Besides the one mentioned above, there was, on the side of the field, another water-channel, likewise the act of man. In the early days, that channel collected the rain-water catchment of a part of the roofs of the old section of the building and, through a channel that existed at the time, bordering the building, conducted it to one of the many draining-holes with which, as stated, the above-mentioned wall is provided. About twenty-seven years before he exercised the right of pre-emption at issue, the Plaintiff, constructing and adding new warehouses, altered that channel — he having found a draining hole in the same wall at the back of the yard of the property in question and communicated it with the channel that was constructed by the side of his own ware- 40

houses. The Defendants therefore submit that the communication so made is a resolute title in that it was made about twenty-seven years before the exercise of the right of pre-emption. That argument, however, is also untenable. In fact, as submitted by the Judicial Referee, the fact that the communication was so made goes to show that the tenement of which it is sought to recover possession and the two foot party wall above-mentioned — as well as, therefore, the draining-holes and conduits — had been in existence for more than thirty years before the Plaintiff exercised the right of pre-emption as above. At that time, it  
 10 was the same channel mentioned before that drained the rain-water catchment of the roofs of Plaintiff's tenement: The only thing is that when the new buildings were constructed, the water was diverted into that channel in a different way.

On these grounds and on the grounds set out in the Report of the Judicial Referee so far as compatible therewith.

The Court,

Allows Plaintiff's claim and, consequently, condemns the Defendants to effect the re-sale of the property within twelve days, subject to the proviso that, in default, the re-sale thereof shall be deemed effected  
 20 in pursuance of the present judgment.

And, in the circumstances of the case, orders each party to bear its own costs, bar the Registry fees, which shall be paid by the Defendants.

(Signed) J. DEBONO,  
 D/Registrar.

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No. 26.  
Defendants'  
Note  
of Appeal.

**No. 26.**  
**Defendants' Note of Appeal**

In H.M. Civil Court, First Hall.

Antonio Cassar Torreggiani

v.

Paolo and Emmanuele Pisani

The Note of Appeal of the Defendants Paolo and Emmanuele Pisani.

The Defendants, deeming themselves aggrieved by the Judgment given by this Honourable Court on the 31st October, 1951, hereby enter appeal therefrom to H.M. Court of Appeal. 10

(Signed) J. H. XUEREB,  
Advocate

„ V CARUANA,  
Advocate

„ G. SCHEMBRI,  
Legal Procurator.

The Seventh November, 1951.

Filed by G. Schembri L.P. without Exhibits.

(Signed) J. DEBONO,  
D/Registrar. 20

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**IN H.M. COURT OF APPEAL**

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**No. 27.**  
**Defendants' Petition**

No. 27.  
Defendants'  
Petition.

In H.M. Court of Appeal.

Antonio Cassar Torreggiani, Mer-  
chant, in his capacity as Managing  
Director, Cassar Company Ltd. (B).

v.

Paolo and Emmanuele Pisani.

The Petition of Paolo and Emmanuele Pisani.

10 Respectfully sheweth:—

By writ-of-summons filed in H.M. Civil Court, First Hall, the Plain-  
tiff, in his aforesaid capacity, premising: That by schedule of pre-  
emption and respective deposit dated 26th June, 1948 (Exhibit A),  
the Plaintiff, in that capacity, exercised the right to recover from De-  
fendants' possession, by reason of neighbourhood and any other lawful  
title whatsoever, the block of buildings at Church Wharf, Marsa, num-  
bers 25 to 38 inclusive, with all the titles and appurtenances thereof,  
that at No. 32 being subject to an annual perpetual burthen for the cele-  
bration of Holy Mass — which property was sold to the Defendants,  
20 at the price of £15,200. by virtue of deed enrolled in the Records of  
Notary Victor Bisazza on the 26th June, 1947; — and that the Defen-  
dants have failed to effect the re-sale of the property or to state what  
lawful expenses should be deposited to their credit; — prayed that said  
Defendants be condemned to re-sell the property to him, in his afore-  
said capacity, by reason of neighbourhood and any other lawful title  
whatsoever, within such short and peremptory period of time as shall  
be established by the Court — and this subject to the proviso that, in  
default within that specified time, the re-sale of the property shall be  
deemed so effected<sup>d</sup> in pursuance of the judgment of the Court. — With  
30 Costs.

H.M. Civil Court, First Hall, by Judgment given on the 31st Octo-  
ber, 1951, allowed Plaintiff's claim and, consequently, condemned the  
Defendants to effect the re-sale of the property within twelve days,  
subject to the proviso that, in default, the re-sale thereof shall be deem-  
ed effected in pursuance of the judgment. — And, in the circumstances  
of the case, ordered each party to bear its own costs, bar the Registry  
fees, which the Defendants were ordered to pay.

The Defendants, deeming themselves aggrieved by that Judgment,  
entered appeal therefrom to this Honourable Court by Minute filed on  
40 the 7th November, 1951.

The grievance is manifest: The Defendants have been ordered  
to re-sell the property to the Plaintiff who, the Court held, is entitled to

No. 27.  
Defendants'  
Petition.  
—continued.

the exercise of the right of pre-emption by reason of neighbourhood. However, according to law, the property in question cannot be considered subject to an easement created by the act of man, which alone justifies the exercise of the right of pre-emption by reason of neighbourhood.

It was held in the Judgment appealed from that Plaintiff's title of neighbourhood is established by virtue of: (a) the easement in respect of the natural flow of water from Plaintiff's overlying property, i.e. through draining holes in the party wall made by "the act of man" — the water being then collected in a conduit constructed in the thickness of the wall and drained seaward through an underground channel; 10  
(b) the easement in respect of the flow of water that falls on the roofs of the warehouses forming part of the St. George's Flour Mills, which easement, according to the judgment appealed from, has been in existence for a period of more than thirty years.

The Defendants will presently make their submissions as regards the easement first referred to.

So far as the second easement is concerned, the Court below disregarded the fact that the channel which exists at the present day, and which is communicated with one of the pre-empted warehouses, was 20  
constructed less than thirty years ago. In fact, the Court held that that channel merely diverted the water in a different way, without however altering the nature of the easement.

Now, before an extension was added to the warehouse which was built by the Plaintiff in 1913 — and that extension was added less than thirty years ago — the rain-water catchment of the roof of that warehouse drained into a yard which was the property of third parties and which was held by the Plaintiff on lease. Before the building of the warehouse in 1913, the same thing happened with the rain-water catchment of part of the roofs of Plaintiff's Flour Mill, though by means 30  
of a channel in the ground instead of drain-pipes leading down from the roofs. Those circumstances might have given rise to an easement in respect of the property belonging to third parties, though not in respect of the pre-empted property — and in any case the Plaintiff was debarred the enjoyment thereof by reason of the fact that he was merely the tenant of what would then have been the servient tenement. When, therefore, the Plaintiff enlarged the warehouse less than thirty years ago, and surrounded that warehouse by a channel that carried the water to one of the pre-empted tenements, he not only altered the water-course, but actually brought about a new state of things. In fact, 40  
the water that formerly drained into the third party property and thence proceeded to one of the warehouses (if it did go there at all),

came to be diverted to another warehouse. That apart, the channel in question is not such as to give rise to the acquirement of an easement, for it is a clandestine channel, that is to say, it is non-apparent in the sense that it is invisible from the pre-empted or servient tenements — a consideration which applies with greater force to the state of things as it existed before and immediately after the building of the first warehouse in 1913.

No. 27.  
Defendants'  
Petition.  
—continued.

It is therefore Defendants' submission that that easement, deemed existent by the Court below, could not have been acquired in actual fact in that it is other than apparent, and that, in any case, it was not acquired by reason of the fact that the period of thirty years has not yet elapsed; and it follows therefore that Plaintiff's claim in respect thereof is untenable. Briefly, the flow of water that existed at the outset, and over thirty years ago, was not such as to constitute a right to the exercise of pre-emption: There was no contiguity as between Plaintiff's property and the pre-empted property, and, at all events, the easement fell to the enjoyment of the property belonging to third parties — that is to say, the property adjoining the pre-empted property — and not to Plaintiff's property. On the other hand, the flow of water as it exists at the present day cannot constitute a right to the exercise of pre-emption by reason of the fact that it has been in existence for less than thirty years. It need scarcely be stated that the same rules that apply in the case of acquirement by prescription of the manner in which easements are exercised apply also in the case of acquirement by prescription of the easement itself. At all events — and on the false assumption it is admissible — the title may serve the Plaintiff to recover one only of the warehouses that formerly belonged to the Apap family, that is to say, warehouse No. 28 — for it is only that warehouse that received the rain-water catchment of the roofs of Plaintiff's property.

So far as the first easement is concerned, the question is dealt with in paras: 7, 8, 9 and 10 of the Note of Submissions filed by the Defendants on 29th May, 1951 (fol. 94). The Defendants do not consider it necessary here to reiterate the same argument. They would however observe that both the Court below and the Judicial Referee have adhered to the supposition that the "double" wall of the present day was formerly a rubble wall. Relying on that assumption, the Plaintiff, in paras: 2 and 3 of the Note of Submissions filed on 29th May, 1951 (fol. 103), endeavoured to show that the present party wall is not Defendants' property in that formerly it was partly his own and partly common property. Even if one were to concede that the Defendants would not in such circumstances be deemed the owners of the wall,



No. 27.  
Defendants'  
Petition.  
—continued.

the fact remains that rights are not set aside and rescinded on a mere supposition; and it is therefore incumbent upon the Plaintiff to substantiate his allegations and assertions. So long as no proof to the contrary is forthcoming, however, the party wall must be considered Defendants' property, not only in view of the different nature of the property which it separates (i.e., buildings on Defendants' side and a field on Plaintiff's side), but also in view of its own structure which clearly indicates, without the least shadow of a doubt, that it was built solely in the interests of the pre-empted tenements — though in a way that would not arrest the water that naturally flows down from Plaintiff's property into those tenements. Not even a bare reference is made in the Judgment appealed from to this question regarding the ownership of the party wall. So long as the rights of other parties are not impaired, and so long as the nature thereof is left unchanged and unaltered, one is at liberty to carry out in one's own property all such works as one may wish to carry out — as in the case of Defendants' predecessor who built the party wall without creating an easement "by the act of man," in that he left the flow of water naturally — by gravitation — *to reach as far as his own property*. In point of fact, contrary to the view expressed in Plaintiff's Note of Submissions, the Defendants are at liberty to alter the present state of affairs in their own property so long as they continue to receive the water that must necessarily flow into their property. It would have been a very different thing if works had been carried out in the dominant tenement such as to alter the natural flow into the servient tenement. 10 20

Wherefore, producing the undermentioned surety for the costs of the action, making reference to the evidence adduced, and reserving the right to produce all further evidence admissible at law — including a further reference to Plaintiff's oath, for which the Plaintiff is hereby summoned — the Appellants humbly pray that the Judgment given by H.M. Civil Court, First Hall, on the 31st October, 1951, be varied, in the sense, that is, that it be affirmed in so far as the Plaintiff was ordered to bear a part of the costs, and reversed in so far as it allowed Plaintiff's claims and ordered the Appellants to bear a part of the costs — Plaintiff's claims being instead dismissed with all the costs both of the First and of this Second Instance. 30

(Signed) V. CARUANA,  
Advocate.

„ J. H. XUEREB,  
Advocate.

„ G. SCHEMBRI,  
Legal Procurator. 40

This 21st December, 1951.  
 Filed by G. Schembri L.P without Exhibits.

(Signed) ED. CAUCHI,  
 D/Registrar.

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**No. 28.**  
**Defendants' Surety Bond**

No. 28.  
 Defendants'  
 Surety Bond.

Giuseppe Schembri, Legal Procurator, son of the late Giovanni and the late Maria neé Cauchi, born and residing in Valletta, appears and stands joint surety with the Appellants, Paolo and Emmanuèle  
 10 Pisani, for the Costs of this Appeal, hypothecating the whole of his present and future property and renouncing every benefit accorded by law.

(Signed) G. SCHEMBRI L.P

The said G. Schembri L.P has affixed his signature hereto in my presence, this 21st December, 1951.

(Signed) S. BUGEJA,  
 D/Registrar.

—————

**No. 29.**  
**Plaintiff's Answer**

No. 29.  
 Plaintiff's  
 Answer.

20 In H.M. Court of Appeal

Antonio Cassar Torreggiani

v.

Paolo and Emmanuele Pisani

The Answer of the Plaintiff Respondent.

Respectfully sheweth:—

Saving the head of costs, in respect of which the Plaintiff is entering cross-appeal, the judgment appealed from is fair and just and should be upheld.

30 It has consistently been held that, where the water does not flow naturally, but with "the agency of man," the easement of the lower tenement receiving the water of the higher tenement ceases to be "an easement in respect of a natural flow of water" and becomes an easement "cretaed by the act of man."

No. 29.  
Plaintiff's  
Answer.  
--continued.

Plaintiff's property is partly urban and partly rural and lies on a level which is about eight feet higher than that of Defendants' property. The wall that divided the two properties, a rubble wall, was therefore about eight feet high; and, up to about fifty years ago, the water flowed naturally, and along the whole length of Plaintiff's field, into the field owned by the Defendants. Subsequently, Defendants' predecessor altered that state of things, replaced the rubble wall by a "double" wall built with regular ashlar masonry and placed in the thickness of the wall about ten draining holes and stone conduits which collect the storm water on the side of Plaintiff's field and discharge it into Defendants' property. 10

The party wall built as above came to replace "the support wall" of Plaintiff's field, and, Plaintiff's field being on a higher level by eight feet, part of that wall is the sole property of the Plaintiff; and therefore the works constructed by Defendants' predecessor for the purpose of canalising the water were so constructed in a wall part of which is Plaintiff's own property.

An easement in respect of a flow of water may be an easement "created by law" or an easement "created by the act of man." It is an easement "created by law" if the water flows naturally — "without the agency of man;" and it is an easement "created by the act of man" if the water flows otherwise than naturally — in fact "with the agency of man." The latter easement, where it is "continuous" and "apparent" may be acquired by *prescription* (section 494, Civil Code). In the case at issue, prescription runs its course and attains completion if thirty years have elapsed since the draining holes were constructed. In actual fact, those draining holes, visible and permanent, conducting the water from Plaintiff's field into Defendants' property, were constructed fifty years ago. And no question in regard to them was ever raised either by the owner of the servient or the owner of the dominant tenement. 20 30

The Defendants cannot complain of their own action if they constructed draining holes in the party wall in order that the water may flow through at "determinate points" rather than be allowed to find its way out along the whole length of the higher field. As held by this Honourable Court in re "Levy Grech v. Grech" (10th May, 1948): "The channel was constructed over thirty years ago and therefore the easement was acquired by prescription, in respect of which, in view of the nature of that easement, no title is necessary." Gianzana (*Digesto Italiano — Acque Private*, No. 1904, p. 128, col. 2) states: "In speaking of 'the agency of man', the legislator has in mind the work or construction whereby the water in the higher tenement is discharged into the lower." This Honourable Court, in re "John Pace v. Testafer- 40

rata" (Vol. XXXI, Vol. I. p. 249 — 3rd August, 1942) held: "The field at a lower level is subject to the field at a higher level to receive such waters as fall therefrom without the agency of man; otherwise *the easement created by law is denaturalized.*" And it was therefore determined in that judgment that, in view of the draining holes made by the act of man, the easement was no longer an easement created by law in that the draining holes *go beyond the nature of the easement created by law.* (Vide also Fadda, Vol. 2, article 536, *Codice Civile Italiano*, p. 900, Nos. 152, 153, 155).

No. 29.  
Plaintiff's  
Answer.  
—continued.

10 The draining holes in question were not constructed in the area of one warehouse only, but in the area of all the pre-empted warehouses; and, at the inspection held in situ, the Court below was able to ascertain that they are to be found also in the area of those warehouses that are contiguous to the new part of the St. George's Flour Mills — which was not built to lean against the party wall constructed by Defendants' predecessor fifty years ago. That part of the buildings was constructed less than thirty years ago, and, therefore, the Defendants have not yet acquired the easement created by those draining holes which, in this area, are not in use.

20 Further, in this part of the property, the water catchment of the roofs of Plaintiff's buildings flows — through visible and permanent drain-pipes and channels — into Defendants' property. In this case, too, the presence of those drain-pipes proves the easement in respect of stillicide, which has been in existence since the year 1913 — although in the period between 1913 and 1923 the water flowed into the yards of the pre-empted warehouses through a channel bordering the old part of the Flour Mill, and then, after 1923, when the Flour Mill was enlarged, through a channel surrounding the new part of the building.

30 The Appeal entered by the Defendants, therefore, is groundless in law and in fact.

The Plaintiff, too, deems himself aggrieved by the judgment appealed from, in that the Court below, in the circumstances of the case, ordered each party to bear its own costs, bar the Registry fees, payable by the Defendants; and the Plaintiff, availing himself of the present opportunity, respectfully enters cross-appeal therefrom.

40 The grievance is manifest: The Defendants probably bought the property in order to set up a Flour Mill next door to the St. George's Flour Mills and thus bring severe competition to bear upon Plaintiff's trade. Exercising the rights which have been upheld in the judgement appealed from, the Plaintiff recovered the property. It was obvious at the outset that the easement in respect of the flow of water and that in respect of the rain water catchment of the roofs was an easement

No. 29.  
Plaintiff's  
Answer.  
—continued.

created by the act of man. But the Defendants preferred to be obdurate and, resisting the claim, they occasioned costs which it was not necessary to incur; and therefore the costs should be borne by the Defendants

Wherefore the Plaintiff respectfully prays that the principal appeal entered by the Defendants be dismissed with costs, that the judgment appealed from be varied in so far as each party was ordered to bear its own costs and the Defendants were ordered to pay the Registry fees and that Plaintiff's cross appeal be allowed — an order being made for the costs both of the First and Second Instance to be borne by the Defendants; — and that the judgment appealed from be affirmed in all other respects. 10

(Signed) G. PACE,  
Advocate.

„ H. GANADO,  
Advocate.

„ C. VASSALLO,  
Legal Procurator.

This 27th December, 1951.

Filed by Charles Vassallo L.P. without Exhibits.

(Signed) U. BRUNO,  
Deputy Registrar.

20

**No. 30.**  
**Decree ordering Enquiry in situ**

No. 30.  
Decree  
ordering  
Enquiry  
in situ.

H.M. COURT OF APPEAL  
(First Hall)

Judges:

The Honourable Mr. Justice A. J. Montanaro Gauci LL.D.,  
*Acting President.*

The Honourable Mr. Justice W. Harding B.Litt., LL.D.

The Honourable Mr. Justice T. Gouder LL.D.

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Sitting held on Friday, the  
2nd May, 1952.

No. 12

Writ-of-Summons No. 149/49.

Antonio Cassar Torreggiani *nomine*  
v.

Paolo and Emmanuele Pisani

The Court,

Whereas it is necessary, for the better implementation of the case,  
that the Court should hold an inspection on the spot. —

20

Appoints for the purpose Wednesday, the 21st May, 1952, at 9 a.m.

The case stands adjourned to the 2nd June, 1952.

Costs reserved.

(Signed) J. N. CAMILLERI,  
D/Registrar.

**No. 31.**  
**Procés Verbal**

No. 31.  
Procés  
Verbal.

H.M. Court of Appeal

*In situ.*

21st May, 1952.

Present:—

30

Counsel for Plaintiff and Defendants.

The Defendants.

The parties have submitted the question and indicated the various  
positions of the locality.

The Court has taken note that, on the water side, the property is  
entirely demolished, only traces of the foundations being still visible. A  
double wall built of regular ashlar masonry stands between this area  
and the area lying behind it. The wall is wedge-ended.

No. 81.  
Procés  
Verbal.  
—continued.

Four draining holes at the same level and two more at a higher level are to be seen in the party wall.

Underground channels, collecting storm waters, traverse the centre of the area and extend to the roadside.

An underground channel lies along the whole length of the wall and turns sideways along the wall on the left side.

The parties have also drawn the attention of the Court to the fact that, in the centre, the wall of the second and third warehouse on the right is somewhat worn out by the action of water.

To the right, at the side, a new wall adjoins a lower wall and the wall standing at the back; and the lower wall appears to be old and is of the same hue as the wall standing at the back. 10

The Court has taken note that, to the left, a wall joins together the wall standing at the back and the wall at the side, which wall is also wedge-ended and appears worn out. A water conduit lies along the second wall.

In the wall at the back of the third warehouse on the left, five stains appear in the cement rendering, and these stains, according to Plaintiff's Counsel, indicate the position of as many draining holes which were formerly in use. The draining holes which are uncovered are partly cut out of the rock. 20

Above the drain-holes which are cement-stopped in the wall above-mentioned, the Court notices the line of the bed joint where, according to the Plaintiff, other drain-holes were positioned.

The foundations of the warehouses and their bonding with the wall at the back are still to be seen.

Traces of a doorway appear on the right side of the wall on the right side of the central warehouse; and in the wall of the second warehouse to the left, there are traces of an aperture opening on to the third warehouse. 30

In the yard at the back of the warehouse formerly the property of Degiorgio, there is a draining hole at the right end of the wall facing the yard; and in the two walls on each side of the yard, there are draining-holes that allow the water to flow from the property on the right to the property on the left.

The Court has taken note that, on the other side of the wall, in the corner, a drain-hole carried the water flowing down from a drain-pipe of which there are traces in the wall from top to bottom. No traces of any other holes appear at the present day. A conduit along the foundations meets the drain-pipe above-mentioned. 40

The Court has also inspected the area at the back, consisting of a field, and has noted that the field, a fairly large one, slopes gently,

almost imperceptibly, from the left side to the right. However, along the party wall in question, the ground, or soil, lies at a lower level and is planted with a prickly pear tree — excepting a part if it to the right, enclosed by a rubble wall, where the soil, planted with fig-trees and a cane-tree, lies at a higher level.

No. 31.  
Procés  
Verbal.  
—continued.

All along the party wall, draining holes are to be seen to the right, in the centre and to the left. No other draining holes can be seen.

A cistern lies to the right.

The parties have shown the Court the outlet of the conduit which serves for the overflow of the cistern, leading to another channel along the wall which is still standing.

The Court has taken note that the roofs of the buildings in the field are provided with water spouts which drain the water into the channel underneath.

The Court, having heard the submissions of Counsel on both sides, ordered the enquiry to be closed.

(Signed) J. N. CAMILLERI,  
Deputy Registrar.

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## No. 32.

### Plaintiff's Application

No. 32.  
Plaintiff's  
Application.

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In H.M. Court of Appeal

Antonio Cassar Torreggiani *nomine*  
v.

Paolo and Emmanuele Pisani

Plaintiff's Application.

Respectfully sheweth:—

The above case stands adjourned to the 3rd November, 1952, on which date the Court proposes to deliver Judgment.

The Applicant feels the necessity of clarifying certain points and quoting certain text-books in support.

The Applicant therefore respectfully prays that he be authorized to file the annexed Note of Submissions and to cause service thereof to be made upon the Defendants.

(Signed) G. PACE,  
Advocate.  
„ G. M. CAMILLERI,  
Advocate.  
„ C. GRECH ORR,  
Legal Procurator.

30



This 14th October, 1952.  
Filed by C. Grech Orr L.P. together with a Note of Submissions.

(Signed) J. MICALLEF,  
D/Registrar.

No. 33.  
Plaintiff's  
Note of  
Submissions.

**No. 33.**  
**Plaintiff's Note of Submissions**

In H.M. Court of Appeal.

Antonio Cassar Torreggiani *nomine*  
v.

Paolo and Emmanuele Pisani 10

The Note of Submissions of the Plaintiff Respondent.

Respectfully sheweth:—

The Plaintiff exercised the right of pre-emption by reason of neighbourhood on the ground that he enjoys an easement over the pre-empted property in that (1) the rain-water catchment of the roofs of the warehouses contiguous to the pre-empted property flows through Defendants' property, and (2) the easement as between Plaintiff's property and the pre-empted property, though originally in the nature of a natural easement, was turned into an artificial easement when, over thirty years ago, Defendants' predecessor-in-title carried out certain works in the party wall. In terms of section 1512 (1) (b) of the Civil Code, the right of pre-emption by reason of neighbourhood is granted to the owner of a *contiguous tenement* enjoying an easement over the tenement sold. 20

The clear words of the law go to show, not that it is necessary that the water-spout of the roofs should be contiguous to the pre-empted property, but that *the property contiguous to the pre-empted property* is entitled to the easement of the flow of its own water through the pre-empted property (Vide fol. 95).

It is an undoubted fact that Plaintiff's property is *contiguous to the pre-empted property*, the buildings themselves being contiguous to that property, or at least a part of it, and the field being likewise contiguous thereto. 30

As established in evidence, and as was ascertained during the survey held by this Court and the Court below, the rain-water catchment of the warehouses, *which are contiguous to the pre-empted property*, flows down through spouts on the roofs of Plaintiff's property and thence drains seaward through the pre-empted property.

That fully proves *the easement in respect of the roofs*, and, clearly,

that easement entitles the Plaintiff to the exercise of the right of pre-emption *at least in respect of the warehouses through which the water flows on its way seaward and which are contiguous to Plaintiff's property.*

No. 88.  
Plaintiff's  
Note of  
Submissions.  
—continued.

As regards the easement which, in Plaintiff's view, is created by reason of the *artificial outflow* through the drain-holes made by Defendants' predecessor when he constructed the party wall between the one and the other property, it is prescribed in section 440 (1) of the Civil Code that "Tenements at a lower level are subject in regard to  
10 tenements at a higher level to receive such waters and materials as *flow or fall naturally* therefrom *without the agency of man*"; and, further on, the law, speaking of "The Manner in which easements are exercised" (section 507 et seq.), lays down that: "The owner of the *servient* tenement cannot do anything which tends to diminish the exercise of the easement or *to make such exercise more inconvenient*. He may not alter the condition of the tenement, nor may he assign for the exercise of the easement any part of the tenement other than that over which it was originally established." (Section 511—1).

That provision of the law, as denoted by the Title under which it  
20 stands, governs both the easements created by law and the easements created by any act of man (Sub-titles I and II).

It is established in the present case that, originally, Plaintiff's property, lying at a higher level than Defendant's property, drained its water in a natural way along the whole length of the rubble wall then lying between the two fields. No evidence has been produced by the Defendants of the existence at that time of any drain-holes through which the water fell from the higher to the lower level. The inference to be drawn, therefore, is that the whole area of Plaintiff's field was  
30 the field owned by the Defendants.

The new party wall built by Defendants' predecessor, and the concrete drain-holes constructed therein, rendered the *exercise* of the easement more burdensome and made "such exercise more inconvenient" (Section 511). In fact, last year — to quote an instance — on those occasions when the rainfall was abundant, the water, unable to find its natural outlet along the whole length of the wall, flooded out Plaintiff's field, adjacent to the wall built by the Defendants, ruined the crops of that field and left deposited therein quantities of stone and material which in turn choked most of the drain-holes and prevented the  
40 water flowing down on to the lower level.

It is therefore obvious that that "act of man" — namely, the few sectional drain-holes replacing the original natural outlet along the

No. 33.  
Plaintiff's  
Note of  
Submissions.  
—continued.

whole length of the party wall — has rendered the original easement more burdensome. (Vide Aubry et Rau, *Delle Servitù*, para: 240; and Baudry Lacantinerie, *Dei Beni*, p. 561). — “Where an easement respecting a natural overflow is rendered more burdensome, the servient tenement may be bound to receive the water by reason of an easement created by virtue of a title, by ‘the disposition of the owner of two tenements’ or by *prescription*.

Similarly, Nicola Germano (*Trattato delle Servitù*, 2nd. Ed., Vol. IV, 1901 — p. 50) writes: “Where the owner of a servient tenement found it necessary to carry out works in his own tenement such as may be required in connection with the building of a house or in connection with the higher level of a road, and where the natural watercourse has been thereby impeded, may the owner of the servient tenement, after the impediment has endured for a period of more than thirty years, maintain the works so carried out?... It is beyond doubt that the owner of a servient tenement who has constructed a wall surrounding his own property, and who has thereby obstructed and impeded the flow of water into that property, may after the lapse of thirty years claim *jus aquam repellendi* as against the dominant tenement.” The same commentator, at page 69, writes further: “The outflow must be *natural*, that is to say, it must not stem or be regulated or varied by the act of man, when, as the result of works carried out on the surface of the ground, the waters have been gathered and diverted to a single point, or the bed of the watercourse has been widened or narrowed or sunk deeper, or the flow has been rendered more rapid or more precipitous.”

Therefore, once the original easement, which was a natural easement, has been rendered more burdensome by reason of the drain-holes in question, the nature of the easement as it originally existed has definitely been altered, so much so, that the Defendant, now that the period of thirty years has elapsed, has it in his power to restrain the Plaintiff opening other drain-holes in order that the overflow may find its way out as it did before, i.e., along the whole length of the wall.

The Plaintiff was therefore entitled to exercise the right of pre-emption by reason of the easement respecting the rain-water catchment of the roofs as well as by reason of the easement respecting the overflow of the field, which is now an artificial, and no longer a natural, easement.

(Signed) G. PACE,

Advocate.

„ J. M. CAMILLERI,  
Advocate.

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**No. 34.**  
**Defendants' Minute**

**No. 34.**  
**Defendants'**  
**Minute.**

In H.M. Court of Appeal.

Antonio Cassar Torreggiani *nomine*  
v.

Paolo and Emmanuele Pisani

The Minute of the Defendants Paolo and Emmanuele Pisani.

The Defendants hereby produce the annexed Note of Submissions.

(Signed) VICTOR CARUANA,  
Advocate.

10

„ J. H. XUEREB,  
Advocate.

„ G. SCHEMBRI,  
Legal Procurator.

This 25th October, 1952.

Filed by G. Schembri L.P. with a Note of Submissions.

(Signed) J. DEBONO,  
Deputy Registrar.

**No. 35.**  
**Defendants' Note of Submissions**

**No. 35.**  
**Defendants'**  
**Note of**  
**Submissions.**

20

In H.M. Court of Appeal.

Antonio Cassar Torreggiani *nomine*  
v.

Paolo and Emmanuele Pisani.

The Note of Submissions of the Defendants Paolo and Emmanuele Pisani.

Respectfully sheweth:—

30

1. The main object here is to answer the submissions made by the Plaintiff *nomine* in his last Note of Submissions, the question at issue having been gone into by the Defendants both in the written pleadings (Statement of Defence and accompanying Declaration, Note of Submissions at fol. 94, filed on 29th May, 1951, and Petition to H.M. Court of Appeal) and in the oral proceedings.

2. The Plaintiff, in his last Note of Submissions, states that he exercised the right of pre-emption because (1) the rain-water catchment of the roofs of the warehouses contiguous to the pre-empted property flows through Defendants' property, and (2) because the easement in respect of the flow of water, which was originally an easement

No. 35.  
Defendants'  
Note of  
Submissions.  
—continued.

created by law, had been converted into an easement "created by the act of man" following the works carried out in the party wall.

3. So far as the first title is concerned, the Defendants agree that two requirements are necessary, namely, contiguity and the right over the servient tenement respecting the flow of water. Nor would it seem there is any divergence of view as regards the possibility of acquiring the title by prescription, provided there are visible and apparent signs.

4. Whereas, in connection with that title, the Plaintiff mentioned the rain-water catchment of the roofs, it may be observed that the roofs in question fall into two categories: the roofs of the warehouses (those that do not adjoin the pre-empted property) which were built over thirty years ago and the water catchment of which falls into a yard *owned by third parties*; and the roofs of the warehouses which were built less than thirty years ago and the water catchment of which flows into the channel in Plaintiff's property and thence finds its way into one of the pre-empted warehouses through an underground channel communicated with the channel in that warehouse. 10

Now, as regards the latter flow of water, it is obvious the Plaintiff has no lawful title thereto, in that, *ex admisis*, the period of 30 years has still to run its course. So far as the former is concerned, not only is the requirement as to contiguity entirely absent, but the possibility of acquiring the right by prescription is debarred to the Plaintiff nomine by the provisions of sections 1654 and 502 of the Civil Code. In fact, the acquirement of such a title in respect of Defendants' property necessarily presupposes that the tenant (i.e., the Plaintiff nomine) has acquired in respect of the property held by him on lease, as against the owner of the property, a title by reason of the fact that his own water catchment flows through that property on its way to Defendants' property — which is inconceivable. 20

Further, the requirement as to visibility is lacking in respect both of the former and latter flow, in that the works which the Plaintiff carried out in his own property are nowhere to be seen from Defendants' property and the works carried out in the "servient" property are hidden underground and there is nothing to show that the Plaintiff had infringed the provisions of section section 482 of the Civil Code. (*Vide* Fadda, *Codice Civile*, Vol. III. p. 8 et seq. Nos. 77, 78, 79, 81, 116 and also 112 and 113). 30

The Plaintiff has therefore failed to substantiate, and is not in a position to substantiate, the title to which he lays claim, and *none* of the tenements bought by the Defendants is subject to the exercise of pre-emption. 40

5. As regards the alleged conversion of an easement created by

law into an easement created by the act of man in consequence of the re-building of the party wall, section 449 (2) of the Civil Code, as worded, entitles the owner of the lower tenement to carry out works in his own tenement, provided the works so carried out are not such as to hamper or impede the exercise of the easement on the part of the owner of the higher tenement. In other words, the owner of the lower tenement may assume a passive role and receive the water that comes down from the higher tenement, or, again, he may carry out such works as render the easement less burdensome to his own tenement. One must therefore recognise the right on the part of the owner of the lower tenement to build a wall around his tenement, provided he allows proper outlet to the water that he is bound to receive — for in that way the rights of both owners are reconciled. (Laurent, *Principii di Diritto Civile*, Ed. 1883, Vol. VII, para: 364, 365, 366; Demalombe, *Code Napoleon Des Servitudes*, T.I. Vol. XI, paras: 16 to 53; Pacifici Mazzoni, Commentary on articles 536 and 537 et seq; and Baudry-Lacantinerie quoted by the Plaintiff nomine — *Dei Beni*, para: 923, p. 554 and 555).

6. Recognising that right on the part of the owner of the lower tenement, one must proceed to examine the consequences that arise if the works carried out are detrimental to the owner of the higher tenement. The consequences, whatever they may be, would certainly not take the form of changing an easement created by law into an easement created by the act of man: It is still storm water that still continues to reach the lower tenement by gravitation and therefore the easement is still a natural easement. The question of damages may arise or possibly the owner of the lower tenement may be required so to modify the works carried out that the owner of the higher tenement may not suffer damage. Be that as it may, however, it is always a matter that affects, not the *nature*, but the exercise of the easement — which still remains an easement in respect of a natural flow of water. Naturally, so far as the case at issue is concerned, such consequences as above envisaged are mentioned purely from the theoretical point of view, in that, in actual practice, no damage was ever sustained by the Plaintiff or by Plaintiff's predecessor as a result of the manner in which Defendants' predecessor built the party wall (which belongs entirely to the Defendants — section 446 (3). If the case were otherwise, protest would no doubt have been lodged at some time or other during the whole period that has elapsed since the wall was constructed. The Plaintiff himself has been the owner of the higher tenement for a period of over 20 years.

7. That which has been stated as regards the owner of the lower

No. 35.  
 Defendants'  
 Note of  
 Submissions.  
 —continued.

tenement, however, is not applicable in the case of the owner of the higher tenement, for the latter is bound to let the outflow follow its natural course as determined by the situation of the property, i.e. he may not render the easement more burdensome (section 440 para: 3): The nature of the easement may well be altered if the water collecting in the higher tenement is made to reach the lower tenement with the agency of man, or to reach it otherwise, i.e. in a different way, than as determined by the situation of the land.

It may be stated that the authors of the text-books quoted by the Plaintiff in his Note of Submissions express the same views in commenting upon the restriction to which the owner of the higher tenement is bound and the consequences that arise where he acts contrary to those restrictions — that is to say, the acquirement of a right by reason of the fact that he alters the natural interdependence of the two tenements. 10

In the present case, however, no such works are to be found *in Plaintiff's tenement*, for the water reaches the party wall, that is, as far as Defendants' property, by natural gravitation. It follows therefore that the easement is a natural easement, and that, here, too, the right of pre-emption is non-existent. 20

The Defendants submit that the Appeal should be allowed on the grounds set out above and those set out in their previous submissions.

(Signed) VICTOR CARUANA,  
 Advocate.

„ J. H. XUEREB,  
 Advocate.

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**No. 36.**  
**Judgment, H.M. Court of Appeal**

No. 36.  
Judgment,  
H.M. Court  
of Appeal.

HER MAJESTY'S COURT OF APPEAL  
(Civil Hall)

Judges :

The Honourable Mr. Justice A. J. Montanaro Gauci LL.D.,  
*Acting President.*

The Honourable Mr. Justice W Harding B.Litt., LL.D.

The Honourable Mr. Justice T. Gouder LL.D

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Sitting held on Friday,  
12th December, 1952.

No. 2

Writ-of-Summons No. 149/1949.

Antonio Cassar Torreggiani, Mer-  
chant, in his capacity as Managing  
Director, Cassar Company Ltd. (B).

v.

Paolo and Emmanuele Pisani

The Court,

20

Upon seeing the Writ-of-Summons, whereby the Plaintiff, in his aforesaid capacity, premising: That by schedule of pre-emption and respective deposit dated 26th June, 1948 (Exhibit A), the Plaintiff, in that capacity, exercised the right to recover from Defendants' possession, by reason of neighbourhood and any other lawful title whatsoever, the block of buildings at Church Wharf, Marsa, numbers 25 to 38 inclusive, with all the titles and appurtenances thereof, that at No. 32 being subject to an annual perpetual burthen for the celebration of Holy Mass — which property was sold to the Defendants, at the price of £15,200, by virtue of deed enrolled in the Records of Notary Victor

30

Bisazza on the 26th June, 1947; — and that the Defendants have failed to effect the re-sale of the property or to state what other lawful expenses should be deposited to their credit; — prayed that said Defendants be condemned to re-sell the property to him, in his aforesaid capacity, by reason of neighbourhood and any other lawful title whatsoever, within such short and peremptory period of time as shall be established by the Court — and this subject to the proviso that, in default within that specified time, the re-sale of the property shall be deemed so effected in pursuance of the judgment of the Court. — With Costs.

s



No. 86.  
 Judgment,  
 H.M. Court  
 of Appeal.  
 —continued.

Upon seeing Defendants' Statement of Defence, pleading that Plaintiff's claims are untenable: the water that collects in Plaintiff's property flows into the property purchased by them following a natural water-course and not one created by the act of man. Without prejudice to the foregoing, the water channel mentioned by the Plaintiff reaches but one of the warehouses which it is sought to recover from their possession, so that, at the most, it is only that particular warehouse that may be subject to recovery. On the other hand, if that water-channel gives rise to the exercise of the right of pre-emption, which it does not, the title is resolute in that the channel was made less than thirty years ago. 10

Upon seeing the judgment given by H.M. Civil Court, First Hall, on the 31st October, 1951, allowing Plaintiff's claim and, consequently, condemning the Defendants to effect the resale of the property within twelve days, subject to the proviso that, in default, the re-sale thereof shall be deemed effected in pursuance of that judgment; and, in view of the circumstances of the case, ordering each party to bear its own Costs, Registry fees, however, being paid by the Defendants.

That Court having considered :

By schedule No. 79 dated 26th June, 1948, the Plaintiff exercised the right to recover from Defendants' possession, by reason of neighbourhood and any other lawful title whatsoever, the block of buildings mentioned in the Writ-of-Summons, which the Defendants had acquired by purchase, at the price of £15,200, by virtue of instrument entered in the Records of Notary Victor Bisazza on the 26th June, 1947. At one and the same time, the Plaintiff deposited to the credit of the Defendants the sum of £15,964. 5. od, being: £15,200 in respect of the purchase price paid as above, and £764. 5. od, interest thereon according to law from the date of the deed of sale to the date of the filing of the schedule of pre-emption. 20 30

The Plaintiff claims the right to exercise pre-emption on the ground that he is the owner of the St. George's Flour Mills, Church Wharf, Marsa, and of the land adjacent thereto — shown in the plan filed at fol. 14 of the Record; — that the rain-water catchment of the roofs of the St. George's Flour Mills and of the land adjacent thereto "flows through a water-channel *made by the act of man,*" which first passes on the outside of the wall of the St. George's Flour Mills and thence into the yards of the warehouses bought by the Defendants; — and that the water collecting in that channel passes out underneath the warehouses and drains into the sea. 40

The Defendants have made no attempt to deny the existence of the water-channel as above described — a fact which the Court as well as

the Judicial Referee had the opportunity to ascertain on the spot. Nevertheless, the Defendants submit that the water collecting in Plaintiff's property flows into the property purchased by them following a natural water-course and not one created by the act of man; — and that the water-channel in question reaches but one of the warehouses which it is sought to recover from their possession, so that, at the most, it is only that particular warehouse that may be subject to recovery. On the other hand, they contend, if that water-channel gives rise to the exercise of the right of pre-emption, which it does not, the title is resolute  
 10 in that the channel was made less than thirty years before.

In order the better to understand the question at issue, it is necessary to explain certain facts which have an important bearing thereon. According to the evidence produced, the property in respect of which it is sought to exercise the right of pre-emption abuts on Plaintiff's property on two sides, that is to say, that property adjoins, on one side, the St. George's Flour Mills, and, on the other side, a field lying at a higher level than that of the property it is sought to recover. According to traces still visible, the latter property, up to the time it was demolished in the last war, consisted of warehouses. A two foot party wall still  
 20 stands between that property and the field owned by the Plaintiff, and, having regard to the manner of its construction, it is to be presumed that Defendants' predecessors-in-title built that wall at the same time they built the warehouses. It is further to be presumed that a rubble wall had stood in the place of the present two foot party wall. Evidently, at that time, the water collecting in Plaintiff's field flowed into the adjoining property it is now sought to recover, belonging to Defendants' predecessors. It would appear that, later on, at a time that goes back to more than thirty years ago, Defendants' predecessors, wishing to build, as in fact they did build, warehouses on their property, felt the  
 30 necessity, not only of replacing the former rubble wall by the present wall, but also of arresting and diverting the water that used to come down from Plaintiff's field and overflow into their own property — so that they constructed the present water-channel and provided the new party wall with a number of drain holes, each about one foot square — still to be seen to-day. These draining holes, as has been ascertained *in situ*, and as the Judicial Referee has submitted in the Report, were made in conformity with technical requirements, presumably by the same men who constructed the wall. The draining holes lead to  
 40 to join the water-channel to be found in the warehouses.

The Defendants submit that though the party wall as it stands at present, a two foot wall provided with draining holes, is "the act

No. 36.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

of man," the overflow of water has remained natural. It does not therefore constitute an easement created by the act of man and does not give rise to the exercise of the right of pre-emption: the easements envisaged by law are those only which are created by the act of man or which consist in the right of way or watercourse (section 1512 (2) of the Civil Code). However, as submitted by the Judicial Referee, the draining holes in question are "the act of man," and, because of them, the water that previously overflowed into the property which the Plaintiff seeks to recover, came to be collected by means of conduits let into the thickness of the wall and thence diverted seaward by means 10 of the channel constructed in that property.

It has been established that the other constructions mentioned above are "the act of man" and therefore constitute a continuous and apparent easement that may give rise to the exercise of the right of pre-emption (Collection of judgments, vol. XXXLLI. i. 256) — as it has done in the present case where, furthermore, it has been proved that the constructions in question were completed more than thirty years before the date of the filing of the schedule of pre-emption whereof in the writ-of-summons.

The Defendants submit that the water-channel, together with the 20 draining holes, reaches but one of the tenements in question, and that therefore it is only that tenement that may perhaps be recovered from their possession. The argument, however, is untenable. Other considerations apart, it was ascertained *in situ* on the 17th February, 1951 (fol. 75) that, before the Plaintiff built the new warehouse annexed to the Flour Mills, there were draining holes in the two foot party wall mentioned above, not only in that part of the wall adjoining the warehouse, but also in that part of it abutting on the St. George's Flour Mills — a fact in regard to which both parties are agreed. As rightly submitted by the Plaintiff, those draining holes are such as to affect, not one, but 30 each and every warehouse contiguous thereto — wherever the draining holes are to be found in the party wall.

The Defendants submit further that the water-channel in question is a resolute title in that it was constructed less than thirty years before. The better to understand the point, it is necessary to explain certain other circumstances bearing on the case. As already mentioned, the property at issue adjoins, in part, the field belonging to the Plaintiff referred to above, and, in part, the building housing the St. George's Flour Mills, likewise owned by the Plaintiff. That building did not at the outset cover the large area it occupies at present. As stated, the 40 Plaintiff, towards 1913, built a single warehouse adjoining the warehouses he is now seeking to recover from Defendants' possession. It ap-

pears that the rain-water catchment of the roofs of that first warehouse to be built was made to overflow by means of pieces of drain-pipe into the yard of the adjoining warehouses. The water so drained passed through a channel constructed "by the act of man" on the side of the adjoining warehouses and, for the reasons above-mentioned, itself constituted a continuous and apparent easement which, having been in existence at least since 1913, gives rise, and has in fact given rise, to the exercise of the right of pre-emption on Plaintiff's part.

No. 36.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

Besides the one mentioned above, there was, on the side of the  
10 field, another water-channel, likewise the act of man. In the early days, that channel collected the rain-water catchment of a part of the roofs of the old section of the building and, through a channel that existed at the time, bordering the building, conducted it to one of the many draining-holes with which, as stated, the above-mentioned wall is provided. About twenty-seven years before he exercised the right of pre-emption at issue, the Plaintiff, constructing and adding new warehouses, altered that channel — he having found a draining hole in the same wall at the back of the yard of the property in question and communicated it with a channel that was constructed by the side of his own warehouses. The Defendants therefore submit that the communication so made is a resolute title in that it was made about twenty-seven years before the exercise of the right of pre-emption. That argument, however, is also  
20 untenable. In fact, as submitted by the Judicial Referee, the fact that the communication was so made goes to show that the tenements of which it is sought to recover possession and the two foot party wall above-mentioned — as well as, therefore, the draining-holes and conduits — had been in existence for more than thirty years before the Plaintiff exercised the right of pre-emption as above. At that time, it  
30 was the same channel mentioned before that drained the rain-water catchment of the roofs of Plaintiff's tenement: the only thing is that when the new buildings were constructed, the water was communicated with the channel in a different way.

Upon seeing Defendants' Note of Appeal, and their Petition, praying that that judgment be reversed and that Plaintiff's claims be dismissed with the Costs both of the First and of this Second Instance.

Upon seeing Plaintiff's Answer, praying that the Appeal be dismissed, and, entering cross-appeal, praying further that the judgment be affirmed on the merits in so far as it allowed the claim, and that an Order be made for the Costs of both the First and Second Instance to  
40 be borne by the Defendant Appellants.

Having examined all the acts filed in the Record.

Having held a formal enquiry on the spot.

No. 86.  
Judgment,  
H.M. Court  
of Appeal.  
—continued.

Having heard Counsel on both sides.

Having seen the Notes of Submissions filed by the contending parties.

Having considered :

As matters stand, the Plaintiff maintains that the right of pre-emption, by reason of neighbourhood, is competent to him in view of the factors hereunder stated, namely:—

1. The water that falls on the roofs of Plaintiff's building and is drained by means of water-spouts into a yard belonging to third parties, lying between Plaintiff's building and the property in respect of which the Plaintiff has exercised the right of pre-emption — and that is supposed to continue to flow in the channel bordering the whole length of the wall of that property. 10

2. The water that flows from Plaintiff's roofs into the channel that was constructed alongside Plaintiff's warehouses when new warehouses were built by the Plaintiff some twenty-six or twenty-seven years before he exercised the right of pre-emption — and that through a draining-hole in the two foot party wall continues to flow along the channel bordering the whole length of the property in respect of which the right of pre-emption has been exercised. 20

3. The water that flows down into the channel of the property in question by means of draining-holes and conduits in the party wall lying between Plaintiff's field and that property.

As regards the *first* factor purporting to constitute the "neighbourhood" above-mentioned, it is to be mentioned that that state of things had existed at the time of Plaintiff's *old* warehouse, and therefore over thirty years ago. *Ex-admissis*, the easement in question is devoid of a title. Therefore, ruling out "the disposition of the owner of two tenements," that which is left is the prescription that could have created that title (section 494 Chap. 23). It has however been established (Plaintiff's evidence — fol. 45 *et seq.*) that the yard taking the overflow was the property of third parties and was only held by the Plaintiff on lease. It follows therefore that possession during the time the Plaintiff was the owner of the old warehouse (that is, since 1913 — *vide* Plaintiff's evidence at fol. 45) fails to count for the purpose of prescription, in that the easement suffered by the servient tenement (that is to say, the yard — which is not even the tenement in respect of which the right of pre-emption has been exercised) was imposed by the same person who was the owner of the dominant tenement, and that person (the Plaintiff) was but the tenant of the servient tenement; and it is a fact that at law the easement which the tenant suffers to be exercised over the tenement does not prejudice the owner of such tenement. (*Vide* also 30 40

- Abela v. Ciantar, Civil Court, First Hall, 18. vi. 1910) As regards possession prior to 1913, that is, before the Plaintiff became the owner of the old warehouse, no evidence has been produced to show that, in 1913, as between the owner of the dominant tenement (the old warehouse) and the owner of the servient tenement (the yard), possession of the easement had already endured for thirty years according to law; and such possession, to be of any value, would have had to be already completed by the time the Plaintiff acquired the old warehouse, considering that, from 1913 onwards, the Plaintiff could not have exercised acquisitive
- 10 prescription over a yard which belonged to someone else and of which he himself was the tenant. To put it briefly, the Court, so far as this first factor of neighbourhood is concerned, has no more before it than that the water on Plaintiff's roof used to fall into a yard which the Plaintiff held on lease — without there being anything to show that that state of things was created by virtue of a title, or by "the disposition of the owner of two tenements" or by lawful possession for thirty years that attained completion at the time when the Plaintiff acquired the old warehouse, apart from the fact that the yard is not the tenement in respect of which the right of pre-emption has been exercised.
- 20 As regards the *second* factor, the existing state or situation, which forms the basis thereof — that is, the channel or ditch excavated by Plaintiff's warehouses — was *ex-admissis* created at the time when the new warehouses were constructed, or some twenty-six or twenty-seven years ago. Here, too, no title exists, and the claim rests on the argument of prescription, the Plaintiff contending that possession deriving from a pre-existing channel is to be added to his possession of the easement. The Court is unable to agree with that view, for the Plaintiff, when he excavated the channel alongside the new warehouse, created a *new situation*, so that, if at all, prescription commenced to run from that date.
- 30 Nor has any evidence been forthcoming as to the visibility of this *opus manufactum* within the meaning of the text-books, jurisprudence and the law. The channel lies in the dominant tenement, at the back of the party wall, and the servient tenement has visibility obstructed by reason of the fact that it lies at a lower level. *Probability* as to visibility is not enough. Nor, again, has any evidence been produced to establish *personal knowledge* on the part of the owner of the servient tenement at any time before the construction of the channel. That apart, the analogy to be drawn from the provisions of section 501 Chap. 23 (*vide* Appeal, Axiak v. Bajada 15. 2. 1888; Sant v. Pace, First Hall, 28. iv. 1891; Sceberras v. Farrugia Bugeja, First Hall, 22. vi. 1872, affirmed
- 40 on Appeal 12. xi. 1873) is that visibility may be argued as something *certain* when the works are to be found in the *servient* and not in the

No. 36.  
Judgment,  
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of Appeal.  
—continued.

dominant tenement — whilst if they are constructed in the dominant tenement, it is necessary clearly to establish the element of visibility. In this case, as stated, visibility is obstructed topographically by reason of the different levels, and personal knowledge on the part of the owner of the servient tenement has not been proved *aliunde*. Once again, therefore, the easement has failed to be established, in that, if at all, prescription must be deemed to have commenced to run from the date of the new situation created by the Plaintiff, and his possession thereof cannot be linked up with and added to that pre-existing — and, in any case, it is debarred by the requisite of visibility. 10

As regards the *third* easement, that concerning the water that flows down into the channel of the property in question by means of draining-holes and conduits in the party wall, the question is whether the flow of the water is "*naturali cursu*" or "*natura loci*," due simply to gravitation and the topographical position of the two tenements — that of the Plaintiff lying at a higher level, and that of which the Plaintiff seeks to obtain possession, lying at a lower level; — or whether the water flows into the latter tenement artificially "*per aquaeductum manufactum*." — No pre-emption title is envisaged in the case of the easement first mentioned, that being a legal easement, arising from the situation of the property. 20

It is a settled principle in jurisprudence, and indeed one dictated by common sense, that the test to apply is to see whether the water reaches the servient tenement as the result of natural gravitation, or whether it reaches the servient tenement artificially, in such a way that, naturally, it would not reach that tenement.

In the present case, the fact that the water reaches the servient tenement following its natural course, and not with the help of any man-made contrivances, is ascertainable *ictu oculi* and has not even been challenged. Nevertheless, the Plaintiff maintains that the works carried out — draining-holes, conduits and drippers — have altered the nature of the easement and transformed what was a legal easement into an easement created by "the act of man" 30

Now apart from the evidence, it is something that has been ascertained *in situ* that the works in question are not causing any alteration of the easement, but only *regulating the exercise*, in the sense, that is, that the water overflowing from Plaintiff's field is being collected in the channel of the servient tenement — by means of draining-holes, etc. — instead of being allowed to spread out throughout the warehouses.

It is a principle in the text-books and in jurisprudence that, thereby, the legal nature of the easement is left unaltered. Pacifici Mazzoni, discussing a similar hypothesis (*Servitù Legali*, Vol. II. para. 19) states: 40

“The servient tenement is not freed of the easement by a wall that is built to enclose the dominant tenement, in that, leaving draining-holes therein to allow the water its outlet as before, *the overflow remains natural.*” And, in the sub-joined Notes, the author quotes the concurrent opinions of Daviel and Demalombe and some jurisprudence. The Court of Cassation, Rome, in the judgment in re Egidi v. Paris (9th July, 1895), held: “A legal easement in respect of a water-course arising out of the situation of the property does not cease to be such where some *opus manufactum* has been constructed to regulate the exercise thereof.” And the Court of Cassation, Turin, in the judgment in re “Revignani v. Mosconi” (29th December, 1879), stated: “The existence of an artificial channel is not repugnant to an easement in respect of a *natural* flow of water.” It is in fact commonly held (*vide* Dionisotti — *Servitù delle Aque*) that: “...it is open to the owner of a servient tenement to carry out in his own property all such works as may be necessary to forestall and prevent the damages that he may sustain in consequence of the overflow of water — as well as such works from which he may derive a real benefit, i.e. diverting the waters into irrigation channels.”

20 That easement cannot therefore be deemed to be the act of man and was and still is a legal easement.

*On Plaintiff's cross-appeal.*

The cross-appeal, based on the assumption that the judgment appealed from would be affirmed on its merits, was restricted to the head of costs — in the sense, that is, that once the Court below gave judgment on the merits for the Plaintiff, there was no reason why the Plaintiff should bear a part of the costs. The argument fails if the merits are decided in the opposite sense.

On these grounds

30 Adjudges:

Allowing the principal appeal, reversing the judgment appealed from and dismissing Plaintiff's claim; and dismissing the cross-appeal entered by the Plaintiff.

Orders that the Costs both of the First and of this Second Instance shall be paid by the Plaintiff.

(Signed) J. N. CAMILLERI,  
D/Registrar.

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No. 37.  
Plaintiff's  
Petition for  
leave to  
appeal to  
H.M. Privy  
Council.

**No. 37.**

**Plaintiff's Petition for leave to appeal to  
Her Majesty's Privy Council.**

In H.M. Court of Appeal.

Antonio Cassar Torreggiani, Mer-  
chant, in his capacity as Managing  
Director, Cassar Company Ltd. (B).

v.

Paolo and Emmanuele Pisani

The Petition of Antonio Cassar Torreggiani in his aforesaid capa- 10  
city.

Respectfully sheweth:—

The Plaintiff, by writ-of-summons filed in H.M. Civil Court, First  
Hall, premising: That by schedule of pre-emption and respective de-  
posit dated 26th June, 1948 (Exhibit A), the Plaintiff, acting in his afore-  
said capacity, exercised the right to recover from Defendants' posses-  
sion, by reason of neighbourhood and any other lawful title whatso-  
ever, the block of buildings at Church Wharf, Marsa, numbers 25 to  
38 inclusive, with all the titles and appurtenances thereof, that at No.  
32 being subject to an annual perpetual burthen for the celebration of 20  
Holy Mass — which property was sold to the Defendants, at the price  
of £15,200, by virtue of deed enrolled in the Records of Notary Victor  
Bisazza on the 26th June, 1947;—and that the Defendants have failed to  
effect the re-sale of the property or to state what other lawful expenses  
should be deposited to their credit; — prayed that said Defendants be  
condemned to re-sell the property to him, in his aforesaid capacity, by  
reason of neighbourhood and any other lawful title whatsoever, within  
such short and peremptory period of time as shall be established by  
the Court — and this subject to the proviso that, in default within that  
specified time, the re-sale of the property shall be deemed so effected in 30  
pursuance of the judgment of the Court. — With Costs.

H.M. Civil Court, First Hall, by Judgment given on the 31st  
October, 1951, allowed Plaintiff's claim and, consequently, condemned  
the Defendants to effect the re-sale of the property within twelve days,  
subject to the proviso that, in default, the re-sale thereof shall be deem-  
ed effected in pursuance of the judgment. — And, in the circumstances  
of the case, ordered each party to bear its own costs, bar the Registry  
fees, which the Defendants were ordered to pay.

The Defendants entered appeal from that Judgment and, in their  
Petition, prayed that Plaintiff's claim be dismissed with all the Costs 40  
both of the First and Second Instance.

This Honourable Court, by Judgment given on the 12th December, 1952, allowed the Appeal entered by the Defendants, dismissed the Judgment given by the Court of First Instance, dismissed the Cross-Appeal entered by the Plaintiff and ordered that the Costs of the First and Second Instance be paid by the Plaintiff.

No. 87.  
Plaintiff's  
Petition for  
leave to  
appeal to  
H.M. Privy  
Council.  
—continued.

The Petitioner deems himself aggrieved by the Judgment given by this Honourable Court and wishes to enter Appeal therefrom to Her Majesty in Her Privy Council.

10 It is beyond doubt that the matter in dispute amounts to and exceeds the value of Five Hundred Pounds.

Wherefore the Petitioner humbly prays that this Honourable Court may be pleased to grant him leave to appeal from the aforesaid Judgment, given on the 12th December, 1952, to Her Majesty in Her Privy Council.

(Signed) G. PACE,  
Advocate.

„ B. H. DINGLI,  
Legal Procurator.

This 27th December, 1952.

20 Filed by B. H. Dingli L.P. without Exhibits.

(Signed) J. CAMILLERI CACOPARDO.  
D/Registrar.

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### No. 38.

### Decree on Plaintiff's Petition

#### HER MAJESTY'S COURT OF APPEAL

The Court,

Upon seeing the Petition whereby the Plaintiff prays for leave to appeal to Her Majesty in Her Privy Council. —

30 Orders that the Petition be put on the case-list for hearing at the Sitting to be held on the 23rd January, 1953 and that service be made upon the Defendants.

This 3rd January, 1953.

(Signed) S. BUGEJA,  
D/Registrar.

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No. 88.  
Decree on  
Plaintiff's  
Petition.

No. 39.  
Decree  
granting  
conditional  
leave.

**No. 39.**

**Decree granting conditional leave.**

HER MAJESTY'S COURT OF APPEAL

(Civil Hall)

Judges:

The Honourable Mr. Justice A. J. Montanaro Gauci LL.D.,  
*Acting President.*

The Honourable Mr. Justice W. Harding B.Litt., LL.D.

The Honourable Mr. Justice T. Gouder, LL.D.

Sitting held on Friday, the 10  
Sixth March, 1953.

No. 9

Writ-of-Summons No. 149/1949.

Antonio Cassar Torreggiani, Mer-  
chant, in his capacity as Managing  
Director, Cassar Company Ltd. (B).

v.

Paolo and Emmanuele Pisani

The Court,

Upon seeing the Petition whereby the Plaintiff submitted: 20

That the Plaintiff, by writ-of-summons filed in H.M. Civil Court,  
First Hall, premising: That by schedule of pre-emption and respec-  
tive deposit dated 26th June, 1948 (Exhibit A), the Plaintiff, acting in  
his aforesaid capacity, exercised the right to recover from Defendants'  
possession, by reason of neighbourhood and any other lawful title  
whatsoever, the block of buildings at Church Wharf, Marsa, numbers  
25 to 38 inclusive, with all the titles and appurtenances thereof, that at  
No. 32 being subject to an annual perpetual burthen for the celebration  
of Holy Mass — which property was sold to the Defendants, at the  
price of £15,200, by virtue of deed enrolled in the Records of Notary 30  
Victor Bisazza on the 26th June, 1947; — and that the Defendants  
have failed to effect the re-sale of the property or to state what other  
lawful expenses should be deposited to their credit; — prayed that said  
Defendants be condemned to re-sell the property to him, in his afore-  
said capacity, by reason of neighbourhood and any other lawful title  
whatsoever, within such short and peremptory period of time as shall  
be established by the Court — and this subject to the proviso that, in  
default within that specified time, the re-sale of the property shall be  
deemed effected in pursuance of the judgment of the Court. — With  
Costs. 40

That H.M. Civil Court, First Hall, by Judgment given on the 31st October, 1951, allowed Plaintiff's claim and, consequently, condemned the Defendants to effect the re-sale of the property within twelve days, subject to the proviso that, in default, the re-sale thereof shall be deemed effected in pursuance of the judgment. — And, in the circumstances of the case, ordered each party to bear its own costs, bar the Registry fees, which the Defendants were ordered to pay.

No. 89.  
Decree  
granting  
conditional  
leave.  
—continued.

That the Defendants entered appeal from that judgment and, in their Petition, prayed that Plaintiff's claim be dismissed with all the  
10 Costs both of the First and Second Instance.

That this Court, by Judgment given on the 12th December, 1952, allowed the Appeal entered by the Defendants, dismissed the judgment given by the Court of First Instance, dismissed the Cross-Appeal entered by the Plaintiff and ordered that the Costs of the First and Second Instance be paid by the Plaintiff.

That it is beyond doubt that the matter in dispute amounts to and exceeds the value of Five Hundred Pounds.

And the Petitioner therefore prayed that he be granted leave to appeal from the judgment given by this Court on the 12th December,  
20 1952 to Her Majesty in Her Privy Council. —

Upon seeing the Decree given on the 3rd January, 1953, ordering that the Petition be put down on the case-list for hearing at the Sitting of the 23rd January, 1953 and that service be made upon the Defendants.

Upon seeing the judgment given by this Court of Appeal on the 12th December, 1952.

Whereas the value of the matter in dispute exceeds Five Hundred Pounds. —

Allows the Petition and grants the Appellant conditional leave to  
30 appeal from the judgment given by this Court of Appeal on the 12th December, 1952 to Her Majesty in Her Privy Council, subject to his entering into good and sufficient security, in terms of section 4 of the Order-in-Council of 1909, in a sum not exceeding Five Hundred Pounds, and, further, gives the Appellant three months within which to procure the preparation of the Record and the transmission thereof to the Judicial Committee of the Privy Council.

Costs hereof reserved to the final Order.

(Signed) J. MICALLEF,  
D/Registrar.

No. 40.  
Security  
Bond.

**No. 40.**  
**Security Bond**

Registry of H.M Superior Courts, Valletta, this Sixteenth March, 1953.

Carmelo Cassar Torreggiani, son of the late Agostino and the late Rosaria neé Caruana Dingli, born in Valletta and residing at Sliema, appears and, in terms of the Decree given by Her Majesty's Court of Appeal on the Sixth March, 1953, in re Antonio Cassar Torreggiani nomine v. Paolo and Emmanuele Pisani, hereby stands surety for and up to the sum of Five Hundred Pounds (£500) for the due prosecution of the Appeal entered by the Appellant nomine, Antonio Cassar Torreggiani, to Her Majesty in Her Privy Council from the Judgment given by H.M. Court of Appeal on the 12th December, 1952, and for the payment of all such Costs as may become payable to the Respondents in the event of the Appellant nomine not obtaining an Order granting him final leave to appeal, or of the Appeal being dismissed, or of Her Majesty in Council ordering the Appellant nomine to pay the Respondents' Costs of the Appeal. 10

(Signed) CARMELO CASSAR TORREGGIANI,

„ CARM. VELLA,

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Assistant Registrar.

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No. 41.  
Minute  
approving  
Translation.

**No. 41.**  
**Minute approving Translation**

In H.M. Court of Appeal.

Antonio Cassar Torreggiani *nomine*

v.

Paolo and Emmanuele Pisani.

The Minute of the contending parties.

Whereby, to meet the ends and purposes of the law, they declare

that the translation of the Record produced by the Plaintiff Appellant is correct and has their approval.

(Signed) G. PACE, Advocate  
for the Plaintiff.

„ V. CARUANA, Advocate  
for the Defendants.

No. 41.  
Minute  
approving  
Translation.  
—continued.

This 3rd June, 1953.

Filed by B. H. Dingli L.P without Exhibits.

(Signed) EDW. CAUCHI,  
Deputy Registrar.

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## No. 42.

### Application for Final Leave

No. 42.  
Application  
for Final  
Leave.

In H.M. Court of Appeal.

Antonio Cassar Torreggiani *nomine*

v.

Paolo and Emmanuele Pisani

The Application of Antonio Cassar Torreggiani *nomine*.

Respectfully sheweth:—

20 That, by Decree given by this Honourable Court on the 6th March, 1953, the Plaintiff Appellant was granted conditional leave to appeal to Her Majesty in Her Privy Council from the judgment given in the above case on the 12th December, 1952.

That the required security has been duly tendered and the translation and printing of the Record has now been completed.

Wherefore the Plaintiff Appellant respectfully prays that this Honourable Court may be pleased to grant him final leave to appeal to Her Majesty in Her Privy Council.

(Signed) G. PACE,  
Advocate.

„ B. H. DINGLI,  
Legal Procurator.

30

This 19th June, 1953.

Filed by B.H. Dingli L.P without Exhibits.

(Signed) U. BRUNO,  
Deputy Registrar.

**No. 43.**

**Decree granting Final Leave**

HER MAJESTYS' COURT OF APPEAL

Judges:

The Honourable Mr. Justice A. J. Montanaro Gauci LL.D.,  
*Acting President.*

The Honourable Mr. Justice W Harding B.Litt., LL.D.

The Honourable Mr. Justice T. Gouder LL.D.

Sitting held on Friday,  
the 26th June, 1953.

10

No. 13

Writ-of-Summons No. 149/49.

Antonio Cassar Torreggiani, Mer-  
chant, in his capacity as Managing  
Director, Cassar Company Limited.

v.

Paolo and Emmanuele Pisani

The Court,

Upon seeing the Application, whereby the Plaintiff Appellant, submitting that the translation and the printing of the Record has now been completed, prays that he be granted final leave to appeal to Her Majesty in Her Privy Council. 20

Upon seeing the Decree given by the same Court on the 6th March, 1953, whereby the Plaintiff Appellant was granted conditional leave to appeal to Her Majesty in Her Privy Council from the judgment given by this Court on the 12th December, 1952 — the order as to Costs being reserved to the Decree granting final leave.

Allows the Application and grants the Plaintiff Appellant final leave to appeal from the aforesaid judgment to the Judicial Committee of Her Majesty's Privy Council. 30

The Costs of the present Decree, and of the Decree granting conditional leave, to be borne by the Plaintiff Appellant, saving recovery thereof, or part thereof, from the Respondents, as may be ordered by the Judicial Committee of Her Majesty's Privy Council.

(Signed) J. MICALLEF,  
Deputy Registrar.

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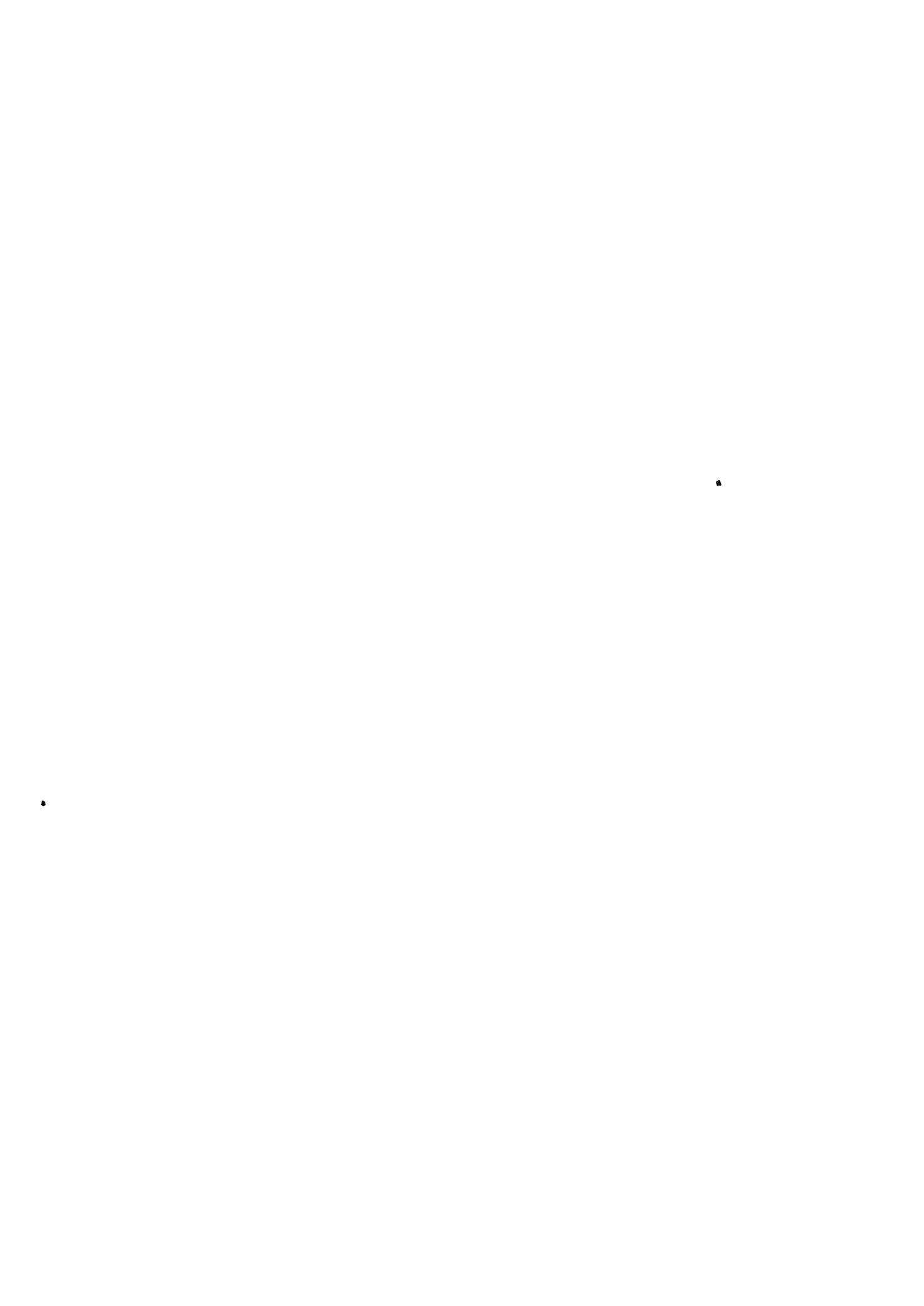
# **EXHIBITS**

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**Plaintiff's Exhibits.**



**Exhibits filed together with the Writ-of-Summons.****A. — SCHEDULE OF PRE-EMPTION**

In H.M. Civil Court, First Hall.

Chev. Antonio Cassar Torreggiani  
in his capacity as Managing Director,  
Cassar Company Ltd.

v.

Paolo and Emmanuele Pisani, Merchants,  
sons of the late Giuseppe and the late Felicità neé Borg,  
born at Floriana, residing at Sliema.Exhibits  
filed  
together  
with the  
Writ-of-  
Summons.

10

Schedule of pre-emption and respective deposit of the Chev. Antonio Cassar Torreggiani in his aforesaid capacity.

Respectfully sheweth:—

By deed enrolled in the Records of Notary Victor Bisazza on the 26th June, 1947, Professor Victor Caruana LL.D. and Professor Joseph Henry Xuereb LL.D., in their capacity as Testamentary Executors of Beatrice Apap, confirmed in their appointment by Decree given by H.M. Civil Court, Second Hall, on the 17th April, 1945, and authorized  
20 by that Court for the purposes within-stated by Decree dated 16th November, 1945, Decree No. 595/1947 and Decree No. 1826/1947, and further authorized to that end by a Decree of the Archiepiscopal Curia dated 19th October, 1945 — sold and conveyed to the said Paolo and Emmanuele Pisani the warehouses at Church Wharf, Marsa, Nos. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38, destroyed by enemy action — that at No. 32 being subject to an annual perpetual burthen of Twelve Pounds for the celebration of Holy Mass — with all the rights and appurtenances thereof.

The aforesaid warehouse at No. 32 (formerly No. 17) is subject to  
30 the aforesaid perpetual burthen of Twelve Pounds per annum by virtue of deed enrolled in the Records of Notary Francesco Giorgio Schembri on the 2nd March, 1912, whereunder the aforesaid warehouse was made subject to a special hypothec guaranteeing payment of the aforesaid burthen.

In order the better to guarantee the fulfilment of the aforesaid pious foundation, the Apparers, Professor Victor Caruana LL.D. and Professor Joseph Henry Xuereb LL.D., in their aforesaid capacity, and acting by and with the consent of the buyers, Paolo and Emmanuele Pisani, hereby render the aforesaid warehouse at No. 32, Church  
40 Wharf, Marsa, subject to a real burthen of Twelve Pounds per annum for the celebration of Holy Mass in accordance with the aforesaid deed, to which the parties make reference.

Exhibits  
filed  
together  
with the  
Writ-of-  
Summons.  
—continued.

Which sale was made for the price of Fifteen Thousand Two Hundred Pounds (£15,200) and subject to the condition that all the principal and incidental expenses in connection with the Deed of Sale were to be paid by the buyers, Paolo and Emmanuele Pisani, that the sale entitled the buyers to receive payment of the whole sum payable as compensation by the War Damage Commission and that contributions in terms of the Land Valuation Ordinance were to be paid by the vendors up to the date of the Deed of Sale and thereafter by the buyers.

The said Chev. Antonio Cassar Torreggiani is the owner of the contiguous property, the water conduits of which, or underground channels, go through all the tenements bought by Paolo and Emmanuele Pisani by virtue of the aforesaid Deed and he therefore enjoys an easement over the tenements in question and is entitled by reason of neighbourhood to the right of pre-emption in respect thereof. 10

Wherefore the said Chev. Antonio Cassar Torreggiani hereby recovers from the possession of Paolo and Emmanuele Pisani, by reason of neighbourhood and any other lawful title whatsoever, the aforesaid property at Nos. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38, Church Wharf, Marsa, bought by them by virtue of Deed enrolled in the Records of Notary Victor Bisazza on the 26th June, 1947; and, at one and the same time, hereby makes deposit of the sum of Fifteen Thousand Nine Hundred and Sixty-four Pounds Five Shillings (£15,200, price paid, and £764. 5. 0, interest thereon according to law from the date of the Deed of Sale to the present date) in order that this sum may freely be withdrawn by Paolo and Emmanuele Pisani as soon as they effect the re-sale of the property according to law, a period of eight days being given to them for the purpose. 20

Finally, the said Chev. Antonio Cassar Torreggiani nomine declares on oath that the lawful expenses incurred by the buyers in connection with the sale are not known to him, in view of which he reserves the right to increase the present deposit by the appropriate amount as soon as the amount of such lawful expenses is made known to him by service of a Judicial Letter according to law. 30

(Signed) G. M. CAMILLERI,  
Advocate.

„ G. PACE BONELLO,  
Legal Procurator.

This 27th June, 1948.

Filed by G. Pace Bonello L.P without Exhibits and together with 40

the sum of £15,964. 5. 0; and sworn to in my presence by the party exercising the right of pre-emption.

(Signed) A. GHIRLANDO,  
Deputy Registrar.

Exhibits  
filed  
together  
with the  
Writ-of-  
Summons.  
—continued.

I hereby certify that, on the 26th June, 1948, I effected service of the present Schedule of Pre-emption, through Acting Usher Vincent Gruppetta, upon Paolo and Emmanuele Pisani, a copy of the document, together with an extract from section 22 of the Laws of Procedure, having been left with Alfred Pisani at No. 19, Spencer Hill, Marsa.

10 This 28th June, 1948.

(Signed) N. AQUILINA,  
Court Marshal.

### B. — DEED CONSTITUTING THE CASSAR COMPANY LTD. (\*)

On this sixteenth day of June one  
thousand nine hundred thirty six.

Before us, Rosario Frendo Randon, Doctor of Laws and Notary Public and in the presence of the undersigned witnesses who declare to possess all qualifications required by law to constitute them good and valid witnesses personally came and appeared.

20

Antonio Cassar Torreggiani, O.B.E., son of the late Agostino, born and residing in Valletta, Merchant.

John Cassar Torreggiani, son of the late Carmelo, born in Floriana and residing in Valletta, Merchant.

Carmelo Cassar Torreggiani, son of the late Agostino, born in Valletta and residing in Sliema, Merchant.

Francesco Maria Cassar Torreggiani, son of Antonio, born and residing in Valletta, Merchant.

30

Agostino Cassar Torreggiani, son of Antonio, born and residing in Valletta, Merchant.

Giuseppe Maria Cassar Torreggiani, son of Giovanni, born in Valletta and residing in Ta' Xbiex, limits of Gzira, Merchant.

Carmelo Maria Cassar Torreggiani, son of Giovanni, born and residing in Valletta, Merchant.

The said appearers well known to Us, the said Notary.

By this act the said Antonio Cassar Torreggiani, John Cassar Torreggiani, Carmelo Cassar Torreggiani, Francesco Maria Cassar

(\*) Original in English.

Exhibits  
filed  
together  
with the  
Writ-of-  
Summons.  
—continued.

Torreggiani, Agostino Cassar Torreggiani, Giuseppe Maria Cassar Torreggiani and Carmelo Maria Cassar Torreggiani declare to confirm and fully approve the work of "Cassar Company Limited" up to the thirty first (31st) December one thousand nine hundred and thirty five (1935) and leave discharge and acquittance in favour of the said Antonio Cassar Torreggiani Managing Director, which Company was constituted by virtue of a public instrument received by Notary Luigi Gauci Forno on the seventeenth (17th) April one thousand nine hundred and twenty two (1922) and amended by virtue of a private writing of the twentieth January one thousand nine hundred and thirty enrolled in the acts of Notary Luigi Gauci Forno of the Twenty first (21st) January of said year 1930, a copy of which was filed in His Majesty's Commercial Court on the seventh August one thousand nine hundred and twenty two and twenty second January one thousand nine hundred and thirty respectively and published in the Government Gazette of the eleventh August of said year 1922 and thirty first (31st) January one thousand nine hundred and thirty respectively, and further the same appearers declare to continue the same, but to cancel all the old rules and conditions governing the above Company and to substitute them by the following:—

1) The Company is to be continued from the first January of this year 1936 to the thirty first December one thousand nine hundred and forty two as a limited liability Company under the same name of "Cassar Company Limited" (Societe Anonyme) the object of which is to carry on the business of shipowners, wheat merchants, flour millers and other trades in general.

2) The subscribed and paid up capital of the Company is Sixty Thousand Pounds (£60,000) divided into six hundred shares of one hundred pounds (£100. 0. 0.) each fully paid at par, and allotted as follows:—

Antonio Cassar Torreggiani, son of the late Agostino, two hundred and twenty eight shares	£22,800. 0. 0.	30
Francesco Maria Cassar Torreggiani son of Antonio, thirty six shares	£ 3,600. 0. 0.	
Agostino Cassar Torreggiani, son of Antonio, thirty six shares	£ 3,600. 0. 0.	
John Cassar Torreggiani, son of the late Carmelo, seventy eight shares	£ 7,800. 0. 0.	
Giuseppe Maria Cassar Torreggiani, son of John thirty six shares	£ 3,600. 0. 0.	40
	<hr/>	
	£41,400. 0. 0.	

	£41,400. 0. 0.	with the Exhibits filed together Writ-of-Summons. —continued.
Carmelo Maria Cassar Torreggiani, son of John thirty six shares	£ 3,600. 0. 0.	
Carmelo Cassar Torreggiani, son of the late Agostino one hundred and fifty shares	£15,000. 0. 0.	
	Total £60,000. 0. 0.	

10     3) The shareholders shall not be liable for any debts of the Company exceeding the paid up amounts as stated against their names.

4) The Administration and Management of the concern is to consist of a Board of three Directors as follows:—

20     Antonio Cassar Torreggiani, who is Chairman for life, John Cassar Torreggiani and Carmelo Cassar Torreggiani Directors for life who are jointly and separately empowered to sign cheques, customs forms and other routine documents on account of the Company. The Board will be properly constituted with a quorum of two Directors. In case of resignation or defect of any of the three Directors a substitute will be elected in a General Meeting of the shareholders. An ordinary General Meeting will be held annually between the first and thirty first (1st and 31st) January of each year, when the Balance Sheet and Profit and Loss Account will be submitted to shareholders.

Antonio Cassar Torreggiani will be remunerated by five per cent (5%) on the net profits.

30     He is also empowered to bind the Company with third parties, to buy and sell on behalf of the Company securities and other investments, as well as any immovable property.

5) In all General Meetings of the Company each share of one hundred pounds (£100) as issued and contemplated in this contract is to carry one vote which can be recorded either personally or by proxy, and a General Meeting is considered to be valid with a quorum of fifty per cent (50%) of the Shareholders with a right to vote at a time. If a General Meeting is called and there is no quorum a second meeting will be called and this will be valid whatever may be the number of Shareholders present.



Exhibits  
filed  
together  
with the  
Writ-of-  
Summons.  
—continued.

6) The Chairman or a delegate appointed by him will represent the Company in Law Court.

7) The shares of the Company shall not be transferred or sold except by the unanimous consent of the shareholders or as provided for in this contract.

8) Should a shareholder desire to cease to have a holding in the Company he may do so after obtaining the permission of the Management provided that he surrenders to the Company his shares. It shall rest with the Management to decide, without right to appeal, whether or not the said permission should be granted. In the event of the death 10  
of a shareholder, such shareholder shall cease to be considered as shareholder on the thirty first (31st) December next following, unless the Management decides to recognise the heirs of the deceased as shareholders in which case the heirs will have no right to vote and will be considered as dormant shareholders without any right to interfere whatsoever in the Management of the concern.

The shareholders may however grant the right to vote to male shareholders over twenty one years old, provided that it is given by a decision of a General Meeting passed by a majority of seventy five per cent (75%) of the votes recorded. In all the above cases of paying out share- 20  
holders, payments of the value of the share shall be made to the rightful party, together with the quota of profits, if there shall be any, or with the deduction of the quota of loss sustained or foreseen to the amount which the Management will fix without any obligation for the company to make any liquidation of any kind whatsoever. The decision of the Management is final without any right to appeal.

9) The duration of the Company is to remain as already fixed and therefore to continue up to the thirty first December (31st) one thousand nine hundred and forty two (1942) after which it is hereby understood to be renewed from year to year unless a written notice re- 30  
questing liquidation by any shareholder is given one month before the thirty first (31st) December of each year, in which case a General Meeting of the shareholders will take place and a decision arrived at by a majority of votes, either to pay out as provided for in the above, shareholders who insist on liquidation and allow the remaining shareholders to maintain and continue, the Company, or in the alternative to liquidate the Company as a whole.

Done, read and signed, after explanation having been made to the appearers of the contents of this deed, in Malta, in Valletta, at number one hundred and twenty three of Strada Vescovo, in the presence of 40

Francis Pisani, clerk, son of the late Alfredo, residing in Sliema and  
Emmanuele Mifsud, clerk, son of the late Giovanni, residing in Valletta.

Exhibits  
filed  
together  
with the  
Writ-of-  
Summons.  
—continued.

(Signed) A. CASSAR TORREGGIANI  
 „ JOHN CASSAR TORREGGIANI  
 „ C. CASSAR TORREGGIANI  
 „ F. CASSAR TORREGGIANI  
 „ AGOST. CASSAR TORREGGIANI  
 „ JOSEPH M. CASSAR TORREGGIANI  
 „ CLO. M. CASSAR TORREGGIANI  
 10 „ FRANCIS PISANI  
 „ E. MIFSUD  
 „ R. FRENDO RANDON,  
 Notary Public  
 Malta.

#### D. — REPORT BY MR. E. VASSALLO A. & C.E.

The undersigned has been instructed by Mr. Antonio Cassar Torreggiani to make an investigation of the system for the disposal of the rain-water catchment of the roofs of his property at Marsa, known as the St. George's Flour Mills, and of the adjacent fields, likewise his  
 20 property.

The undersigned has therefore carried out an investigation on the spot and made a survey of the roofs of the property above-mentioned, the adjacent fields of the neighbouring plot which was formerly the site of warehouses Nos. 25/44, Church Wharf, Marsa; and he has prepared the attached plan and now reports as follows:—

The ground formerly occupied by warehouses Nos. 27/28, 29/30, 31/32, 33/34, 35/36, 37/38, 39/40, 41/42 and 43/44, Church Wharf, now destroyed through enemy action, is bordered on the north-west by the field mentioned above and partly by the building known as the  
 30 St. George's Flour Mills.

The rain-water catchment of the roofs of the St. George's Flour Mills flows through water spouts projecting from the walls into a channel lying between the adjacent field and the building. The channel borders the whole length of the building up to the point where it reaches the party wall between the warehouses and the fields. Then, in the corner where the walls make junction, the channel dips below ground level and, through apertures in the wall, proceeds along the whole length of the wall separating the warehouses from the adjacent fields.

An accumulation of debris and the fact that the channel disappears below the warehouse grounds makes it impossible to view the  
 40 channel as actually embedded. However, the slabs covering it are bro-

Exhibits  
filed  
together  
with the  
Writ-of-  
Summons.  
—continued.

ken at certain points and an idea of its direction may therefore be gathered.

Besides the one above, another channel, of greater capacity, follows a longitudinal course in a different direction and finds its outlet into the sea. It is impossible without taking up the ground to follow the exact course of this second channel or to venture an opinion as to the existence of any other similar channel.

An aperture in the wall buttressing the quay, slightly above sea level — noticed by the undersigned — is probably the outlet for the longitudinal channel above mentioned or some other channel similar 10 to it.

The fields to the north-west lie on a level about nine feet higher than the warehouses and are divided from the warehouses by a wall of a thickness of about two feet. Throughout the length of this wall, on the side of the fields, the undersigned has noticed several holes at ground level (more than nine in number) bored vertically through the thickness of the wall.

On the warehouses' side, the undersigned failed to locate the other end of the holes in question — except in the case of a single hole that comes out on the side of warehouses Nos. 41/42. It is probable 20 that the outflow ends of these holes have been covered up or were filled in at some time or another.

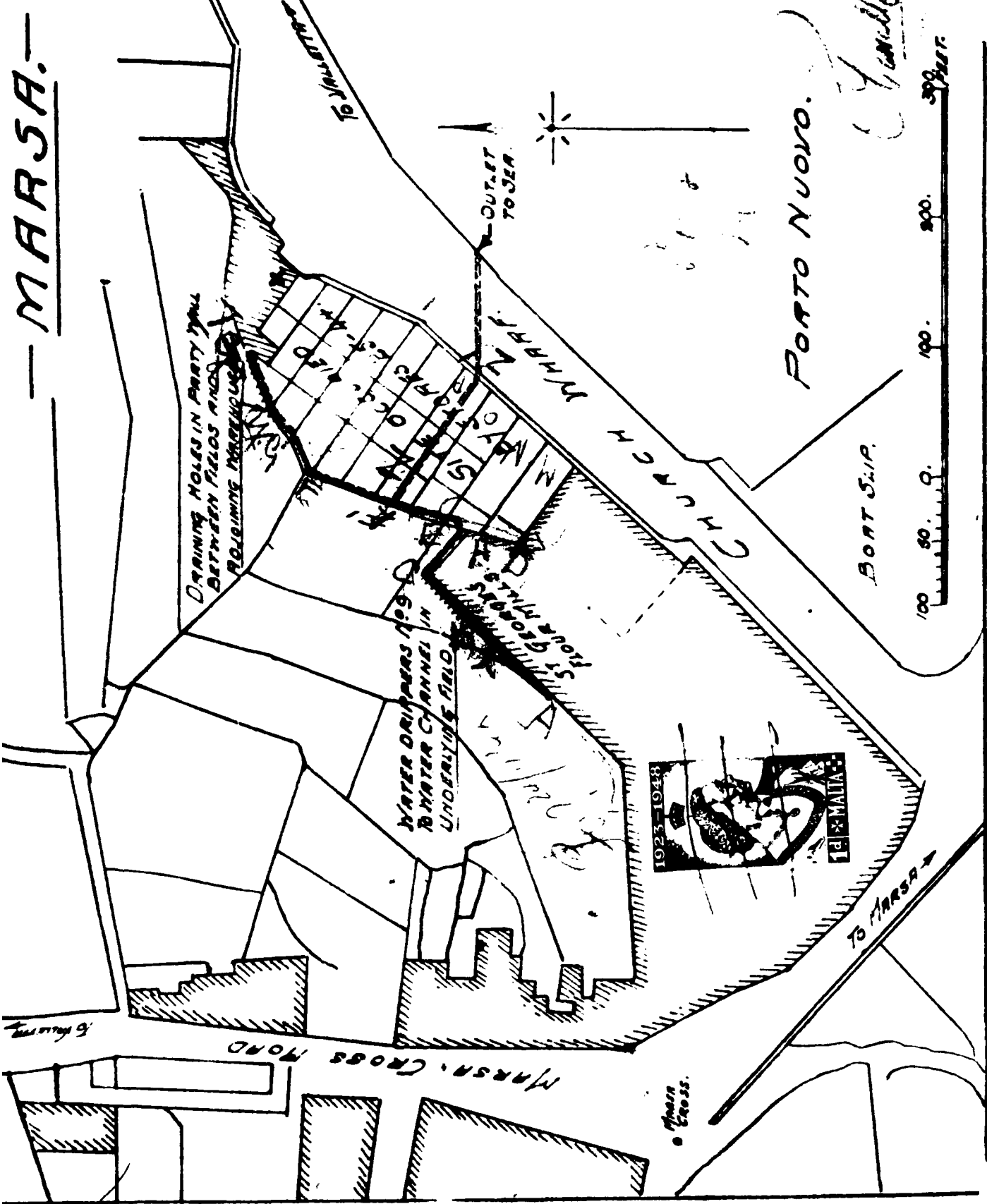
Following the survey as above carried out, the undersigned has come to the conclusion that the channels embedded underground in the warehouses serve the purpose of draining the water falling on the roofs of the St. George's Flour Mills, the overflow from the adjacent fields and the water that used to fall on the roofs of the warehouses when the warehouses were still standing.

(Signed) E. VASSALLO A. & C.E.

31/1/49.

30

EXHIBIT "E"



Exhibits  
filed by  
Minute  
dated 22nd  
February  
1951.

## Exhibits filed by Minute dated 22nd February, 1951.

### A. — DEED DATED 18th JANUARY, 1911.

The Eighteenth January One Thousand Nine Hundred and Eleven (1911).

Before me, Notary Francesco Georgio Schembri, and in the presence of the undersigned competent witnesses, personally came and appeared:—

Of the one part:—

Emmanuela, the widow of Michele Micallef, daughter of the late 10  
Paolo Borg, born and residing in Valletta; and Angelo, Vincenza, the wife of Salvatore Grech, Bernarda, the wife of Francesco Apap, children of the said Emmanuela and Michele Micallef, born in Valletta, and residing, Angelo, at Hamrun, the others, at Floriana — the said Vincenza Grech and Bernarda Galea appearing without the assistance but with the consent and concurrence of their respective husbands, as per instruments dated the Sixteenth and the Seventeenth of the present month of January, which instruments, marked Exhibits A and B, are being annexed hereto for preservation and registration; — and the said Carmela Apap appearing with the consent and assistance of her 20  
husband, the said Francesco Apap, Engineer, son of the late Giuseppe, born at Gharb, Gozo, residing at Hamrun:

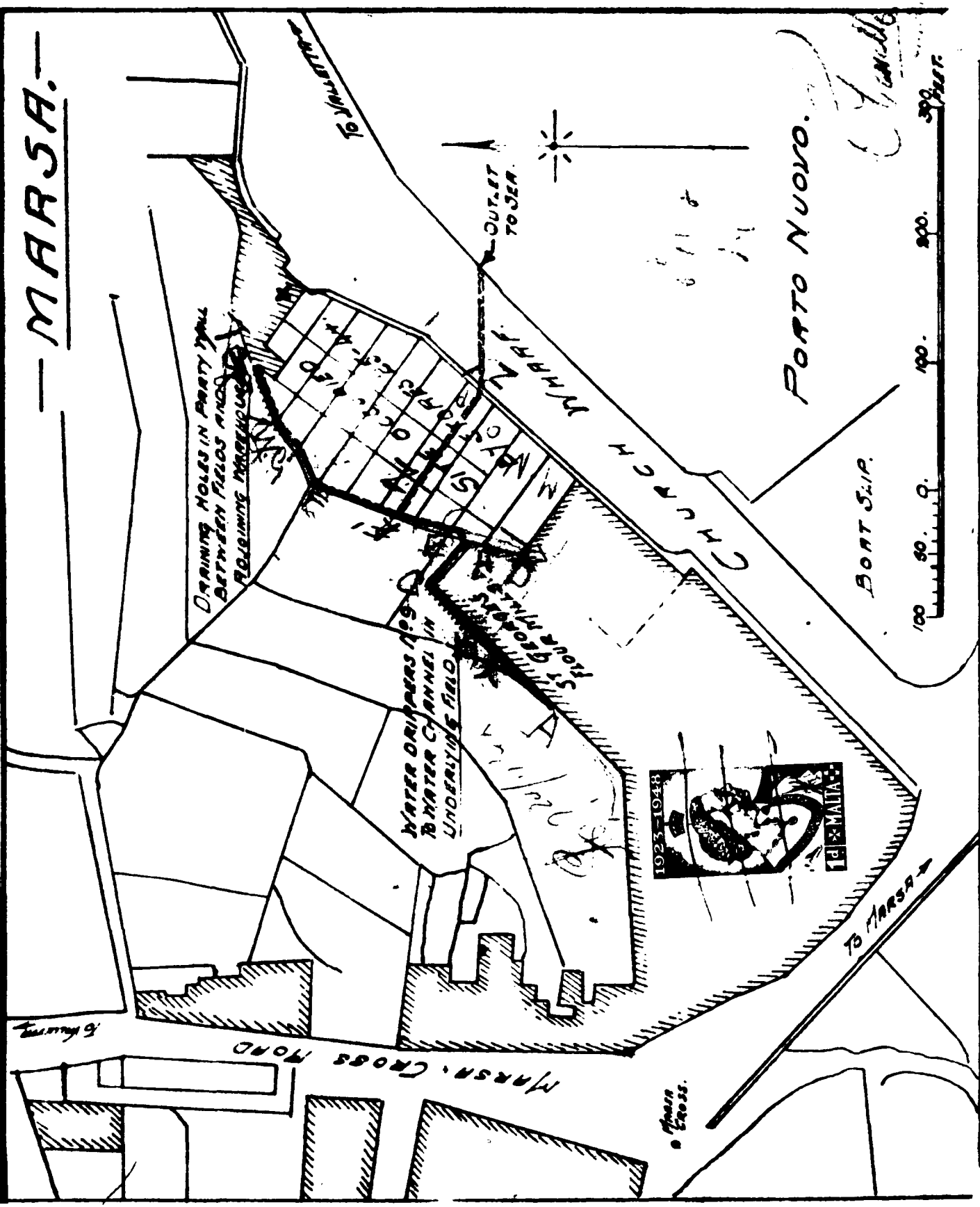
And — of the other part — Antonio Cassar Torreggiani, Merchant, son of Agostino, born and residing in Valletta.

The Appearers are known to me Notary.

And, by virtue of these presents, the Appearers Angelo Micallef, Vincenza, the wife of Salvatore Grech, Bernarda, the wife of Giuseppe Galea, and Carmela, the wife of Francesco Apap, jointly and *in solidum*, sell and convey to the said Antonio Cassar Torreggiani four-fifth 30  
undivided portions of the field at Marsa known as Ta' Xatt il-Qwabar, measuring about four *tumoli*, five *mondelli* and one *misura* and consisting of three plots of land of good quality soil, having access at Vicolo Secondo, Via Croce, Marsa, and bounded, on the north, by other property belonging to the vendors or their brothers, on the south, by property formerly belonging to the Zammit heirs, and, on the west, partly by other property belonging to the vendors, partly by a lane and partly by other property. — the whole field is subject to an annual perpetual burthen of twenty Low Masses and eleven *tari* in respect of tithes and the present sale and conveyance is therefore being made and accepted 40  
subject to a proportionate share thereof, but otherwise free and unencumbered.

EXHIBIT "E"

MARSA.



*NOTES:—*

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Exhibits  
filed by  
Minute  
dated 22nd  
February  
1951.

## Exhibits filed by Minute dated 22nd February, 1951.

### A. — DEED DATED 18th JANUARY, 1911.

The Eighteenth January One Thousand Nine Hundred and Eleven (1911).

Before me, Notary Francesco Georgio Schembri, and in the presence of the undersigned competent witnesses, personally came and appeared:—

Of the one part:—

Emmanuela, the widow of Michele Micallef, daughter of the late 10  
Paolo Borg, born and residing in Valletta; and Angelo, Vincenza, the wife of Salvatore Grech, Bernarda, the wife of Francesco Apap, children of the said Emmanuela and Michele Micallef, born in Valletta, and residing, Angelo, at Hamrun, the others, at Floriana — the said Vincenza Grech and Bernarda Galea appearing without the assistance but with the consent and concurrence of their respective husbands, as per instruments dated the Sixteenth and the Seventeenth of the present month of January, which instruments, marked Exhibits A and B, are being annexed hereto for preservation and registration; — and the said Carmela Apap appearing with the consent and assistance of her 20  
husband, the said Francesco Apap, Engineer, son of the late Giuseppe, born at Gharb, Gozo, residing at Hamrun:

And — of the other part — Antonio Cassar Torreggiani, Merchant, son of Agostino, born and residing in Valletta.

The Appearers are known to me Notary.

And, by virtue of these presents, the Appearers Angelo Micallef, Vincenza, the wife of Salvatore Grech, Bernarda, the wife of Giuseppe Galea, and Carmela, the wife of Francesco Apap, jointly and *in solidum*, sell and convey to the said Antonio Cassar Torreggiani four-fifth 30  
undivided portions of the field at Marsa known as Ta' Xatt il-Qwabar, measuring about four *tumoli*, five *mondelli* and one *misura* and consisting of three plots of land of good quality soil, having access at Vicolo Secondo, Via Croce, Marsa, and bounded, on the north, by other property belonging to the vendors or their brothers, on the south, by property formerly belonging to the Zammit heirs, and, on the west, partly by other property belonging to the vendors, partly by a lane and partly by other property. — the whole field is subject to an annual perpetual burthen of twenty Low Masses and eleven *tari* in respect of tithes and the present sale and conveyance is therefore being made and accepted 40  
subject to a proportionate share thereof, but otherwise free and unencumbered.



The sale of the aforesaid four-fifth undivided portions of the field is made and accepted at the agreed price of One Hundred and Twelve Pounds (£112), which sum the vendors hereby declare they receive in sterling legal tender from the buyer, to whom they give due acquittance therefor.

Exhibits  
filed by  
Minute  
dated 22nd  
February  
1951.

—continued.

The vendors guarantee to the buyer the quiet possession of the property sold by virtue of these presents, in respect of which guarantee they hypothecate in favour of the buyer, *in solidum*, the whole of their present and future property, fixing the sum of thirty pounds sterling  
10 over and above the sale price for the purposes of the respective registration.

Further, the said Emmanuela, the widow of Michele Micallef, as tutrix of her son Giorgio Micallef, a minor, binds herself to take the necessary steps to obtain due authorization in order that she may in her aforesaid capacity sell to the said Antonio Cassar Torreggiani at the price of Twenty-eight pounds sterling the other undivided one-fifth portion of the property which, subject to the aforesaid burthens, belongs to her aforesaid minor son, Giorgio Micallef, and, in order to provide against the contingency of her failing to obtain for any reason  
20 whatsoever such due authorization, the said Emmanuela Micallef, personally and on her own behalf, hereby binds herself to acquire from her son according to law the said one-fifth undivided portion in order that she may sell and convey that portion to the said Antonio Cassar Torreggiani at the aforesaid price of Twenty-eight pounds sterling.

In respect of which obligation, the said Emmanuela Micallef hypothecates in favour of the said Antonio Cassar Torreggiani the whole of her present and future property, fixing the sum of Fifty pounds sterling for the purpose of the respective registration.

Done, read and published — the parties having been duly instructed  
30 as to the import and purport hereof — in Malta, at my office, situate at Number One Hundred and Forty Seven, Strada Santa Lucia, Valletta, in the presence of Roberto Camenzuli, clerk, son of the late Giuseppe, residing at Hamrun, and Giovanni Tabonè Caruana, clerk, son of the late Giuseppe, residing at Birkirkara, witnesses, signed hereunder.

With the exception of the said Antonio Cassar Torreggiani and Vincenza Grech, the Appearers declare to be illiterate.

(Signed) A. CASSAR TORREGGIANI

„ V GRECH

„ ROB. CAMENZULI

„ G. TABONE CARUANA

„ FRANCESCO GEORGIO SCHEMBRI

Notary Public, Malta.

Exhibits  
February  
filed by  
Minute  
dated 22nd  
1951

—continued.

Registered 19th January at Vol. I, at No. 215 and at Vol. R, at No. 44 and at Vol. IL, at No. 44.

True Copy issued from the Records of Notary Francesco Georgio Schembri.

This 21st February, 1951.

(Signed) Notary V BISAZZA,  
Keeper.

A. — DEED DATED 22nd JULY, 1911.

The Twenty-second July One Thousand Nine Hundred and Eleven (1911). 10

Before me Notary, and in the presence of the undersigned competent witnesses, personally came and appeared:—

Georgio Micallef, bread-seller, son of the late Michele, born at Qormi, residing in Valletta.

The Appearer is known to me Notary.

And, by virtue of these presents, said Appearer sells and conveys to Antonio Cassar Torreggiani, Merchant, son of Agostino, born and residing in Valletta — in whose absence and on whose behalf appears John Cassar Torreggiani, son of the late Carmelo, born at Floriana, residing in Valletta, known to me Notary — one-fifth undivided portion of the field at Marsa known as Ta' Xatt il-Qwabar, measuring about four *tumoli*, five *mondelli* and one *misura* and consisting of three plots of land of good quality soil, having access at Vicolo Secondo, Via Croce, Marsa, and bounded, on the north, by other property belonging to the vendor and his brothers and sisters, on the south, by property formerly belonging to the Zammit heirs, and, on the west, partly by other property belonging to the vendor, partly by a lane and partly by other property — that is to say, one-fifth undivided portion of the field of which the said Antonio Cassar Torreggiani bought four-fifth undivided portions by virtue of deed of sale enrolled in my Records on the Eighteenth January One Thousand Nine Hundred and Eleven. 30

The whole field is subject to an annual perpetual burthen of twenty Low Masses and eleven *tari* in respect of tithes, but is otherwise free and unencumbered.

The sale of the aforesaid one-fifth undivided portion is made at the price of Twenty-eight Pounds Sterling (£28), which sum the vendor, Georgio Micallef, declares he receives from the buyer, John Cassar Torreggiani, who makes payment on behalf of and with money belonging to the said Antonio Cassar Torreggiani — and the vendor gives due acquittance therefor. 40

The vendor guarantees to the buyer the quiet possession of the portion of property sold by virtue of these presents, in respect of which guarantee he hypothecates in favour of the buyer the whole of his present and future property, fixing the sum of Five Pounds over and above the sale price for the purposes of the respective registration.

Exhibits  
filed by  
Minute  
dated 22nd  
February  
1951.  
—continued.

Done, read and published — the parties having been duly instructed as to the import and purport hereof — in Malta, at my office, at Number One Hundred and Fifty-seven, Strada Santa Lucia, Valletta, in the presence of Giorgio Mifsud, pensioner, son of the late Luigi, residing in Valletta, and Giovanni Tabone Caruana, clerk, son of the late Giuseppe, residing at Birkirkara, witnesses, signed hereunder.

The Appearer Giorgio Micallef declares he is illiterate.

(Signed) JOHN CASSAR TORREGGIANI

„ GIORGIO MIFSUD

„ G. TABONE CARUANA

„ FRANCESCO GIORGIO SCHEMBRI

Notary Public, Malta.

Registered 22nd July at Vol. I, No. 2524.

True Copy issued from the Records of Notary Francesco Giorgio Schembri.

This 21st February, 1951.

(Signed) Notary V BISAZZA,  
Keeper.

C. — DEED DATED 17th APRIL, 1922. (\*)

The Seventeenth day of April One  
Thousand Nine Hundred and  
Twenty-two.

Before me the undersigned Notary and in the presence of the hereinafter mentioned witnesses, came and appeared:—

30 Rosaria, widow of Agostino Cassar Torreggiani, daughter of the late Professor Ferdinando Caruana Dingli, born and residing in Valletta.

Paolo Cassar Torreggiani, son of the late Antonio, born and residing in Valletta.

Antonio Cassar Torreggiani, son of the late Agostino, born and residing in Valletta.

John Cassar Torreggiani, son of the late Carmelo, born in Floriana, residing in Valletta.

(\*) Original in English.

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Carmelo Cassar Torreggiani, son of the late Agostino, born and residing in Sliema.

The said appearers well known to me the said Notary.

Whereas by a Deed dated the Seventeenth December one thousand nine hundred and twenty one, the said Rosaria Cassar Torreggiani, Paolo Cassar Torreggiani, Antonio Cassar Torreggiani, John Cassar Torreggiani and Carmelo Cassar Torreggiani have agreed to dissolve the Company formed by them to carry on the business together under the name "Cassar Limited," and have for such purpose and pursuant to the said Deed, drawn up the Company's balance sheet up to the twenty seventh February One Thousand Nine Hundred and Twenty two, whereof a copy is hereto annexed for preservation. 10

Now in pursuance of the said agreement in this behalf, the said Rosaria Cassar Torreggiani, Paolo Cassar Torreggiani, Antonio Cassar Torreggiani, John Cassar Torreggiani and Carmelo Cassar Torreggiani, hereby declare to determine and dissolve the aforesaid Company called "Cassar Limited" and in consequence thereof the said parties severally and collectively fully approve the said balance sheet as a basis of liquidation and in accordance with the same they approve to receive their quota in full settlement of their respective interest and share in the said dissolved Company. 20

And for the purpose of fulfilling the obligations entered into by the said appearers, and contained in the said agreement of the Seventeenth December one thousand nine hundred and twenty one, the above named Rosaria Cassar Torreggiani and Paolo Cassar Torreggiani are hereby empowered by all the shareholders of the Company "Cassar Limited" to sell to the Company "Cassar Company Limited" formed by a Deed in my acts of this date, all the immovable property and the whole milling plant belonging to the said Company "Cassar Limited" now dissolved. 30

Wherefore they, the said Rosaria Cassar Torreggiani and Paolo Cassar Torreggiani, so empowered by all the shareholders of the Company "Cassar Limited" and hereinafter called the vendors, hereby sell and transfer unto the said Antonio Cassar Torreggiani who for and on behalf of the said "Cassar Company Limited," declares to accept the buildings known as "Saint George's Flour Mills", with all annexed stores, situate at Marsa, Church Wharf numbers eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen together with all the milling machinery, motors, gas engines, appurtunances and accessories, that is to say the whole milling plant as a going concern as at present owned by "Cassar Limited" now being dissolved and together with the adjacent ground situate at the back of the said buildings, measuring four *tumoli*, three *mondelli* and seven *misure*, approximately, bounded on 40

the north by the property owned by Micallef, Grech, Apap and Galea; on the west by a lane; that same ground which had been bought by the said Messrs. "Cassar Limited", as measuring four *tumoli* five *mondelli* and one *misura* and a fraction of which is now being occupied by the buildings mentioned above.

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—continued.

Such sale and transfer of the said Flour Mills, buildings and their adjuncts is made in consideration and for the price of Seventeen Thousand pounds sterling (£17,000) which has been agreed upon as to Seven Thousand pounds (£7,000) for the building above described and  
10 as to Ten Thousand pounds (£10,000) for the said milling plant complete as a going concern.

And the said vendors declare that the said price has been paid, and is included in the said balance sheet, wherefore they hereby give full acquittance and release.

Further the said vendors sell and transfer unto the said John Cassar Torreggiani, who declares to accept the following other property which belonged to the said Messrs. "Cassar Limited" in liquidation:—

a) Two stores number eighty one and eighty four, a mezzanino number eighty two and a room number eighty three, Jetties  
20 Wharf, Marsa.

b) The house number thirteen and fourteen Strada Villa Ambrosa, and the shop number eleven B Strada Duke of York, Hamrun.

c) The mezzanino number one Strada Dietro la Chiesa and the shop number sixty Strada San Trofimo at Sliema.

d) The stable at Pietà in Vicolo Dolori bounded on the East by Vicolo Dolori, on the West by the property owned by Barbara.

Which sale and transfer is made in consideration and for the price of Two thousand, six hundred and fifty five pounds (£2,655), which the  
30 said vendors declare to have been paid to the credit of the said Company "Cassar Limited" to-day, from the purchaser to whom they hereby give full acquittance and release.

The said vendors further sell and transfer in consideration and for the price of Five hundred pounds (£500) unto the said Antonio Cassar Torreggiani who for and in behalf of the said "Cassar Company Limited" declares to accept the buildings known as "Zebbug Flour Mills" at Casal Zebbug number thirty six, thirty seven, thirty eight, thirty eight A, thirty nine, forty and forty one, Strada Grazie, comprising all the machinery therein contained; which price the vendors declare to have been paid to-day to the credit of the said Company "Cassar Limited"  
40 and therefore give the same full acquittance and release.

Finally the above appearers as shareholders of the Company "Cassar Limited" in dissolution in accepting as basis the annexed bal-

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—continued.

ance sheet, showing total assets, agree to receive as their respective final share in full settlement, their quota in accordance with same. Therefore each of the shareholders of the Company "Cassar Limited" now dissolved, on the basis of the said annexed balance sheet give each other full acquittance and release.

As the immovable property above transferred, the same is not subject to the Donations and Succession Duties Ordinance as part of the same property was purchased by the said dissolved "Cassar Limited" and the other part belongs to the appearers as heirs of Agostino Cassar Torreggiani, who died before one thousand nine hundred and 10 eighteen.

Done, read and published in the English language at the request of the parties, in the office of A. Cassar e Figli, in Valletta at number one hundred and twenty three of Strada Vescovo, in the presence of Enrico Pace, son of Giovanni, residing at Sliema, clerk, and of Roberto Imbroll, son of the late Emmanuele, residing in Valletta, lawful witnesses according to their assertion here undersigned with me Notary and the appearers; the said Roberto Imbroll, clerk.

(Signed) ROSARIA CASSAR TORREGGIANI  
 „ P CASSAR TORREGGIANI 20  
 „ A. CASSAR TORREGGIANI  
 „ JOHN CASSAR TORREGGIANI  
 „ C. CASSAR TORREGGIANI  
 „ ROB. IMBROLL  
 „ HENRY PACE  
 „ L. GAUCI FORNO

Notary Public, Malta.

A True Copy issued from the Acts of Notary L. Gauci Forno, this twenty-fourth day of February one thousand nine hundred and forty seven (24-2-1947). 30

(Signed) Dr. GIORGIO BORG OLIVIER,  
 Notary Public, Malta.  
 Keeper.

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**Defendants' Exhibits.**

A. — REPORT BY MR. G. R. VINCENTI A. & C. E. — FILED  
TOGETHER WITH THE STATEMENT OF DEFENCE.

Report by  
Mr. G. R.  
Vincenti  
A. & C. E.

4th December, 1948.

Messrs. Emmanuele and Paolo Pisani have entrusted me with the task of enquiring into and reporting upon the matter regarding the right of pre-emption exercised by Mr. A. Cassar Torreggiani O.B.E in respect of the warehouses at Church Wharf, Marsa (demolished through enemy action) which they bought from the Testamentary Executors of the late Beatrice Apap.

10 In connection with that task, I have inspected the property in question, obtained leave to inspect, and inspected, the property of Mr. A. Cassar Torreggiani, which lies in the vicinity of the warehouses — and seen the Report and accompanying plan filed by Mr. E. Vassallo A. & C.E. on the 17th June, 1948.

Now, having duly considered the question at issue, I beg to report as follows:—

1. The warehouses under reference formed part of the several warehouses formerly standing as a block at Church Wharf, Marsa, the yards of which were adjacent to the property belonging to Mr. Cassar  
20 Torreggiani, consisting of a field at a higher level.

2. Although the warehouses in question and the adjoining warehouses were totally destroyed (of the whole block, only a few warehouses are left, those immediately adjoining the St. George's Flour Mills) the party wall between the warehouses and the pre-empted property is still intact.

3. It is beyond doubt that that wall, built uniformly of ashlar masonry set in mortar, is the property of the owner of the warehouses and that it was built at the same time the warehouses were built.

4. A channel lies along the whole length of the warehouses in  
30 question and the other warehouses on either side. In my opinion, that channel was constructed for the purpose of collecting the rain water that flows from the field of Mr. Cassar Torreggiani mentioned at para: 1 above — which water could not have been arrested or contained without damage to the owner of the field. The channel was also necessary to the owner of the warehouse, in that, without it, the flow of water from the adjoining field would flood the whole area occupied by the warehouses.

5. The water collecting in the channel finds its way into the sea through another channel lying under one of the warehouses — as  
40 shown in the plan prepared by Mr. E. Vassallo A. & C.E., with whom I am in agreement so far as this point is concerned, subject however to the same reservations he himself has made I should add that, having



Report by  
Mr. G. R.  
Vincenti  
A. & C.E.  
—continued.

regard to the length of the channel, which stretches along the whole length of the party wall between the two properties, it is not improbable that the water collecting therein is carried seaward by more than one single channel. That could be ascertained by digging up the ground, but the point has no bearing on the matter at issue and I did not therefore consider it necessary to have the work carried out.

6. It would not appear that the channel that lies along the party wall still collects the water from that part of the field which, according to information I gathered on the spot, was built by Mr. Cassar Torregiani about sixteen years ago. It seems in fact that, at the time when those buildings were erected, a channel was constructed close by so as to drain the surplus water collecting in the field. That channel appears to be connected with the original channel along the party wall, as shown in the plan prepared by Mr. Vassallo — in which in fact the original channel is not shown beyond a certain point. 10

7. I should observe that no works in connection with that communication between the two channels are to be seen in the pre-empted property. I should add also that rain had fallen a few days before I inspected the property and that I found the party wall dry along its whole length — bar that part of it where the new channel, viewed from the higher tenement, appears to have its outlet. The fact shows that, due to the works carried out in the field, an excess of water is collecting in that part of the same field. It shows also that the connection between the two channels is not properly made. 20

8. Independently of the question as to whether the original channel and the flow of water into that channel constitutes an easement such as to give rise to the exercise of pre-emption, I am of the opinion that the warehouse in the area where the original channel is no longer in use is quite definitely not subject to pre-emption, any easement in respect thereof having been definitely removed (and there is nothing else that can be seen that might give rise to the exercise of pre-emption). An easement in respect of the other warehouses, if it exists, must be removed in like manner if and when the party exercising pre-emption decides to erect buildings on the site at the back of these warehouses, in that he would then be bound to provide an outlet for the rain-water catchment of his own roofs. 30

9. As regards the existence of an easement by reason of the existence of the original channel, I am of the opinion that no such easement exists: The work was carried out by the owner of the pre-empted property in his own property and for his own benefit — in order in fact to obviate to the inconveniences which the situation of the land imposed upon his property. The easement therefore is still a natural easement 40

— as distinct from an easement “created by the act of man,” which is the only easement that, according to law, gives rise to the exercise of pre-emption.

Report by  
Mr. G. R.  
Vincenti  
A. & C.E.  
—continued.

10. Finally, I would refer to the possibility of some question arising in respect of the warehouse in the area of which the new channel has its outlet. Apart from the fact that that channel, for the reasons above stated, cannot give rise to the exercise of the right of pre-emption, the channel itself has been in existence for a period of less than thirty years and may therefore be removed at the request of the owner of the pre-empted property.

I am therefore of the opinion that the party exercising pre-emption has no claim to the title of neighbourhood and that Messrs. Paolo and Emmanuele Pisani are not bound to effect the re-sale of the property.

(Signed) GUST. R. VINCENTI.

### EXHIBIT “A”

Exhibit “A”

(Protest entered 28th February, 1950 — produced together with Defendants’ Note of Submissions on 29th May, 1951).

In H.M. Civil Court, First Hall.

Emmanuele and Paolo Pisani

20

v.

Antonio Cassar Torreggiani, in his capacity as Managing Director, Cas-sar Company Limited.

The Protest of Emmanuele and Paolo Pisani.

Respectfully sheweth:—

By virtue of deed enrolled in the Records of Notary Victor Bisazza on the 26th June, 1947, the complainants bought the block of buildings at Church Wharf, Marsa, numbers 25 to 38 inclusive.

30 The aforesaid party claims the right to the recovery of the property, filing the respective schedule of pre-emption on the 26th June, 1948, and, subsequently — the complainants having refused to effect the re-sale — suing out the writ-or-summons now pending before this Court (No. 149/1949).

It has been established in the course of the survey carried out by the Technical Referee and by the Court, that new buildings were erected about 20 years ago on the site occupied by the St. George’s Flour Mills, and that, as a result of the works carried out, the pre-existing water course was altered, in that the rain-water falling on the property of Cas-sar Company Limited, which previously flowed naturally into com-

Exhibit "A"  
—continued.

plainants' property, came to be collected in a channel which was communicated with another channel in complainants' property; which channel has its outlet by the warehouse which, before it was destroyed by enemy action, was warehouse No. 28 Church Wharf, Marsa.

That that action, arbitrary and illegal, is prejudicial to the complainants in that their property is being subjected to an easement created by the act of man, with all the attendant consequences.

Wherefore the complainants hereby bring the foregoing formally to the notice of the aforesaid party; — enter protest against the illegal action complained of; — and, in order to meet all the ends and purposes of the law, and, more especially, in order to establish interruption of the prescription that may be running in respect of the easement created by means of the channel leading into their property, the complainants hereby call upon the aforesaid party without delay to remove the works in question and thus to restore the state of things as formerly existing between the one and the other property. 10

And, rendering him liable for all present and future damages, the complainants hold the aforesaid party answerable for *dolus*, delay and negligence for all the ends and purposes of the law. With Costs.

(Signed) J. H. XUEREB, 20  
Advocate.  
„ V CARUANA,  
Advocate.  
„ G. SCHEMBRI,  
Legal Procurator.

This 25th February, 1950.

Filed by G. Schembri L.P. without Exhibits.

(Signed) S. BUGEJA,  
D/Registrar.

I hereby certify that, on the 28th February, 1950, I effected service of the present Protest, through Usher Henry L. Calleja, upon Mr. A. Cassar Torreggiani, in his capacity as Managing Director, Cassar Company Limited, a copy of the document, together with an extract from section 22 of the Laws of Procedure, having been left at his office at No. 237, Kingsway, Valletta, with Messenger L. Portelli. 30

This 28th February, 1950.

(Signed) NAZ. AQUILINA,  
Court Marshal.

**EXHIBIT "B"**

Exhibit "B"

(Conveyancing Deed dated 4th June, 1932 — produced together with Defendants' Note of Submissions on 29th May, 1951.)

This Fourth June One Thousand Nine Hundred and Thirty-two.

Before me, Notary Eduardo Calleja Schembri, and in the presence of the undersigned competent witnesses, personally came and appeared:—

Publio Agius, milkman, son of of the late Giuseppe, born and residing at Marsa.

Antonio Cassar Torreggiani, Merchant, son of the late Agostino,  
10 born and residing in Valletta — for and on behalf of Cassar Company Limited.

Appearers are known to me Notary.

And, by virtue of these presents, the Appearer Publio Agius sells, alienates and conveys to the Appearer Antonio Cassar Torreggiani in his aforesaid capacity, the plot of ground situate at Via Croce, Marsa, known as "Tal-Marsa", consisting of two strips of land measuring two *tumoli* and one *mondello*, and bounded, on the south, by property belonging to the "Ta' Ceilu" Church, Teresa Caruana and Giovanni Apap, on the east, by Admiralty property, on the north, by property  
20 belonging to the vendor, Publio Agius, and, on the west, by property belonging to the buyer, Antonio Cassar Torreggiani, free from and unencumbered by burthens — more fully described in the plan made by Giuseppe Mifsud Ellul A. & C.E., which is annexed hereto for preservation, marked Exhibit "A"

The aforesaid sale is made at the agreed price of Two Hundred and Sixty-five Pounds, which sum the buyer has here in my presence paid to the vendor, who gives due acquittance therefor.

The vendor, under the general hypothec of his property, guarantees to the buyer the quiet possession and full enjoyment of the land.

30 It is agreed that the expenses in respect of the present conveyance shall be paid by the buyer and that the respective brokerage fees shall be paid by the buyer and the vendor in equal shares between the two.

In connection with the provisions of Ordinance No. XVIII of 1918, it is hereby declared that no duty is chargeable in respect of the aforesaid property, which was sold to the present vendor by Paolo Micallef by Deed of Sale enrolled in my Records on the Seventh February, 1928.

The buyer undertakes to wall up the door on the west side of his property.

**Exhibit "B"**  
**—continued.**

Done, read and published — the parties having been duly instructed as to the import and purport hereof — in Malta, at Number One Hundred and Twenty-three, Strada Vescovo, Valletta, in the presence of Francesco Pisani, son of the late Alfredo, residing at Sliema, and Emanuele Mifsud, son of the late Giovanni, residing at Valletta, witnesses.

The Appearer Publio Agius declares he is illiterate.

(Signed) A. CASSAR TORREGGIANI

„ FRANCESCO PISANI

„ E. MIFSUD

„ ED. CALLEJA SCHEMBRI

10

Notary Public, Malta.

Registered at Volume I, No. 1909.

True Copy issued from my Records, this Eighth May, 1951.

Quod Attestor.

(Signed) ED. CALLEJA SCHEMBRI,

Notary Public, Malta.