21st. March, 1946.

The Hon. Mr. Justice
Dr. W. Harding, B.Litt., LL.D.

Major William Edward Clarke, R.E., et.

versus

The Hon. Edgar Cuschieri ne.

Lease — Right of Preference — Salt-pans — Rural Tenement — Art. 965, 1608 and 1697 of the Civil Code.

The expression "rural tenement" must be taken to mean "what is mainly arable land which is habitually given or taken on lease for the growing of crops and cognate agricultural purposes".

The salt-pans known as "Salini" do not fall within the meaning of the expression "rural tenement", although a part thereof could be used for agricultural purposes; and as they are, on the other hand, neither an "urban tenement", nor a "building", the lessee of the salt-pans cannot claim the right of preference which the law allows in respect of these tenements.

By writ-of-summons number 57 of 1946, plaintiffs, after prefacing that defendant nomine, by an official letter dated the 29th. November, 1945, had imposed certain conditions for the new lease of the Salini, tenement no. 370, at Bur-Marrad, in the limits of Naxxar, which were not reasonable, and that they, as the tenants thereof, had in consequence communicated to defendant nomine certain counter-proposals by their letter dated the third of December 1945, which he had not accepted, notwithstanding plaintiff's official letter of the 29th. December, 1945, to the same effect; and after praying for a judicial declaration to the effect that the aforesaid conditions, contained in the letter of defendant nomine of the 29th. November, 1945, were not reasonable, asked that the conditions of the new lease be fixed by the Court, after appointing, if necessary, referees for the purpose. With costs, including those of the afore mentioned official letter of the 29th. December, 1945;

Defendant nomine, in his statement of defence, submitted that the provisions of section 1697 of the Civil Code (Chapter 23, Revised Edition) were not applicable in the

present case, as the salt-pans were neither a "building" nor a "rural tenement", and consequently plaintiffs were not entitled to any right of preference under section 1683 of the said Code. Subject to this first plea, defendant nomine submitted, further, that the conditions of the new lease were just and fair;

After hearing the arguments of counsel for plaintiffs and those of the Crown Counsel, and the evidence of the male plaintiff, as far as the first plea is concerned, the Court has considered as follows;

It is clear from the terms of the writ-of-summons, and it is explicitly stated in the declaration which accompanies it, that plaintiffs ground their action on the provisions of what, at the time of the filing of that act, was section 1361 of Ordinance VIII of 1868, and is now, after the publication of the Revised Edition of the Laws of Malta, section 1697 of the Civil Code, Chapter 23;

This section runs as follows:—

"The lessee may not set up 'his right of preference' against the demand for the surrender of the tenement, where such demand is admissible, if he refuses to accept the new lease on the conditions proposed to him and 'by the Court deemed reasonable', even though it is proved that the plaintiff intends to let up the tenement to others on less onerous conditions";

The words which have been underlined are those relevant to the issue, that is, the words "his right of preference" and "by the Court deemed reasonable". It appears safe to construe the section as meaning, "inter alia", that, in order that the lessee may ask the tribunal to enquire into the reasonableness or otherwise of the conditions of the new lease, it is necessary that the right of preference be competent to him;

This Court, therefore, must first of all see whether plaintiffs are entitled to the right of preference in respect of the tenement in question. It is, of course, common ground between the parties, that the present proceedings concern the salt-pans only, and that the tenement known as the Salina Palace and the lands attached to it are not included in the issue;

The other section to be considered, therefore, is that dealing with the right of preference, that is, section 1683 ibidem. Have plaintiffs a right of preference in respect of the lease of the salt-pans under that section? If so, then they are entitled to ask the tribunals to review the conditions of the new lease;

Section 1683 first refers to a right of preference under section 1680, which refers to co-possessors, and is, therefore, inapplicable to the present case. Nor can there be any question that the claim of plaintiffs to a right of preference falls to be considered under sub-paragraphs (a) or (b) of section 1683, as, clearly, the salt-pans are neither an urban tenement nor a building. The whole question really turns on sub-paragraph (c). In fact, the issue may be narrowed down to this:— Are the salt-pans a tenement?

It is, of course, correct that the Code in question, in section 345, makes the basic distinction between "lands" and "buildings", and that the term "lands" admits of a very wide construction. In fact, if the term used in sub-paragraph (c) afore mentioned were "lands", there would appear to be little difficulty in coming to the conclusion that the salt-pans would be included. But whereas section 345 is making a general enumeration of things which are immovable, section 1683 is dealing with a preferential right or privilege, which, as has always been held, does not admit of a wide interpretation. This view was taken by this Court in the case "Sciberras Trigona vs. Mifsud", 30th. April 1872, and later in the case "Chapelle vs. Fenech", 13th. November 1906; and is a logical consequence of the general principle that exceptions are to be interpreted restrictively. The correct approach to the "punctum saliens" of this case is not whether the salt-pans are a "land", but whether they are a "rural tenement":

In the opinion of this Court the expression "rural tenement" must be taken to mean "what is mainly arable land which is habitually given or taken on lease for the growing of crops and cognate agricultural purposes". If this view is correct (and it is the one accepted by the Court), then the salt-pans are not included in section 1683, and consequently

the action based on section 1697, which, in its turn, predicates the applicability of section 1683, falls;

This conclusion appears to be supported by the following considerations;

On the strength of the maxim "noscitur a sociis", it is no doubt helpful to see in what sense the same expression has been used in the Code under the same subject of lease. To quote a few instances, section 1621 refers to a rural tenement as a tenement capable of producing friuts and also refers to the gathering of the produce. Section 1656 uses the expression in the same sense, and in fact refers to section 1621. Section 1666 and those following it, under IV, dealing with rural tenements, refer to the yearly crop, to the value of the seeds, and the expense of gathering in the fruits; these are all words which are obviously in keeping with the construction put by this Court on the expression "rural tenement";

Again, the corresponding expression used in the Maltese text of section 1683 is "għalqa", just as it is "raba'," in the plural, in the heading (IV) preceding section 1666. It is universally accepted that the afore mentioned words in Maltese can only mean arable land given on lease for the growing of crops or cognate agricultural purposes. This is not a case of discrepancy between the English and the Maltese text of the law, in which case, according to clause 49 of the Malta Letters Patent 1939 the English text would prevail, but, on the contrary, it is one of those cases where the existence of a double text has the advantage of helping the Court in its interpretation of the law;

Crown Counsel has also pressed on the Court the argument that the provision contained in subparagraph (e) was introduced in 1933 (a long time after the enactment of the law in the latter half of the previous century) in order to comply with the insistent demand of farmers to be protected against eviction in cases, especially, where they had held the property on lease for a long period and had carried out substantial improvements therein, and that, therefore, only land given on lease for agricultural purposes could be reasonably

included in the provision. This argument appears to be sound;

In a statement of submissions filed by plaintiffs, at page 20 of the record, it has been urged that salt-pans are always fruit-producing as much as fields, and should consequently be deemed to be included in section 1683. This submission is not, perhaps, correct. In the present case, the salt is not manufactured from the rock, as is the case, for instance, in the Middlesborough district of England, but from natural brine. The process is, briefly, that of allowing the sea-water, or brine, to flow through a series of channels in evaporating pans, and salt is produced by solar evaporation. The salt is not a fruit of the land in this case, but of the sea; the land is only the means of gathering the salt by collecting it, evaporating it, draining it, lifting it from the pans, washing and drying it;

Counsel for plaintiffs has also ingeniously argued that there is a part of the salt-pans which could be used for agricultural purposes, and this point formed the subject of the evidence of the male plaintiff at page 22 of the record. It was stated in that evidence that a certain part of the salt-pans could be used, even though such use had never been made of it to date. It appears that the proportion of this part in relation to the whole area of the salt-pans would be, roughly, in the ratio of one to thirty;

This contention, however, cannot help plaintiffs. Our Courts have always held that what falls to be considered in similar cases is the predominant part of the tenement, and the purpose which the parties had in view in contracting the lease. Now, there is no doubt that the preponderating, if not also the all-absorbing part of this particular tenement is that of the salt-pans, and that the over-riding if not also the only, use of the tenement is the manufacture of salt by solar evaporation in salt-pans. Nor is there any room for doubt that the tenement was, since a very long time ago, taken by the lessees for use as salt-pans; and the potentiality of the strip mentioned by plaintiff as an agricultural holding, seems to have been more in the nature of an after thought for the purposes of this case, as may be inferred from the opening paragraph of the application at page 19. Indeed, it should

be noted that, ever since the first grant of the salt-pans in 1870, the use thereof for purposes of agriculture was, and continued to be, explicitly prohibted (see exhibits filed with defendant's note at page 25);

This appears to be the only fair view of the case under the provisions in question. However much the Court may sympathise with a plaintiff in his desire to have his claim threshed out before the tribunal, still, the functions of a Court of Law are those of "jus dicere" and not those of "jus condere". If this is a "casus omissus", the tribunal is not entitled to remedy the deficiency, if deficiency it be;

For the foregoing reasons, the Court dismisses the claim. With regard to the costs, as the question does not appear to have been considered in previous cases, and was justifiably, at least "prima facie", a debatable one, orders that each party should bear his own. The registry fee, however, is to be borne by plaintiffs.