

6
In the Privy Council

12 OF 1970

ON APPEAL
FROM THE COURT OF APPEAL, MALTA

BETWEEN

DOCTOR VINCENZO DEPASQUALE nomine et

Respondent (*Plaintiff*)

AND

FRANCESCA THE WIFE OF MICHELE AQUILIN

Appellant (*Defendant*)

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
MAY 1972
25 RUSSELL SQUARE
LONDON, W.C.1.

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AND

FRANCESCA THE WIFE OF MICHELE AQUILINA
Appellant (*Defendant*)

RECORD OF PROCEEDINGS

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IN H.M. CIVIL COURT, FIRST HALL

In the Privy Council

12 OF 1970

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

BETWEEN

DOCTOR VINCENZO DEPASQUALE nomine et
Respondent (*Plaintiff*)

AND

FRANCESCA THE WIFE OF MICHELE AQUILINA
Appellant (*Defendant*)

RECORD OF PROCEEDINGS

DOCUMENTS

Translation

No. 1

No. 1
Writ of
Summons

Writ of Summons

In Her Majesty's Civil Court,
First Hall
This twelfth day of January, 1966.
Filed by Vincent Falzon, L.P.,
without Exhibits.
(Signed) J. BRIMMER,
Deputy Registrar.

ELIZABETH II

By the Grace of God, Queen of Malta
and of Her other Realms and Territories,
Head of the Commonwealth.

By Our Command, at the suit of Doctor Vincenzo Depasquale, Advocate, in his capacity as Acting Commissioner of Land, and by a note of the 8th October, 1966, Doctor John Pullicino, LL.D., assumed the proceedings in his capacity as Commissioner of Land vice Dr Vincenzo Depasquale, you shall summon Francesca the wife of Michele Aquilina assisted by him to appear at the sitting to be held on the 8th February, 1966, at 9 a.m.

And there, every necessary declaration being prefaced and any expedient direction being given, whereas by an application filed before the Land Arbitration Board, the then Commissioner of Land, having premised that the defendant duly assisted had been served with a Governor's declaration wherein it was declared *inter alia* that two plots of land, one a plot of agricultural land in the parish limits of Birkirkara of an area of two tmien four sghan and five points six kejllet bounded on the North West by property of the Parish Church of Birkirkara, on the South West by property of W.J. Parnis England Limited, on the East by property of Paul Micallef and on the South by the remaining portion of the land of which such plot forms part, and the other a plot of agricultural land in the parish limits of Msida and of Gzira, of an area of nine point two kejllet, bounded on the South by property of Francis Bezzina Wettinger and others, on the North by property of the Government of Malta and on the South East by the remaining portion of the land of which such plot forms part, are required for a public purpose and are to be acquired by absolute purchase and that the defendant had also been served with a notice to treat whereby the competent authority offered as compensation the sum of two hundred and twenty pounds eight shillings (£220.8.0.) and twelve pounds five shillings (£12.5.0.) for the absolute purchase of the said two plots of land, free from and unencumbered by burthens, as better explained in the report by Edgar Caruana Montaldo, A. & C.E. and that the defendant had not accepted the said compensation for the aforesaid lands and had claimed instead that, on the basis of the price received by her from the sale, to the Franciscan Sisters, of land adjoining the plots of land in question compensation should be reckoned on the basis of six hundred pounds (£600) for every sixty-eight and a half square canes — prayed that the Board be pleased to order the transfer of the said lands to him by absolute purchase, to assess the relative compensation and to give any necessary directions in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 136); and whereas the question was raised before the said Board whether for the purposes of the valuation of the land to be compulsorily acquired and in particular for the determination or otherwise of its potential value the provision of section 25 (1) (b) of Chapter 136 is to be considered by itself or whether it should be interpreted in conjunction with the provision of Section 16 of the same law and in particular whether this latter section should be exclusively applied in the sense that if the land to be compulsorily acquired is not a building site in terms of the law then the land should necessarily be considered solely as "rural or waste land as the case may be" independently of its potential value as a "building site" — which question in the opinion of the Board exceeds its competence and should therefore be reserved as laid down

in Section 24 of Chapter 136 abovementioned.

That in fact the Board by its decision of the 15th December, 1965, reserved the aforesaid questions for the decision of the Chairman of the Board sitting as Judge of Her Majesty's Civil Court, First Hall, and gave the plaintiff one month's time to bring, in the manner required by law, the aforesaid reserved questions before the aforesaid Court presided over by the Chairman of the Land Arbitration Board. and ordered that in default, such questions might be brought forward by the defendant within the same time, and, in consequence of such
10 directions stayed the further hearing of the said application until the points so reserved shall have been determined;

That the defendant maintains that for the purposes of assessing the amount of compensation, although the plots of land in question do not in terms of the law qualify as a "building site", this notwithstanding the value to be attributed to the land in question is not that of "rural or waste land as the case may be" but the potential value of the said plots of land as a building site should be taken into consideration — notwithstanding the provisions of section 16 — and the compensation payable should not be less than the amount which the land might have
20 realised in a free transaction in the market;

And whereas such a valuation is contrary to the express provision of the law, that is to say "any land which is not a building site **shall be valued for the purposes of determining the compensation payable in the case of its compulsory acquisition** as rural land or as waste land as the case may be"; and the land in question is "rural land" and in fact was, up to some time ago, worked as such

The defendant to shew cause why it should not be declared and adjudged by this Court that in determining the compensation due to the defendant for the said plots of land the provisions of section
30 25 (1)(b) are to be interpreted as subject to the provisions of section 16 and that, therefore, the amount of compensation shall be the sum which the said plots of land, which are not a "building site" but "rural" or "waste land", might have realized in a free transaction in the market according to law.

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

And after service by delivery of a copy hereof to the said defendant or her agent, according to law, or upon your meeting with any

No. 1
Writ of
Summons
—continued.

obstacle in the said service, you shall forthwith report to this Our Court.

Given by our aforesaid Civil Court, First Hall, Witness our faithful and well beloved the Honourable Mr. Justice E. Magri, Doctor of Laws, Judge of Our said Court.

This fourteenth (14th) day of January, 1966.

(Signed) E. MAGRI.

No. 2
Plaintiff's
Declaration

No. 2

Plaintiff's Declaration

In Her Majesty's Civil Court, First Hall

10

Doctor Vincenzo Depasquale in his capacity as Acting Commissioner of Land

v

Francesca the wife of Michele Aquilina

The declaration of the plaintiff nomine

Respectfully sheweth:

That the present suit has been rendered necessary because the Land Arbitration Board considered the question debated by the parties to be of a determinative and absorbing value, that is to say the question whether for the purposes of the valuation of the land compulsorily acquired and in particular for the determination or otherwise of its potential value the provision of section 25 (1) (b) of Chapter 136 should be considered by itself or else whether it should be interpreted in conjunction with section 16 of the said law, and in particular whether the latter section should be exclusively applied in the sense that if the land compulsorily acquired is not a "building site" in terms of law, then the land should necessarily be considered solely as "rural or waste land as the case may be".

20

30

That the plaintiff considers that an organic interpretation of the law requires that no provision saving a provision *ad hoc*, may be interpreted by itself as claimed by the defendant, much more so when section 16 determines how land "which is not a building site shall be valued for the purpose of determining the compensation payable in the case of its compulsory acquisition".

Not only does an organic interpretation of the law militate against section 25 (1) (b) being considered by itself but even the said section *expressis verbis* subordinates the assessment of compensation payable in terms of the Ordinance to the special provisions of the law. In fact the textual words are "without prejudice to any special provision contained in this Ordinance."

40

That the defendant claims that the fact that the plots of land in question do not qualify as a "building site" is no obstacle to their value being taken to be, taking into consideration the building potential of the land, the price which such land would realize in the market because of its said potential.

No. 2
Plaintiff's
Declaration
—continued.

That such interpretation runs counter to the fundamental provision of the law and, therefore, defendant's interpretation should be disallowed with costs.

10

(Signed) G. DEMARCO,
Crown Counsel.
V. FALZON, L.P.

Witnesses: The plaintiff to confirm the facts set forth.

The defendant so that a reference to her oath may be made.

The Director of the Public Works Department, Edgar Caruana Montaldo, A. & C.E., and Joseph Darmanin to furnish the necessary information relating to the compulsory acquisition.

The witnesses who may be eventually mentioned by the defendant to answer any questions according to law.

20

(Signed) G. DEMARCO,
Crown Counsel.
V. FALZON, L.P.

Plaintiff's note of reference

The plaintiff respectfully makes reference to the aforesaid record of proceedings before the Land Arbitration Board.

(Signed) G. DEMARCO,

No. 3

Statement of Defence

No. 3
Statement of
Defence

30 In Her Majesty's Civil Court,
First Hall.

Doctor Vincenzo Depasquale,
Advocate, nomine.

v

Francesca Aquilina et.

Defendant's statement of defence

Respectfully sheweth:

That in compulsory acquisition the fundamental principle is that compensation should be such as to **fully reinstate the owner in his economic position** at the moment of the compulsory acquisition.

40

That as appears from the copy of the deed of the 10th April, 1964 (in the records of Notary G. Cassar), fol. 29 of Application No. 8 of 1965 before the Land Arbitration Board, the defendant has sold land, adjoining the plots which are being compulsorily acquired, at a

much higher price than that offered by the plaintiff nominee to the defendant.

That the whole area known as "Tal-Hriereb" began to undergo rapid building development before the 16th August, 1960, because the public had chosen to develop it, and in a few years its greater part was rapidly built up and, as a result, its market value had increased so much that it was being acquired at the annual ground rent of 12s./6d. and upwards per square cane.

That, as it has always been held by the Courts, the fair compensation payable to the owner should always be governed by the 10 potential value.

(Signed) G. PACE, Adv.
B.H. DINGLI, L.P.

The declaration of the defendant:

Respectfully sheweth:

That the plaintiff claims that compensation should always be based on the three categories "rural land", "waste land" or "building site". This, however, is not correct because the law provides also that the compensation shall be the amount payable to "a willing seller in the open market" and this shows that the aforesaid three categories are not absolute — and, therefore, the principle which should prevail is that every citizen should be placed in the same economic position he was in before the compulsory acquisition. Wherefore, where there exists a potential value, which may be deduced from all the circumstances of each particular case, the Court should take such value into consideration and should give great weight to the fair and well founded will of the willing seller of the tenement being acquired compulsorily. 20

(Signed) G. PACE, Adv. 30
B.H. DINGLI, L.P.

Witnesses: The contending parties, Joseph Barbara, A. & C.E., the Honourable Dr Alessandro Cachia Zammit, Frank Bezina Wettinger, Paola Vella to give evidence on the transfer of neighbouring plots of land and on other matters.

(Signed) G. PACE, Adv.
B.H. DINGLI, L.P.

Reference is made to record of proceedings No. 28/1965 before the Land Arbitration Board, which proceedings stand adjourned *sine die*. 40

(Signed) G. PACE, Adv.
B.H. DINGLI, L.P.

This twentysixth (26th) day of January, 1966.
Filed by Ben. H. Dingli, L.P., without Exhibits.

(Signed) E. SAMMUT,
Deputy Registrar.

No. 4
Plaintiff's Note

No. 4
Plaintiff's
Note

In Her Majesty's Civil Court, First Hall

Writ of Summons No. 18/66M
Doctor Vincenzo Depasquale nomine

v

Francesca the wife of Michele
Aquilina, assisted by him

The Note of John Pullicino, LL.D., Advocate, in his capacity as
10 Commissioner of Land

Whereby he assumes the proceedings vice Doctor Vincenzo
Depasquale, Advocate.

(Signed) E. CORTIS,
Crown Counsel.

This 8th day of October, 1966.

Filed at the sitting by Dr E. Cortis without Exhibits.

(Signed) VIC. APAP,
Deputy Registrar.

20

No. 5
Plaintiff's Note of Submissions

No. 5
Plaintiff's
Note of
Submissions

In Her Majesty's Civil Court, First Hall

Writ of Summons No. 18/66M

Doctor Vincenzo Depasquale,
Advocate, nomine et

v

Francesca Aquilina et

The Note of John Pullicino, LL.D., Advocate, in his capacity as
Commissioner of Land.

30 Respectfully submits:

That the points raised by the several owners of the lands (directly
or indirectly) involved are the following:

1. the compensation payable to the owner should be such as
to fully reinstate him in his economic position at the time of the
compulsory acquisition;

2. with regard to the interpretation to be given to sections 16
and 17 and to paragraph (b) of subsection (1) of section 25 of the
Land Acquisition (Public Purposes) Ordinance (Chapter 136), it has
been submitted that the "plaintiff wants to achieve his object by tak-
40 ing into consideration only the letter of the law" (Dr Mizzi v Carmelo
Zammit);

3. a quotation from Halsbury which reads "Tribunals assessing

No. 5
Plaintiff's
Note of
Submissions
—continued.

compensation may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which, in the course of events within a reasonable period, it might be applied just as the owner might do if he were bargaining with a purchaser in the market”;

4. quotations from the debates of the Legislative Assembly on the Special Development Areas Act, 1956 (Act. No. IX of 1956);

5. an interpretation of section 4 (3) of Act Number IX of 1956 in conjunction with section 38 of the Constitution of Malta.

(Signed) E. CORTIS, LL.D., 10
Crown Counsel.

This 8th day of March, 1967.

Filed at the sitting by Dr E. Cortis without exhibits.

(Signed) VIC. APAP,
Deputy Registrar.

No. 6
Plaintiff's
Note of
Submissions

No. 6

Plaintiff's Note of Submissions

In Her Majesty's Civil Court, First Hall

Writ of Summons No. 18/66M 20

Doctor Vincenzo Depasquale,
Advocate, nomine

v

Francesca Aquilina et

The Note of submissions of John Pullicino, LL.D. in his capacity as Commissioner of Land

Respectfully sheweth:

That on the 16th August, 1960, by Government Notice No. 435 the land in question was declared “frozen” for the purposes of the **Special Development Areas Act, 1956;** 30

That on the basis of the said declaration and of subsection (3) of section 4 of the said Act, the value of the said land was determined to be that existing on the 16th August, 1960, and this, according to the said subsection, “notwithstanding anything to the contrary contained in that Ordinance”, that is to say the Land Acquisition (Public Purposes) Ordinance (Chapter 136);

That the defendants have submitted, *inter alia*, that the compensation payable to them should be such as to fully reinstate them in their economic position at the time of the compulsory acquisition — **which the plaintiff accepts that he should do, but always in the** 40 sense of, and in accordance with, the provisions of the laws which govern the matter in question;

That the plaintiff agrees with the defendants that this matter is

governed — saving the provisions of subsection (3) of section 4 of the aforesaid Act — by sections 16, 17 and 25 (1) (b) of the Land Acquisition (Public Purposes) Ordinance;

That, however, the defendants want to extend the interpretation of section 25 (1) beyond the legislative intent as they are extending the said interpretation beyond the letter of the law;

10 That the defendants are forgetting that section 25 (1) starts with the words “without prejudice to the special provisions of this Ordinance” — and these words refer particularly to section 16 and to section 17 (as substituted by section 6 of Act XXVII of 1956) of the said Ordinance;

That section 16 of the said Ordinance categorically lays down that land is either a building site or rural or waste land;

That section 17 defines most clearly which land is to be deemed a building site and, in its subsection (3), limits the depth of such land to a maximum of twelve canes;

20 That if the argument of the defendants were to prevail in the sense that the land's potential to become a building site in future should also be taken into consideration, then we would have to say that the words in subsection (3) of the said section 17 are of no effect, whereas any plot of land, whatever its depth, may be developed and built up because this depends on whether the architect in charge of the building makes use of the site by building in depth or by erecting a building on a broad frontage;

30 That the words of paragraph (b) of subsection (1) of section 25, that is to say that the value of land “shall be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realize” are subject to the other provisions of the law, that is to say as a building site or rural land or waste land as the case may be, because otherwise the legislator would have had no reason to define in clear terms (as he has done in section 17) which land is a building site for the purposes of compulsory acquisition and, much less to lay down the maximum depth of twelve canes;

That, therefore, as these provisions of the law are clear, their interpretation is uncalled for, in view of the fact that, as it has always been held by these Courts, where the law is clear there is no place for its interpretation (Vide “Farrugia vs Agius” Appeal 16.8.1950 Vol. XXXIV, I, page 229; “Zammit Haber vs Agius Gilbert” Appeal, 30.XI.1953, Vol. XXXVII, I, p. 386);

40 That neither does the quotation from Halsbury apply to the case in question, because this would have only applied if the law did not expressly provide otherwise;

That the respondents have quoted several parts from the debates of the Legislative Assembly. In this regard, the plaintiff makes refer

No. 6
Plaitiff's
Note of
Submissions
—continued.

ence to the judgment given by the Court of Appeal (Income Tax Appeal Number 7) where mention was made of what had been stated by the Minister of Finance in the Legislative Assembly during the debate on the Income Tax Bill. That Court, in its judgment, said, with regard to what had been stated in the debate, that “Even if this were his intention, so long as it has not been given effect to, it can have no juridical value because intentions can have no practical application, especially when the positive law gives directions as to how it should be applied”;

That the respondents have also submitted that subsection (3) of section 4 of Act Number IX of 1956 is tempered by section 38 of the Constitution of Malta, which section provides that property shall be compulsorily acquired for the payment of adequate compensation; had the defendant, however, continued to read the other provisions of the law, he would have arrived at subsection (9) of section 48 of the said Constitution which reads; “Nothing in section 38 of this Constitution shall affect the operation of any law in force immediately before 3rd March, 1962”.

That, therefore, the plaintiff respectfully feels that the compensation payable to the defendant is to be determined as demanded by him in the Writ of Summons. 10

(Signed) E. CORTIS,
Crown Counsel.

This 8th day of March, 1967.

Filed at the sitting by Dr E. Cortis without Exhibits.

(Signed) VIC. APAP,
Deputy Registrar.

No. 7
Defendant's
Note of
Submissions

No. 7

Defendant's Note of Submissions

In Her Majesty's Civil Court, First Hall

Dr Vincenzo Depasquale, Advocate
nomine

v

Francesca Aquilina et

30

The Note of the defendant

Whereby she produces the annexed note of submissions and exhibits.

(Signed) G. PACE, Adv.
A. AGIUS, L.P.

This seventh (7th) day of March, 1967.
 Filed by Arturo Agius, L.P., with a note of submissions and with
 one Exhibit.

No. 7
 Defendant's
 Note of
 Submissions
 —continued.

(Signed) R. SAVONA,
 Dep. Registrar.

In Her Majesty's Civil Court, First Hall

Dr Vincenzo Depasquale, Advocate,

v

Francesca Aquilina et.

10 The Note of submissions of the defendant Aquilina

Respectfully sheweth:

That the cardinal point in this cause is that this Court has "to
 harmonize the principle of reinstating the owner in the financial posi-
 tion he was in before the compulsory acquisition and of awarding him
 adequate compensation so that he will not be in a worse position
 than that he was in before" with the principles laid down in section
 25 (1) (b) of Chapter 136 wherein the legislator ordered that "the
 value of the land shall be taken to be the amount which the land,
 if sold on the open market by a willing seller, might be expected to
 20 realize" and in Section 16 which reads: "Where land is not a build-
 ing site, it shall be valued for the purpose of this Ordinance as agri-
 cultural land or waste land, as the case may be".

That the legislator, notwithstanding the amendments of 1956,
 has not changed the fundamental concept that compensation is to be
 based on what a willing seller would reasonably realize for his land
 "in the open market", precisely to safeguard the owner who is divested
 of his property for public purposes against being paid compensation
 which is inadequate and inappropriate to the case — thus the legis-
 30 lator is conforming with the spirit which forms the basis of the law
 of compulsory acquisition. Only in this way can the owner's right to
 his property be acknowledged, of which property he is being deprived
 as "*dominus rei suae moderator et arbiter*".

That no legislation of civilised countries recognizing the right to
 private property has encroached on the principle of the citizen's right
 to private property, although all such countries subject such right to
 public exigencies after ensuring fair and adequate compensation.

That the classification into the three categories mentioned in sec-
 tion 16 of the law, that is to say building sites, rural land and waste
 land, does not affect the particular case before this Court. In fact
 40 the legislator has not laid down any limits to the value of each one
 of these three categories and, therefore, it should not be inconceivable
 that a plot of land, notwithstanding the fact that it does not qualify
 as a building site because it is slightly more distant than one hundred

yards from a "built-up area", may have a value which approximates that of a "building site", if it is only a reasonable distance away in excess of the one hundred yards required by the law and if it is evident that it is going to be developed within a short time. This concept was ably set forth and explained by Dr G. Cassar, the then Minister of Justice, during the parliamentary debate, precisely when the 1956 amendments were tabled and when he maintained that the one hundred yards were only specific as regards nomenclature but not as regards value, to establish which "several other factors, whereof this was only one aspect, had to be taken into consideration." 10

That this shows that the classification into three categories is not drastic in the sense claimed by the plaintiff as regards value, but should be harmonised with the other sections of the law on the principle that "*incivile est nisi tota lege perspecta judicare vel respondere*".

That when the 1956 amendment to the law was published, the intention of the legislator was clearly explained in the parliamentary debate, as appears from the photostatic copies of the salient points of the said debate, which is filed in full in the record of proceedings pending before the Land Arbitration Board in the names "Edgar Mizzi noe vs Carmelo Zammit". It is well known that it is not possible to arrive at the value of land solely and exclusively on the basis of a definition. It is enough to point out that the land which forms the object of the present cause was a building site in accordance with the original definition of the law because it was "within a two-mile radius from Kingsgate", and precisely when its value was enhanced by the erection of buildings in its vicinity, it ceased to qualify as a building site as a result of the 1956 amendment, when its real value had obviously increased. The definition, therefore, as was held in the said debate, gives only a *prima facie* indication of the nature of the land being acquired compulsorily, but this constitutes only one factor amongst the many which are to be taken into account in order to arrive at the fair value, because the definition is not meant to fix in a specific manner the value of the land acquired compulsorily. When the attention of the Government of the day was drawn to the fact that the bill which the House had before it did not specify this criterion, the reply of the then Prime Minister was in the sense that it was not necessary for the law to do so because it was in the nature of things that such criterion be followed and that it had always been followed. Actually this is laid down in text-books on valuation of property, and it is so logical that it is not felt that there is any need to elaborate on this point. It is enough to point out that in the judgment given by this same Court in re "Rosanna Vella v Deakin noe" it was established that the Land Arbitration Board in determining the fair compensation should take into account any purpose to which the plot of land might in future be applied. 30 40

That, as has already been stated, the legislator has laid down that compensation shall be deemed to be the amount which a willing seller might realize in the open market. What is the "open market"? This expression is self-explanatory. In the sale of lands the open market depends on several circumstances, including the locality, the nearness to other lands which are being developed, the demand of the public which chooses such locality for the erection of buildings, the probability of a resale, and many other circumstances. In this regard it has been held (Inland Revenue Commissioner v Clay and Buchanan) that "a value, ascertained by reference to the amount obtainable in the open market, shows an intention to include every possible purchaser; the market is to be an open market, as distinguished from an offer to a limited class only, such as the members of the family".

That by the expression "willing seller" the legislator intended to lay down that the price has to be such as to generate in the owner a mental attitude which leads him to be willing to sell, evidently because compensation is to be adequate to the case. Naturally it does not follow as a consequence that the owner may take advantage of the circumstance that the state requires his property and exaggerate in his claim, but leads to the conclusion that if lands in the vicinity of the land in question are in fact realizing a price or a ground rent which results from deeds of sale of the same period — and such deeds were entered into without any simulation or artifice with intent to show an untruth — then the value of the land acquired compulsorily should be based on such values, which, in the present case, were paid for the said lands both by the Government when it recently acquired from third parties land in the same area, and by private citizens in purchases made by them.

That the plans of this locality filed in the record pending before the Land Arbitration Board in the names "Edgar Mizzi noe v Carmelo Zammit", prepared from aerial photographs taken at different times preceding the compulsory acquisition, show most clearly how popular this area is for building development. It can be asserted without fear of contradiction that, had it not been for Government's intervention, the said lands compulsorily acquired, would to date have been fully developed by private parties.

Before concluding this note of submissions it would not be out of place to refer to the Universal Declaration of Human Rights, which amongst other precepts defines that "all are equal before the law and are entitled to equal protection against discrimination". And it cannot but be admitted that, were plaintiff's argument to prevail, a way would be opened to discrimination where this hurts most, whereas it would differentiate between owners who are not hit by expropriation and who may, therefore, benefit from the real value established

in the open market, and those who are instead so hit and who consequently receive only a small fraction of the value being realized by neighbouring property which is not hit by expropriation. And one cannot but visualize the wide field for abuse which might thus be created as a result of discrimination in the choice of the owners of land to be hit by compulsory acquisition, once it is sanctioned that under expropriation compensation may be much less than the value in the open market. These concepts are essentially based on natural law, which should inspire, and is superior to, any dictates of the written law. 10

It would equally not be out of place to refer to the other institution known as the "European Convention for the Protection of Human Rights", which besides duplicating the fundamental principles of human rights enunciated in the Universal Declaration provides also for the implementation and safeguard of the said principles.

It does not appear that more need be said except to list the negative effects of the interpretation which plaintiff is attributing to the relevant sections of the law of compulsory acquisition. In fact, if such interpretation were to be allowed by the Court, the following effects would result: 20

1) vitiation of the spirit which forms the basis of and which inspires this matter, that is to say that the object of the law is to ensure that the owner, on payment of compensation, will remain in the same economic position he was in before the acquisition;

2) vitiation of the logical basis and of the dictates of text writings on valuation of property by the exclusion of a factor of great relevance from consideration in the assessment of the value of the property;

3) vitiation of the specific dictate of our law which determines that compensation is to be such as to induce in the owner a mental attitude of willingness to accept the price offered to him which price should reflect that in the open market; 30

4) vitiation of the fundamental principles listed in U.N.O.'s Universal Declaration of Human Rights and in the European Convention for the Protection of Human Rights;

5) it would be in contradiction with the spirit and with what was stated in the course of the parliamentary debate when the 1956 amendments to the law were tabled, when the accent was always on the fact that the definition of a building site had the object of determining as a general norm the nature of the land hit by expropriation, but was in no way binding as regards value, because this always continues to be the market value and in the assessment of such value the definition was only one out of many other factors to be considered. 40

(Signed) G. PACE, Adv.

No. 8

No. 8
Defendant's
Note of
References

Defendant's Note of References

In Her Majesty's Civil Court, First Hall

Doctor Vincenzo Depasquale noe

v

Francesca Aquilina

The Note of the defendant

Whereby she produces the annexed Note in compliance with the order given by this Court.

10

(Signed) G. PACE, Adv.

B.H. DINGLI, L.P.

This 16th day of October, 1967.

Filed by B.H. Dingli, L.P., with a Note.

(Signed) J. BRINCAT,

Dep. Registrar.

In Her Majesty's Civil Court, First Hall

Doctor Vincenzo Depasquale noe

v

Francesca Aquilina

20 The Note of the defendant

1) Whereby she produces an official copy of the judgment given by Her Majesty's Civil Court, First Hall, in re "Rosanna Vella vs Group Captain Colin Hugh Deakin" determined on the 20th January, 1961.

2) Whereas she has not succeeded to trace the date of the judgment in re "Inland Revenue Commissioner v Craig & Buchanan" quoted at fol. 20 of the record, respectfully quotes "R v Brown" (1867) Law Reports 2 Q.B. 630, per Lord Cockburn, at page 631, 11 Digest 125 (160), in which case it was "held that the potential value of agricultural land for building purposes should be considered" quoted in Halsbury, Laws of England, Second Edition Vol. 6, page 45(b).

3) The defendant also makes reference to page 44 of the same Halsbury volume, where the principle of our law is repeated "the value of the land is the amount which the land if sold in the open market by a *willing seller* might be expected to realize".

4) Similarly the defendant makes reference to para. 43 page 45 of the said Halsbury Volume 6 with regard to the "potential value" of land acquired compulsorily.

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(Signed) G. PACE, Adv.

B.H. DINGLI, L.P.

No. 9

Judgment, H.M. Civil Court, First Hall 31st October, 1967

HER MAJESTY'S CIVIL COURT, FIRST HALL

Judge: The Hon. Mr Justice E. Magri, LL.D.

Sitting held on Saturday, 31st October, 1967.

No. 7

Writ of Summons No. 18/66

Doctor Vincenzo Depasquale, Advocate, in his capacity as Acting Commissioner of Land vice Dr Vincenzo the 8th October, 1966, John Pullicino, LL.D., Advocate, assumed the proceedings in his capacity as Commissioner of Land vice Dr Vincenzo Depasquale 10

v

Francesca the wife of Michele Aquilina, assisted by him.

The Court,

Having seen the writ of summons whereby the plaintiff nomine — having prefaced that by an application filed before the Land Arbitration Board, the then Commissioner of Land, having premised that the defendant duly assisted had been served with a Governor's declaration wherein it was declared *inter alia* that two plots of land, one a plot of agricultural land in the parish limits of Birkirkara of an area of two tmien four sghan and five point six kejllet bounded on the North West by property of the Parish Church of Birkirkara, on the South West by property of W.J. Parnis England Limited, on the East by property of Paul Micallef and on the South by the remaining portion of the land of which such plot formed part, and the other a plot of agricultural land in the parish limits of Msida and of Gzira, of an area of nine point two kejllet, bounded on the South by property of Francis Bezzina Wettinger and others, on the North by property of the Government of Malta and on the South East by the remaining portion of land of which such plot formed part, were required for a public purpose and were to be acquired by absolute purchase and that the defendant had also been served with a notice to treat whereby the competent authority offered as compensation the sum of two hundred and twenty pounds eight shillings (£220.8.0) and twelve pounds five shillings (£12.5.0) for the absolute purchase of the said two plots of land, free from and unencumbered by burthens, as better explained in the report by Edgar Caruana Montaldo, A. & C.E.; and that the defendant had not 20 30 40

accepted the said compensation for the aforesaid lands and had claimed instead that, on the basis of the price received by her from the sale to the Franciscan Sisters of land adjoining the plots of land in question, compensation should be assessed on the basis of six hundred pounds (£600) for every sixty-eight and a half square canes — prayed that the Board be pleased to order the transfer of the said lands to him by absolute purchase, to assess the relative compensation and to give any necessary directions in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 10 136); and having prefaced that the question was raised before the said Board whether for the purposes of the valuation of the land to be acquired compulsorily and in particular for the determination or otherwise of its potential value the provision of section 25(1)(b) is to be considered by itself or whether it should be interpreted in conjunction with the provision of Section 16 of the same law and in particular whether this latter section should be exclusively applied in the sense that if the land to be acquired compulsorily is not a building site in terms of the law then the land should necessarily be considered solely as “rural or waste land as the case may be” independently of its potential value as a building site — which question in the opinion of the Board exceeded its competence and should therefore be reserved as laid down in Section 24 of Chapter 136 above-mentioned.

Having prefaced that in fact the Board by its decision of the 15th December, 1965, had reserved the aforesaid questions for the decision of the Chairman of the Board sitting as Judge of Her Majesty’s Civil Court, First Hall, and had given the plaintiff one month’s time to bring, in the manner required by law, the aforesaid reserved questions before the aforesaid Court presided over by the Chairman of the Land Arbitration Board and ordered that in default such questions might be brought forward by the defendant within the same time, and, in consequence of such directions had stayed the further hearing of the said application until the points so reserved were determined:

Having prefaced that the defendant maintains that for the purpose of assessing the amount of compensation, although the plots of land in question do not in terms of the law qualify as a “building site”, the value to be attributed to the land in question is not that of “rural or waste land as the case may be” but the potential value of the said plots of land as a building site should be taken into consideration — notwithstanding the provisions of section 16 — and the compensation payable should not be less than the amount which the land might have realized in a free transaction in the market.

Having prefaced that such a valuation is contrary to the express provision of the law, that is to say that “any land which is not a building site shall be valued for the purposes of determining the com-

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Judgment,
H.M. Civil
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—continued.

pensation payable in the case of its compulsory acquisition as rural land or as waste land as the case may be;” and the land in question is “rural land” and in fact was, up to some time ago, worked as such.

Prayed that — every necessary declaration being made and every expedient direction being given — it be declared and adjudged by this Court that in determining the compensation due to the defendant for the said plots of land the provisions of section 25(1)(b) are to be interpreted as subject to the provisions of section 16 and that, therefore, the amount of the compensation is the sum which the said plots of land, which are not a “building site” but “rural” or “waste land”, might have realized in a free transaction in the market according to law. 10

Having seen the declaration of the plaintiff nomine and his note of witnesses;

Having seen the statement of defence of the defendant whereby she submitted that in compulsory acquisition the fundamental principle is that compensation should be such as to fully reinstate the owner in his economic position at the time of the compulsory acquisition; that as appears from the copy of the deed of the 10th April, 1964, (in the records of Notary G. Cassar), fol. 29 of Application No. 8 of 1965 before the Land Arbitration Board, the defendant had sold land adjoining the plots which are being compulsorily acquired at a much higher price than that offered by the plaintiff nomine to the defendant; that the whole area known as “Tal-Ffriereb” began to undergo rapid building development before the 16th August, 1960, because the public had chosen to develop it, and its greater part had been rapidly built up in a few years, and, as a result, its market value had increased so much that plots were being acquired at the annual ground rent of 12s/6d and upwards per square cane; that, as it has always been held by the Courts, the fair compensation payable to the owner should always be governed by the potential value; 20 30

Having seen the declaration of the defendant and her note of witnesses;

Having seen all the acts of the case and the exhibits produced;

Having seen the notes of submissions of the contending parties;

Having heard counsel for the contending parties;

Having considered:

That the question under examination was reserved by the Land Arbitration Board for decision by this Court, because it represents an unusual situation in the development of land compulsorily acquired, which situation has created a contestation and a wide divergence between the expropriating authority and the owner of the land as regards the valuation criterion to be adopted by the said Board in the assessment of the fair compensation due to the owner; and that the outcome of several other claims by owners whose property has been 40

compulsorily acquired regarding the compensation to be assessed in respect of the respective plots of land situated in the neighbourhood of defendant's land depends on the result of this present cause;

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—continued.

Having considered:

That the land in question is situated in an area of progressive and widely known building development, mainly due to the blocks of public buildings which are being erected thereon, and to the opening of a road which is to become one of the most important traffic arteries of the Island;

- 10 That the celerity itself with which this area is being developed and the proximate possibility of the erection of internal blocks of buildings which though not built on the aforesaid main road will be communicated thereto, as well as the continuously rising market prices cause this Court to ponder at length on the interpretation to be given to the law which governs this matter so as not to disturb the equilibrium between the equitable compensation due to the owner whose property has been compulsorily acquired and the authority's need to make use of land for a public purpose.

Having considered:

- 20 That it is proper to say at the outset that the present dispute should not be based on the classification of the three categories mentioned in section 16 (Chapter 136), but on the value which each one of them may have at the moment of the expropriation in harmony with, and taking into account, what is laid down by section 25(1)(b) of the said law which reads: "Without prejudice to any special provision contained in this Ordinance, in assessing compensation the Board shall act in accordance with the following rules; (b) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realize;"

- 30 That besides it does not appear that at the present stage the defendant is claiming that the land compulsorily acquired is a building site in the sense of the law, and it is for this reason that the plaintiff nomine claims the application, with all its consequences, of the provisions of Section 16 of the said law which reads: "Any land which is not a building site shall be valued for the purpose of determining the compensation payable in the case of its compulsory acquisition as rural land or as waste land, as the case may be";

Having considered:

- 40 That the nature of the land compulsorily acquired is a factor which may contribute to the formation of a generic criterion about the valuation of the tenement, but it cannot be held that such criterion is exclusive, even with regard to the same category of land, because it may depend in each case on a number of other factors which substantially affect the said value, including that of the potential value which the

tenement compulsorily acquired might have realized in the open market, where the offer of any purchaser may depend on the degree of actual or potential development of the land thus varying substantially the price which such land might realize under different market conditions.

That it is not out of place to observe here, that the Government in the act of compulsory acquisition exposes itself, as regards the amount of compensation payable, to what may be called the ideal competition of whoever had the intention of buying the said land at the market price.

That the legislator has not made any pronouncement on this criterion, but it appears that he meant to be generous with the owner in laying down that the value was to be based on the market value which might be realised "by a willing seller". This means that the same field which ordinarily has a certain value, under the changed circumstances brought about by building development, although its nature remains unchanged, is subject to a market offer which may vary its acquisition value in a determinative and progressive manner, because of its potential development in the building field.

Having considered:

That the case-law of our tribunals, long before the introduction of the law now in force, enunciated principles relating to the criteria to be adopted in this matter with regard to the assessment of the value of an expropriated tenement: "In establishing the value of a tenement, for the purposes of compulsory acquisition, consideration should be given not only to its destination and to its present state, but also to its intrinsic susceptibility resulting from the combination of causes inherent therein which might raise its value. Such susceptibility, which some call "potentiality," should not be chimeric and merely apparent but must be such that it might be put to use presently or in the near future, according to calculations of probability, based on factual circumstances." (Law Reports, XVI, II, 321; XXVI, I, 515). In making such valuation, as Judge Giovanni Pullicino has observed on the authority of the judgment given by the Civil Court, First Hall, on the 14th August, 1879, in re "Mamo nomine versus Psaila" — "One cannot fail to take into account the circumstances that the said tenement adjoins a public street, and that it is in a condition as to easily serve as a building site, taking into consideration the locality, the longer or lesser distance from inhabited areas, and to the houses or buildings which happen to be adjacent to it..... such circumstances would form part of the fair price, as determined by market conditions, in the hypothesis that the contracting parties were a willing vendor and a willing purchaser."

That in the said valuation, therefore, consideration should be had of any potentiality of real and actual advantage of the thing com-

pulsorily acquired: "The value of the property has to be inferred from all the uses to which it might be applied, and not only from those to which the owner had chosen to apply it." (Cassaz. Roma, 24th January, 1895 *Giurisprudenza*, Vol. XLVII, 1562).

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Judgment,
H.M. Civil
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—continued.

10 That, moreover, this principle is elucidated and brought up to date by Halsbury, where the interpretation of the British Courts in this matter is set out as follows: "Tribunals assessing compensation may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market. This value for future purposes is generally referred to as the potential value of the land....." "if however the land is peculiarly suitable or adaptable for some particular purpose..... that fact must be taken into account in assessing the compensation if that adaptability gives it an enhanced market value, it must be taken into account in assessing the value of the land" (*Laws of England*, Hailsham Edition, Vol. VI No. 19 para. 43 and 44);

20 That the said principles have been adopted in recent case-law where it was expressly held that once in the law of compulsory acquisition there is no express or implied prohibition of the inclusion in the compensation payable to the owner of other elements besides the value of the land compulsorily acquired, compensation should be such that the owner would be fully reinstated in his economic position as at the juridical moment of the compulsory acquisition (*First Hall in re "Rosanna Vella versus Group Captain Colin Hugh Deakin, E.R.D. nomine determined on the 20th January, 1961*).

Having considered:

30 That because this question has arisen because of lack of clarity about the applicability of the aforesaid Sections 16 and 25 in relation to the assessment of fair compensation payable to the owner — the defendant has felt the need to refer to another source of interpretation: the parliamentary debates held on the occasion of the passing of the law now in force.

40 That this element of interpretation is recognised in the *Digesto Italiano* wherein it is stated: "The preparatory works which precede the enactment of the law are one of the historical sources that have special importance and they are in fact continuously invoked in judicial practice" (*Interpretation of the Law No. 29*); and Ricci also confirms that concept with certain safeguards: "In the search for the spirit of the law it would be useful to keep in mind the discussions which have preceded the making of the law, and the reports of the commissions and Ministers' speeches; but the interpreter should be careful not to attribute too great an importance to such elements and interpretation..... the interpreter should fix his attention on the precedents of the law and espec-

ially on the ensemble of its provisions meant to govern a certain matter" (Diritto Civile, Vol. L, Part 1, para. 13); because as Pacifici Mazzoni remarks "logical interpretation tends to discover and determine the intention of the legislator, through the logical *nexus* of the ideas contained in the law and the political and juridical reason for the same and through an examination of every circumstance leading to the same law. Amongst such circumstances one has to keep in mind the historical element of the law..... as well as the motives set forth in the speeches of Ministers or of members of both houses, in the parliamentary debates." (Istituzioni, Vol. I, No. 19). 10

That now these principles appear to have been virtually accepted in our case-law with regard to the "Objects and Reasons" (of a Bill) drawn up by the Crown Advocate, in which case-law it is stated that such Objects and Reasons do not have the force of law, but are only of value for doctrinal interpretation purposes. (Law Reports XXXVII, I, 118, 122).

Having considered:

That from the parliamentary debates which preceded the making of the law in question it appears without any shadow of doubt that "there is nothing absolute in the law which leads automatically to the price" (fol. 33); "the law lays down certain norms as to whether land is a building site or not. It does not say anything about value..... but if values are shown by other means, they will be adopted." (fol. 33). "When there are no other determining factors, such distances will form the criterion. Everyone agrees, everyone that is who truly works in this trade and who truly knows the value of land, that there are other intrinsic matters which do not agree with the definition; there is the value which a plot of land might realise in the market" (fol. 34 and 35); and "this definition is not creating values. It is only creating norms. One has to see whether the areas being acquired are 20
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undergoing development" (fol. 36).

That, moreover, the interpretation given by the then Minister of Justice, Doctor Joseph Cassar, LL.D., is an eloquent explanation which shows what was the intent of the legislator at the time of the discussion of sections 16 and 25 (1) (b) aforesaid; Dr Cassar expressed himself as follows: "The law does not bind anyone as regards value, but makes clear which locality is and which is not a building site. That, however, is only one of the factors which lead to the value; but there will be many other factors which lead to such value." (fol. 38) 40

That under the circumstances and as the law appears to have been authoritatively interpreted particularly as regards the valuation criterion to be adopted, one cannot fail to agree with what Halsbury maintains in this matter, that is to say: "It is to be assumed that Parliament knows the law, even in technical matters." (Op. cit. Vol. XXXI,

para. 624), and with what Bianchi maintains: "Certainly the views and opinions expressed by those who prepared, presented and discussed the law have a merely individual value, and are as authoritative as the person who expressed them, depending on the knowledge which such person demonstrates to be in possession of."

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Judgment,
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—continued.

10 That, in this case one of the principal speakers who took part in the parliamentary debate, was the then Prime Minister Mr Dominic Mintoff, who as an architect, when he spoke on this matter, was doing so with full knowledge of the facts, and his opinion besides being that of the Head of the Government, was also that of a technical person, endowed with a long and vast experience in the exercise of the profession of Architect and Civil Engineer.

Having considered:

That naturally, moreover, although the value of the land may depend on several factors including as has already been said the land's potential in the open market "no increase in value is attributable to the tenement by reason of the advantage which it derives as a direct consequence of the works for which the authority has required the tenement" (Law Reports, XXVII, II, 104).

20 Having considered:

That in view of the foregoing considerations it does not appear that the submissions contained in the first two paragraphs of the note of submissions of the plaintiff nomine (fol. 12) can be upheld because the claim therein set forth is irreconcilable with the principle laid down in section 25 (1) (b) aforesaid whereas it would alter the nature of or restrict, against the will of the legislator, the criterion which should be adopted in the valuation of the land compulsorily acquired.

Having considered:

30 That the Court therefore is of the opinion that in the assessment of the compensation due to the defendant for the said lands several other factors have to be taken into consideration besides the nature of the said land including its potential value in the open market and, therefore, the provision of section 25 (1) (b) (Chapter 136) as regards the assessment of the value of the land compulsorily acquired should not be exclusively subordinated to the provision of section 16 as claimed by the plaintiff nomine;

On these grounds:

40 Decides the case by disallowing the demand of the plaintiff nomine and declaring that in the assessment of the compensation payable to the defendant for the lands acquired compulsorily the provision of section 25 (1) (b) above referred to should not be interpreted in the sense claimed by the plaintiff nomine, but as laid down by this Court in the foregoing considerations, that is to say that several other

No. 9
Judgment,
H.M. Civil
Court, First
Hall
—continued.

factors — besides that of the nature of the said land — including its potential value in the open market are to be taken into account in the assessment of such compensation.

In view of the circumstances of the case, each party is to bear its own costs but the registry fees are to be borne by the plaintiff nomine.

(Signed) VIC APAP,
Deputy Registrar.

No. 10
Plaintiff's
Note of
Appeal

No. 10

Plaintiff's Note of Appeal

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In Her Majesty's Civil Court, First Hall

Writ of Summons No. 18/1966 M

Doctor Vincenzo Depasquale, Advocate, in his capacity as Acting Commissioner of Land and by a note of the 8th October, 1966, John Pullicino, LL.D., Advocate, assumed the proceedings in his capacity as Commissioner of Land vice Doctor Vincenzo Depasquale. 20

v

Francesca the wife of Michele Aquilina, assisted by him.

The Notes of Appeal of the plaintiff nomine

Who, whereas he feels aggrieved by the judgment given by this Court on the 31st October, 1967, in the case in the aforesaid names, respectfully enters an appeal therefrom before Her Majesty's Court of Appeal.

(Signed) ENRICO CORTIS, 30
Crown Counsel.
G. Cassar, L.P.

This 8th day of November, 1967.
Filed by G. Cassar, L.P. without exhibits.

(Signed) R. SAVONA,
Dep. Registrar..

IN H.M. COURT OF APPEAL

No. 11
Plaintiff's Petition of Appeal

No. 11
Plaintiff's
Petition of
Appeal

In Her Majesty's Court of Appeal

Writ of Summons No. 18/1966M

Doctor Vincenzo Depasquale, Advocate, in his capacity as Acting Commissioner of Land and by a note of the 8th October, 1966, John Pullicino, LL.D., Advocate, assumed the proceedings in his capacity as Commissioner of Land vice Doctor Vincenzo Depasquale.

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v

Francesca the wife of Michele Aquilina assisted by him.

The Petition of Appeal of Doctor John Pullicino, Advocate, in his capacity as Commissioner of Land.

Respectfully sheweth:

That by Writ of Summons filed by him on the 12th January, 1966, the appellant nomine, having prefaced that by an application filed before the Land Arbitration Board the then Commissioner of Land, having premised that the defendant Francesca Aquilina duly assisted had been served with a Governor's declaration wherein it was declared *inter alia* that two plots of land, one a plot of agricultural land in the parish limits of Birkirkara of an area of two tmien four sghan and five point six kejllet bounded on the North West by property of the Parish Church of Birkirkara, on the South West by property of W.J. Parnis England Limited, on the East by property of Paul Micallef and on the South by the remaining portion of the land of which such plot formed part, and the other a plot of agricultural land in the parish limits of Msida and of Gzira, of an area of nine point two kejllet, bounded on the South by property of Francis Bezina Wettinger and others, on the North by the property of the Government of Malta and on the South East by the remaining portion of the land of which such plot formed part, were required for a public purpose and were to be acquired by absolute purchase and that the defendant had also been served with a notice to treat whereby the competent authority offered as compensation the sum of two hundred and twenty pounds eight shillings (£220. 8. 0.) and twelve pounds five shillings (£12. 5. 0) for the absolute purchase of the said two plots of land, free from and unencumbered by burthens, as better explained in the report by Edgar Caruana Montaldo, A. & C.E., and that the defendant had not accepted the said compensation for the aforesaid

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lands and had claimed instead that, on the basis of the price received by her from the sale to the Franciscan Sisters of land adjoining the plots of land in question, compensation should be assessed on the basis of six hundred pounds (£600) for every sixty-eight and a half square canes — prayed that the Board be pleased to order the transfer of the said lands to him by absolute purchase, to assess the relative compensation and to give any necessary directions in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 136); and having prefaced that the question was raised before the said Board whether for the purposes of the valuation of the land to be acquired compulsorily and in particular for the determination or otherwise of its “potential value” the provision of section 25(1) (b) of Chapter 136 of the Laws of Malta is to be considered by itself or whether it should be interpreted in conjunction with the provision of section 16 of the same law and in particular whether this latter section should be exclusively applied in the sense that if the land to be acquired compulsorily is not a “building site” in terms of the law then the land shall necessarily be considered solely as “rural or waste land as the case may be” independently of its potential value as a “building site” — which question in the opinion of the Board exceeded its competence and should therefore be reserved as laid down in section 24 of Chapter 136 abovementioned.

Having prefaced that in fact the Board by its decision of the 15th December, 1965, had reserved the aforesaid questions for the decision of the Chairman of the Board sitting as Judge of Her Majesty's Civil Court, First Hall, had given the plaintiff one month's time to bring in the manner required by law the aforesaid reserved questions before the aforesaid Court presided over by the Chairman of the Land Arbitration Board and had ordered that in default such questions might be brought forward by the defendant within the same time; and in consequence of such directions had stayed the further hearing of the said application until the points so reserved were determined;

Having prefaced that the defendant Francesca Aquilina maintains that for the purposes of assessing the amount of the compensation, although the plots of land in question do not in terms of the law qualify as a building site, the value to be attributed to the land in question is not that of “rural or waste land as the case may be” but the potential value of the said plots of land as a building site should be taken into consideration — notwithstanding the provisions of section 16 — and the compensation payable should not be less than the amount which the land might have realized in a free transaction on the market;

Having prefaced that such a valuation is contrary to the express provision of the law, that is to say that “any land which is not a building site shall be valued for the purposes of determining the com-

compensation payable in the case of its compulsory acquisition as rural land or waste land as the case may be"; and the land in question is "rural land" and in fact was up to some time ago, worked as such.

10 Prayed that it be declared and adjudged by this Court that in determining the compensation due to the defendant for the said plots of land the provisions of section 25 (1) (b) are to be interpreted as subject to the provisions of section 16 and that, therefore, the amount of the compensation is the sum which the said plots of land, which are not a "building site" but "rural" or "waste land", might have realized in a free transaction in the market according to law.

20 That the defendant respondent by her statement of defence pleaded that in compulsory acquisition the fundamental principle is that compensation should be such as to fully reinstate the owner in his economic position at the time of the compulsory acquisition. That as appears from the copy of the deed of the 10th April, 1964 (in the records of Notary G. Cassar) fol. 29 of Application No. 8 of 1965 before the Land Arbitration Board, the defendant had sold land adjoining the plots which are being compulsorily acquired at a much higher price than that offered by the plaintiff nominee to the defendant. That the whole area known as "Tal-Hriereb" began to undergo rapid building development before the 16th August, 1960, because the public had chosen to develop it, and its greater part had been rapidly built up in a few years, and, as a result, its market value had increased so much that it was being acquired at the annual ground rent of 12s/6d and upwards per square cane. That, as it has already been held by the Courts, the fair compensation payable to the owner should always be governed by the "potential value".

30 That Her Majesty's Civil Court, First Hall, by its judgment given on the 31st October, 1967, disallowed the demand of the plaintiff and declared that in the assessment of the compensation payable to the defendant for the lands acquired compulsorily the provisions of Section 25 (1) (b) above referred to should not be interpreted in the sense claimed by the plaintiff nominee, but as laid down by that Court in its considerations that is to say that several other factors — besides that of the nature of the said land — including its potential value in the open market are to be taken into account in the assessment of compensation, and ordered that in view of the circumstances of the case, each party was to bear its own costs but that the registry fees were to be borne by the plaintiff nominee.

40 That the appellant, whereas he felt aggrieved by the said decision, has entered an appeal therefrom before this Court of Appeal by a note filed on the 8th November, 1967;

That the grievance is clear and manifest and consists in that the first Court in its judgment has completely ignored the express and clear provisions of the Land Acquisition (Public Purposes) Ordinance

(Chapter 136), including the provision of section 17 which the appealed judgment does not even mention once, and has resorted to a criterion of interpretation which was uncalled for once the law is clear, and thus the first Court came to a decision contrary to the clear and categoric provisions of sections 16 and 17 of the said Ordinance, having reached the conclusion that although "land" may not be a building site it may nevertheless be a potential building site;

That it is stated in the first place that during the second reading of the bill concerning the amendment introduced by Act. XXVII of 1956, when the Honourable Doctor Giorgio Borg Olivier, then Leader of the Opposition, at the sitting of the 30th October, 1956, asked the Government "to say which model it had followed", the then Minister of Justice, Doctor Cassar, answered "we have not followed any model" "in a matter of this kind one cannot follow other countries" (page 1897);

In such circumstances, if it is inopportune to fall on an interpretation of the law when the legislator has spoken clearly, it is wholly out of place to resort for the purposes of interpretation to comments on other Laws which have nothing in common with our Law and particularly have no provisions corresponding to section 16 of our law as supplemented by section 17.

That the Court of first instance started by saying that the dispute should not be based on the classification of the three categories mentioned in section 16 of Chapter 136, but on the value which each of these categories may have at the moment of the compulsory acquisition in harmony with and taking into account the provisions of section 25 (1) of the said law and on the basis of such reasoning the first Court created a sub-category or a shade of an already existing category, that is to say the building site envisaged in section 16 and defined in section 17. In a few words, whilst the legislator has laid down in categorical terms that land which is not a building site is to be valued as rural or waste land according to law, and in no less categorical terms gave the definition of a "building site", the first Court in a manner completely opposed to the will of the legislator has rendered that definition nugatory by creating the "potential building site";

That the first Court has based its decision on the words contained in sub-paragraph (b) of section 25 (1) of the law and particularly on the words "which the land if sold in the open market by a willing seller might be expected to realise", without giving due weight to the introductory words of the said section 25 (1) "without prejudice to any special provision contained in this Ordinance", which words imposed that the said section be co-ordinated, nay subordinated, to the special provisions of the said law such as sections 16 and 17;

That the said Court, in support of its opinion, quoted three judgments of the Maltese Courts as well as a judgment of the Court of

Cassation of Rome;

That the three judgments were given by the Maltese Courts one in 1879, one in 1898 and the other in 1926, that is to say long before the promulgation of the Ordinance of 1935 which now governs the compulsory acquisition of lands by the competent authority and the subsequent amending laws. It is to be noted that, when the said judgments were pronounced, compensation payable for the compulsory acquisition was governed by section 15 of Ordinance VII of 1868, which compensation in accordance with the said section was to be
10 "fair"; but in the then existing law there was nothing resembling, not even remotely, the provisions now in force;

That the same thing may be said with regard to the decision of the Court of Cassation of Rome quoted by the first Court. In fact, in Italy compulsory acquisition is governed by the Law of the 25th June, 1865, and section 39 thereof lays down that compensation shall be "equal to the amount for which the owner, who freely decides to sell, would have sold it, and at which others, free to buy it, would have bought it". The appellant respectfully repeats that if Chapter 136 of the Laws of Malta was modelled on the Italian Law it would have
20 been possible to apply to local compulsory acquisition the comments made on the said law, but our legislator did not want this and, he therefore and with a specific object, wanted to limit the value which might be payable by the competent authority in a case of compulsory acquisition. The intention to limit values is also seen on examination of section 17 of Chapter 136 substituted in 1956 for the original section whereby the area which may fall under the category of a "building site" was greatly limited.

That the first Court in its judgment has also quoted Halsbury where it is stated

30 "Tribunals assessing compensation may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market. This value for future purposes is generally referred to as the potential value of the land".

That, however, it is to be noted that the English law which governs this matter is different from the Maltese Law. In fact in England compensation payable for compulsory acquisition is
40 governed by "The Acquisition of Land (Assessment of Compensation) Act. 1919" (9 & 10 Geo. 5c. 57). Section 2 of this Law reads:

"In assessing compensation, an official arbitrator shall act in accordance with the following rules:

(1) No allowance shall be made on account of the acquisition being compulsory;

(2) The value of land shall, subject as hereinafter provided be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant;"

There is no equivalent in the English Law to sections 16 and 17 of Chapter 136 of the Laws of Malta, which sections, in the humble opinion of the appellant, make all the difference whereas they have been included with a purpose;

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That the first Court has also quoted, in support of its decision, the judgment given by Her Majesty's Civil Court, First Hall on the 20th January, 1961, in re "Rosanna Vella vs Group Captain C.H. Deakin noe". There is no need to enter into the merit of how correct the said judgment is (and the appellant says so with all due respect), because in that case the merit was completely different from the present case: in that case the question was whether besides a building site, rural or waste land, there could also be land of a completely different nature such as land suitable for stone quarrying. But in the present case the question is whether, in the context of section 16 which provides that land which is not a building site has to be valued for the purposes of the compulsory acquisition as rural or waste land as the case may be, and in the context of section 17 which defines with greater precision what is a building site, the express words of the law can be frustrated by the creation of the concept of a potential building site as opposed to a building site.

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That finally the first Court in order to arrive at its decision has also resorted to the Parliamentary debate on the introduction of the bill which later became Act No. XXVII of 1956 amending Chapter 136;

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That it should be said that as was determined by this Court in Income Tax Appeal No. 7 one cannot arrive at an interpretation of the Law on the basis of the intent manifested by the legislator in Parliament if such intent does not find its concrete manifestation in the law and much more so when the words of the law are so clear as to exclude such intent. This notwithstanding, on reading the whole debate on the amendment in question one comes to the conclusion that the first Court was not justified to draw from the said debate the conclusion drawn by it. The appellant agrees that the amending law did not lay down values but norms, but such norms (as appears clearly from section 17 of Chapter 136 which replaced the original section) if they have changed anything, have restricted the concept of a "building site". The words uttered by the then Minister of Justice, Doctor Cassar, "there will be, however, many other factors in arriving at the value", are logical because a "building site" in a village is not of the same value as a "building site" in a town, just as the value of a "build-

40

ing site" in the same town may vary depending on whether it is in a central position or not. In the said parliamentary debate the Honourable Mr. Mintoff, then Prime Minister, said: "unless this criterion is adopted one would come to the conclusion that any land has a potential value — but it is the actual value which has to be ascertained" (fol. 1994 of the debates) and further on "the potential should be set aside, it is the actual value which counts". The first Court arrived precisely at the opposite conclusion;

10 That, in view of the foregoing, it is respectfully submitted that the interpretative criterion of the first Court was wholly erroneous and out of place. The Court had only to apply the precise and categorical wording of section 16 of Chapter 136, as supplemented by section 17 to which section 25 is subordinated. The creation of a sub-
category, nay of a shade category, of a potential building site is contrary to the clear text of section 16 which prescribes that land which is not a building site shall be valued as rural or waste land as the case may be and defeats the object of section 17 which categorically defines a building site. It is respectfully submitted that when the
20 judge to render such precision inefficacious through an interpretation criterion.

Wherefore the appellant, whilst making reference to all the evidence produced before the Court of first instance and reserving the right to produce all other evidence valid according to law, including a reference to the oath of the defendant respondent who is summoned, as of now, to appear before the Court for the purpose, respectfully prays that this Court may be pleased to allow this appeal, to reverse the judgment given by Her Majesty's Civil Court, First
30 Hall, on the 31st October, 1967, in the case in the aforesaid names allowing instead the demand of the appellant nomine, with the costs of both instances against the defendant respondent.

(Signed) ENRICO CORTIS, Adv.
Crown Counsel.
JOS. GATT, L.P.

This 23rd day of November, 1967.
Filed by Joseph Gatt, Legal Procurator, without exhibits.

(Signed) R. SAVONA,
Deputy Registrar.

No. 12

Defendant's Answer

In Her Majesty's Court of Appeal

Doctor Vincenzo Depasquae, Advoca-
cate nomine

v

Francesca the wife of Michele
Aquilina, assisted by him

The Answer of the respondent

Respectfully sheweth:

10

That the appealed judgment is just and should be confirmed, as it is based on local case-law and on local and foreign doctrine, as well as on the parliamentary debate which took place when the law was enacted.

Wherefore she respectfully prays that the said judgment be confirmed with costs against the appellant.

(Signed) G. PACE, Adv.
B.H. DINGLI, L.P.

No. 13

20

Defendant's Note of Submissions

In Her Majesty's Court of Appeal

Dr Vincenzo Depasquale, Advocate,
nomine

18/1966

v

Francesca Aquilina

The Note of the respondent

Whereby she produces the annexed note of submissions.

(Signed) G. PACE, Adv.
B.H. DINGLI, L.P.

30

This 29th Day of February, 1968.
Filed by B.H. Dingli, L.P., with a note of submissions and three
(3) Exhibits.

(Signed) J. BRINCAT,
Deputy Registrar.

In Her Majesty's Court of Appeal

No. 13
Defendant's
Note of
Submissions
—continued.

Writ of Summons No. 18/1966

Dr Vincenzo Depasquale, Advocate,
noe

v

Francesca Aquilina

The Note of Submissions of the said Aquilina.

Respectfully sheweth:

10 That compulsory acquisition is governed by Ordinance XL of 1935 (Chapter 136 of the Laws of Malta) which has been amended several times, on the last occasion by Act XXVII of 1956.

That the law when it was first enacted in 1935 contained the same provisions now existing in Section 25 (1) (b), that is to say that "The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realize".

Now this is only a faithful repetition of the English law (Acquisition of Land [Assessment of Compensation]) Act, 1919 (c. 57), Section 2 whereof reads:

20 "Rules for the Assessment of Compensation — In assessing compensation an official arbitrator shall act in accordance with the following rules:

(2) The value of the land shall subject as "hereinafter provided", be taken to be the amount which the land if sold in the "open market" by "a willing seller" might be expected to realize, — provided..."

30 Wherefore once this principle of our law has been in existence since 1935 and was confirmed by Act XXVII of 1956, Plaintiff is not correct in claiming that local case-law quoted in the appealed judgment is of no value as a result of the amendments that have been effected "subsequently to the said case-law". As a matter of fact our Courts have only followed the principles which have always governed this matter both before and after the enactment of the law of compulsory acquisition which principles are based on the English law of 1919 governing the assessment of compensation for compulsory acquisition.

10 Compensation to be assigned in any case of compulsory acquisition should be assessed in a way as to **fully reinstate** the owner in his **economic position** at the time of the compulsory acquisition; the **fundamental principle** which inspires this matter would otherwise be violated. (Vide judgment, "Rosanna Vella vs Deakin noe" of the 20th January, 1961, given by the Civil Court, First Hall, which is the only case expressly decided in this matter).

In the application of the said principle, it is necessary to interpret sections 16, 17 and 25 (1) (b) of the Land Acquisition Ordinance.

Sections 16 and 17, as existing that is to say following the amendments of 1956, are the sections being invoked by Plaintiff so as to reduce the assessable compensation to the sum being offered by him. Plaintiff aims to achieve his object by directing his attention only to the letter of the law, maintaining that the property being compulsorily acquired should be classified as agricultural land and submitting also that, therefore, a fixed and abstract rate of compensation, applicable indistinctly to any rural land, is to be attributed thereto. 10

According to plaintiff, therefore, it would have been sufficient for one to ascertain whether a plot of land is agricultural land, waste land or a building site and consequently any plot of agricultural land is worth as much as any other agricultural land, and waste land is worth as much as any other waste land, and only in the case of land which qualifies as a "building site" is an assessment to be made of the value to be attributed to the land being compulsorily acquired. This is not correct. It is enough to keep in mind that the Board is in part composed of two architects who exercise their professional duty by drawing up a valuation and not simply by classifying lands and applying fixed criteria to the classification. The presence of an architect, with his professional capacity and technical education, implies that he has to take into consideration any intrinsic and extrinsic circumstance which has a bearing on the value which he has to establish, so as to reinstate the owner in his economic position. According to plaintiff, architects may only render their professional services in the case of the compulsory acquisition of land which qualifies as a "building site" and not when the land in question is either "waste" or "agricultural land". 20

That as we read in Halsbury (Laws of England, Vol. VI, 30 Hailsham Edition).

"Tribunals assessing compensation may take into account not only the present purpose to which the land is applied, but also any other **more beneficial** purpose to which, in the course of events within a reasonable period, it might be applied, just as the owner might do if he were bargaining with a purchaser in the market".

From this it emerges that apart from classifying the property being compulsorily acquired, one should consider all the particular factors in evidence on the said property, the location in general of other similar property and the present and eventually probable position of the land with reference to building development in the neighbouring area and of any circumstance or other adaptability, which considered collectively enable the Board to arrive at the assessable compensation, which compensation is justly qualified by 40

section 25 (1) (b) — which will be commented upon further on and which undoubtedly should have the function indicated above.

Section 4 (3) of Act IX of 1956, also invoked by plaintiff, simply reads: “the value of the land or building as at the date of publication of the declaration in terms of Section 3 in the Government Gazette”. This section lays down the rule with regard to the time to which reference is to be made when the value is to be assessed but this does not provide a solution to the real point at issue, namely, the amount of assessable compensation, that is to say it does not present
10 any factor which indicates what should be the value in each particular case.

Plaintiff's arguments, therefore, do not lead to any acceptable conclusion; nay they may lead to the absurd. For example, a plot of land on the outskirts of Gharb, Gozo, which has no prospect, not even the most remote, of being developed, should be assigned the same value as a plot of land, rural by definition, situate in the proximity of development areas near Sliema, St Julians or Msida, where the demand for development is constant and follows an accelerated rhythm.

20 That the provision of the law should be interpreted in accordance with the motives and the intent of the legislator, and, therefore, the debate which accompanied the Parliamentary approval of the 1956 amendments, throws the best light for the purposes of the interpretation of the said law. It shows that sections 16, 17 and 25 (1) (b) of the law *de qua* were meant to give only a *prima facie* indication of the nature of the land to be compulsorily acquired, as they were never meant to exclude, nay they allow, consideration of other factors which may have a bearing on the land's value.

The following points result from the said debate. At the sitting
30 of the 7th November, 1956, in the Committee stage, the Honourable Mr. D. Mintoff said: “The law does not lay down absolute values — the law does not say that this is a building site because it is in a particular area and its price is such an amount... The law lays down certain general norms, and there is nothing absolute in the law which leads automatically to the price. There is nothing **absolute** in the law.” “The law lays down certain norms as to whether a plot of land is a building site or not. It does not say anything about value. That is to say, **everything being equal**, if there is no other determining factor, there should be no doubt as to what is a building site and
40 what is not. This is what the law says. But if there are other **factors** unconnected with the law, they shall be taken into consideration.” (Fol. 2252 and 2253 debates 7 November, 1956).

The Honourable Mr. Mintoff said at the same sitting (fol. 2254): “In spite of everything else the value remains the **market value** because the fact of a “building site” is not defined in the law, which

does not establish the value, and in this manner it throws all objections out of gear". When the Hon. Mr. Rizzo, architect, complained that when, as a result of this definition, a plot of land cannot be styled a building site, its value would thereby be decreased, the Hon. Mr. Mintoff replied (page 2254 debates): "I do not agree with what the hon. member is saying. It is true that, when there are no other determining factors, such distances will form the criterion. Everyone agrees, everyone that is who truly works in this profession and is truly aware of the value of land, that there are other intrinsic matters which do not agree with the definition... there is the value which a plot of land might realize in the market... **the demand is an amount equal to the price at which adjoining lands were sold ... the value has to be similar to the actual sales of adjoining land**". Page 2256, the Hon. Mr. Mnitoff: "This definition is not **creating values**. It is **only creating norms**. One has to establish whether the areas being acquired are undergoing expansion". Page 2257: "We ourselves admit", said the Hon. Mr. Mintoff, "that the norm we are laying down is not perfect, because the value is the **market value**... we are saying that this is a mere norm which shall have effect **when there are no other factors** which prove something different".

The same thing was repeated by the Honourable Dr J. Cassar, the then Minister of Justice, (fol. 2257) when, following a remark by the Hon. Dr. J. Frendo Azzopardi in the sense that the Minister of Justice had specifically stated that land which is more than 100 yards distant from a built-up area cannot be deemed to be a building site, he retorted: "But it is not the value which is specific, because there exist other criteria which lead to the value." The Hon. Mr. Mintoff added: "If there is no other evidence of its value, this is to be taken as a general norm. But if there exist other criteria, then the value shall be different. That is to say there are other norms besides this one." And when Mr. Rizzo intervened to say: "But the law does not say so", the Hon. Mr. Mintoff replied: "Because we know that that is how things are done, and that is what we said on the Second Reading. We have stated that **one** of the valuation concepts followed by the Public Works Department is the proper value of the land, and we have also said that the fact that a plot of land is a building site, by itself is not sufficient, because the value of a building site may vary from 1d to £5 a cane" (fol. 2257). Later he went on to say: "The architect has first to carry out researches, to find out what has been taking place, to examine all the evidence and then assess the value."

The Hon. Dr. Cassar at fol. 2259 went on to say: "The law does not bind anyone as regards value, but makes clear which locality is a "building site" and which is not. That, however, is **only one** of the factors, which lead to the value, but there will be **many other factors** which lead to the value." That at the sitting of the 30th October, 1956

(fol. 1904) following a remark by the Hon. Mr. Rizzo that the Government was going to acquire land cheaply and then sell it at a high price, "or sell it cheaply to foreigners", the Hon. Dr. Cassar the Minister who was piloting the said law, answered "We purchase **at market value**," and the concept of market value includes the principle **whether in fact the public wishes to invest its capital in that locality**, independently of whether there are any roads or key plans.

The interpretation provided by these authoritative declarations leads to the conclusion that the amendment proposed was only meant
 10 to classify generically lands being compulsorily acquired. It is positively certain that in the assessment of compensation the said amendment should not be applied in an arid and abstract manner, but the traditional and universally accepted criteria regarding the transfer of property should continue to apply whether such transfer is effected by conventional title or by compulsory acquisition, which criteria were identified during the debate by the Hon. Mr D. Mintoff ("it is not enough to call a plot of land a building site," "the proper value of the land", "the value remains the market value", "the value is conditioned by intrinsic matters", "the demand is an amount equal to the
 20 price at which adjoining lands were sold", "the value has to be similar to the actual sales of adjoining land", and "the architect in order to assess the value has to carry out researches, find out what has been taking place, examine all the evidence") and summarized by the Minister of Justice: "We buy at market value", explaining at the same time what he meant by these words. Were it not so, that is to say, had this amendment been meant to set aside any other criterion and to ensure that the classification of lands was to form the only basis of valuation, section 25(1)(b) would have been abrogated, which section, together with the interpretation above enunciated, leaves no doubt
 30 as to the criteria to be followed in the assessment of compensation.

In this sense too, that is to say of a mere general norm, one is to interpret the other provisions which require that, for an area to qualify as a building site, it has to have a frontage on an existing street and it shall be deemed to be a building site to a maximum depth of twelve canes only, as otherwise there would be no type of development barring that known as "ribbon development", which is universally condemned by town planning authorities. For this reason the value of a plot of land, notwithstanding that it does not have a frontage on an existing street, should it form part or be in the proximity
 40 of, a developing area, should be that of a building site or nearly so, such value depending on the distance of the particular land in question from the area undergoing development, because obviously where there is a demand for building development, Government intervenes by preparing key plans incorporating the layout of new roads. In text books dealing with valuation we come across a class of land

styled “accommodation land”, that is to say land which though it is still being used as it has been used for hundreds of years for an agricultural or some other purpose, will have been virtually reached by building development so that, although it cannot be called a building site, it is obvious that it will be built up within a short time. The fact that our legislator did not make any reference to this category of land does not mean that the architect making the valuation is to set aside the fundamental principles which formed the object of his studies in text books on valuation, and fail to take this factor into account in assessing the value if that happens to be the case, because the legislator has in this regard allowed him a free hand by enunciating in section 25(1)(b) the criteria to be followed in the assessment of compensation. 10

That section 25(1)(b) of the law reads: “the value of the land shall, as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realize”. Here the law lays down three concepts with regard to the value of the land, that is to say:

- i) if sold on the open market;
- ii) by a willing seller;
- iii) the value it might be expected to realize. 20

These are three concepts each of which is complete and makes sense by itself, but which are joined together in one single provision of the law and refer to a single subject, that is to say the assessment of the value of land being compulsorily acquired. Besides, these concepts are progressive in that each one of them extends the limits of the one preceding it. In fact one of the concepts is that of a reasonable price; but this was not enough for the legislator who not only wanted to ensure that Government paid a reasonable price, but that the price would moreover be coherent with whatever is suggested by a free market made up of unhindered demand and supply. But not even this was enough and the legislator introduces the concept of a “willing seller”, that is to say to the concept of the objective value of the land in itself, to the requirement of a competitive market, he also adds the subjective criterion of the **seller**, that is to say the owner. This latter concept is of importance because the vendor, as distinct from the purchaser, is by nature induced to raise the value of his property. Therefore, the price criterion has been extended to the maximum by the legislator, neither could it have been otherwise because any other dictate would have vitiated the principle of the right of compensation for expropriation. Hence sections 16 and 17 are to be interpreted as per the parliamentary discussion and explanation, and they are to be reconciled with section 25(1)(b) and, particularly so in this case and in that of other lands in the same locality and independently of their particular location — see the speech by the Minister of Justice at the sitting of the 30th October, 1956 (fol. 1904 of the debates): 30 40

"..... in that locality, independently of whether there are any roads or key plans" — there exist intrinsic and extrinsic factors which make the compensation on offer wholly inadequate.

The plans of the area demonstrate how lands in this locality were developed by the public through the erection of buildings between the years 1957 and 1964, showing clearly that **long before** the publication of Government Notice No. 357 of the 4th August, 1961, the public had abundantly indicated how popular this area was for development. This happened years before the project for the Sliema
10 Regional Road was planned. These plans show also that, notwithstanding the freezing, development, where it had not been prohibited, went on with the same rhythm as before and that one particular area which had been temporarily frozen but which was subsequently released from such restriction, was practically completely built up within a period of eighteen months. The plans also show the property which forms the subject of this present cause.

As regards the rates of ground rent current at the time of the publication of Government Notice No. 357 of the 4th August, 1961,
20 relating to the University site there is no need to go into too many details. It is sufficient to point out that, on the strength of the deeds submitted to the scrutiny of the Department of the Commissioner of Land, when the compensation payable for other land compulsorily acquired was being discussed, it was established that the compensation should, and in fact was, based on a rate of ground rent of (12s/6d) twelve shillings six pence per square cane per annum.

A detailed examination of the plans, which show how rapidly buildings were encroaching on the free spaces in this locality, leaves no reasonable doubt that, had the Government not intervened by freezing the land and subsequently compulsorily acquiring it, this
30 land would have been developed a long time ago and for this reason the compensation payable to the respondent should not be less than the amount which the land would have realized in a free transaction in the market.

The respondent is producing herewith two aerial photos marked A and B. That marked A was taken before Government published the Notice relating to the Girdle Road, which road, therefore, does not appear on photograph A, and demonstrates clearly how the "Tal-
40 Hrireb" area was being developed on either side of the territory which was subsequently "frozen" to provide the site for the new University, which is consequently also not shown in the same photograph. The other photograph, taken on the 20th November, 1964, shows the precocious building development which took place on three sides in the direction of the said University reaching up to the Regional Road, which is shown by two parallel lines running from Im-sida to the Roundabout intersected by Gzira Road. Private buildings

reached the boundary line of the University grounds and, had Government never set up an obstacle in the way by means of the aforesaid notice, there is no doubt that the whole area on which the University has now been erected would have been completely built up as the whole of that area is in demand by the public for building development.

Respondent is also producing a detailed diagram marked C which shows how the land "Tal-Friereb" has been undergoing development by the public in the three periods therein indicated, that is to say in 1957, 1960 and 1964, which diagram may also be confirmed on oath by Joseph Barbara, A. & C.E., who has drawn it up and which may, if deemed necessary, be established by an inspection on the site. 10

That the above goes to show that, independently of the construction of the University and of the Regional Road, respondent's land, even if it does not qualify as a building site, is nonetheless rural and which, however, because of its location, has a value in the open market equal or nearly equal to that of other sites which fall within the definition of a "building site"; and respondent, as the owner, would never have been prepared to sell it of her own free will (willing seller) in the said open market at a price which is not similar to that realized by third parties in the transfer of neighbouring lands in the same locality which are being developed for building purposes. 20

This same argument also disposes of the difficulty which might at first sight arise, that is to say:

If two adjoining plots of land abut on the road, one lying "within a distance of no more than 100 yards of a built-up area" (section 17) and the other, which adjoins it, is 101 yards "from that built up area" — will their value be equal or will the first be valued as a building site and the other as rural land?

That this difficulty is resolved by the dictates of the law itself 30 in the sense that, according to section 25: "without prejudice to any special provision contained in this Ordinance" — that is to say without prejudice to the three categories of land "building site", "agricultural land" or "waste land" — compensation **shall be assessed** in accordance with the following rules:

(a)

(b) The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realize.

Provided..... 40

From the foregoing it appears that the law is dealing with the "value of land" in general, the value of any **class of land** and not with "the value of a building site" only; therefore, even rural land, which, because of extrinsic or intrinsic conditions or because of other particular factors, is worth more in the open market than agri-

cultural land, on the ground that neighbouring plots of land are being sold in the open market at building site prices — notwithstanding the fact that Government intends to acquire it compulsorily — does not undergo a reduction in its open market value. Moreover the owner is entitled to the same compensation which he would have realized if he were to sell it in the open market of his own free will and without any compulsion, to another citizen.

The legislator was only fair and just in laying down the norm contained in section 25(b) thereby safeguarding the citizen from being
10 robbed by the state and ensuring that the private citizen would be paid what he is entitled to expect in a voluntary transaction with another citizen at ruling market prices.

(Signed) G. PACE, Adv.

B.H. Dingli, L.P.

No. 13
Defendant's
Note of
Submissions

No. 14

Plaintiff's Note 4th March, 1968

No. 14
Plaintiff's
Note
4th March, 1968

In Her Majesty's Court of Appeal

Dr Vincenzo Depasquale, Adv. noe et

v

20

Francesca Aquilina et

The Note of Doctor John Pullicino nomine

Whereby he produces the annexed plan market Exhibit X.

(Signed) ENRICO CORTIS, Adv.
Crown Counsel

30

This 4th day of March, 1968.

Filed at the sitting by Dr Enrico Cortis, Adv., with a plan X.

(Signed) J. BRINCAT,
Dep. Registrar

No. 15
Plaintiff's
Note
10th July, 1968

No. 15

Plaintiff's Note 10 th July, 1968

In Her Majesty's Court of Appeal

Writ of Summons No. 18/66 M
Doctor Vincenzo Depasquale nomine
et

v

Francesca Aquilina et

The Note of Doctor John Pullicino, LL.D., in his capacity as
Commissioner of Land 10

Whereby he files, as authorised by this Court, a photographic
copy of Government Notice No. 435 of the year one thousand nine
hundred and sixty (1960) where the land in question was declared to
be "frozen" and a copy of the plan to which reference is made in
the said Government Notice (Exhibits AA and BB).

(Signed) ENRICO CORTIS, Adv.
Crown Counsel
G. CASSAR, L.P.

This 10th day of July, 1968.

Filed by G. Cassar, L.P., with two Exhibits. 20

(Signed) VIC APAP,
Dep. Registrar

No. 16
Decree,
H.M. Court
of Appeal

No. 16

Decree, H.M. Court of Appeal

HER MAJESTY'S COURT OF APPEAL

The Court,

Orders the parties to mark with a cross in red pencil on the
plan the particular plot of land to which this case refers and this
within one week from today.

This 10th day of July, 1968. 30

(Signed) VIC APAP,
Dep. Registrar

No. 17

No. 17
Judgment,
H.M. Court
of Appeal

Judgment, H.M. Court of Appeal

HER MAJESTY'S COURT OF APPEAL

(Civil Jurisdiction)

Judges:

His Honour Prof. Sir Anthony J. Mamo, O.B.E., C.St.J., Q.C.,
B.A., LL.D. — PresidentThe Hon. Mr Justice Prof. J.J. Cremona, K.M., LL.D., B.A.,
D.Litt(Rome), B.A.Hons.(Lond.), Ph.D.(Lond.), F.R.Hist.S. — Vice-
10 President

The Hon. Mr Justice J. Flores, B.L.Can., LL.D.

Sitting held on Monday, twentyeight (28th) October, 1968

Writ of Summons No. 19/66

Doctor Vincenzo Depasquale, Advocate, in his capacity as Acting Commissioner of Land and by a note of the 8th October, 1966, John Pullicino, LL.D., Advocate, assumed the proceedings in his capacity as Commissioner of Land vice Doctor Vincenzo Depasquale

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v

Francesca the wife of Michele Aquilina assisted by him.

The Court,

30 Having seen the Writ of Summons filed before Her Majesty's Civil Court, First Hall, whereby the plaintiff nomine, having prefaced that by an application filed before the Land Arbitration Board the then Commissioner of Land, having premised that the defendant duly assisted had been served with a Governor's declaration wherein it was declared *inter alia* that two plots of land, one a plot of agricultural land in the parish limits of Birkirkara of an area of two tmieim, four sighan and five point six kejllet, bounded on the North-West by property of the Parish Church of Birkirkara, on the South West by property of W. J. Parnis Engand Limited, on the East by property of Paul Micallef and on the South by the remaining portion of the land of which such plot formed part, and the other, a plot of agricultural land in the parish limits of Msida and

No. 17
Judgment,
H.M. Court
of Appeal
—continued.

of Gżira, of an area of nine point two kejllet, bounded on the South by property of Francis Bezzina Wettinger and others, on the North by property of the Government of Malta and on the South East by the remaining portion of the land of which such plot formed part, were required for a public purpose and were to be acquired by absolute purchase and that the defendant had also been served with a notice to treat whereby the competent authority offered as compensation the sum of two hundred and twenty pounds eight shillings (£220. 8. 0.) and twelve pounds five shillings (£12. 5. 0.) for the absolute purchase of the said two plots of land, free from and unencumbered by burthens, as better explained in the report by Edgar Caruana Montaldo, A. & C.E. and that the defendant had not accepted the said compensation for the aforesaid lands and had claimed instead that on the basis of the price received by her from the sale, to the Franciscan Sisters, of land adjoining the plots of land in question compensation should be assessed on the basis of six hundred pounds (£600) for every sixty-eight and a half square canes — prayed that the Board be pleased to order the transfer of the said lands to him by absolute purchase, to assess the relative compensation and to give any necessary directions in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 136); and having prefaced that the question was raised before the said Board whether for the purposes of the valuation of the land to be acquired compulsorily and in particular for the determination or otherwise of its potential value the provision of section 25(1)(b) of Chapter 136 is to be considered by itself or whether it should be interpreted in conjunction with the provision of section 16 of the same law, and in particular whether this latter section should be exclusively applied in the sense that if the land to be acquired compulsorily is not a building site in terms of the law, then the land should necessarily be considered solely as “rural or waste land as the case may be” independently of its potential value as a building site — which question in the opinion of the Board exceeded its competence and should therefore be reserved as laid down in section 24 of Chapter 136 above mentioned;

Having prefaced that in fact the Board by its decision of the 15th December, 1965, had reserved the aforesaid questions for the decision of the Chairman of the Board sitting as Judge of Her Majesty's Civil Court, First Hall, and had given the plaintiff one month's time to bring, in the manner required by law, the aforesaid reserved questions before the aforesaid Court presided over by the Chairman of the Land Arbitration Board; and had ordered that in default such questions might be brought forward by the defendant within the same time, and in consequence of such directions had stayed the further hearing of the said application until the points so reserved were determined;

Having prefaced that the defendant maintains that for the

purposes of assessing the amount of compensation, although the plots of land in question do not in terms of the law qualify as a building site, the value to be attributed to the land in question is not that of "rural or waste land as the case may be" but the potential value of the said plots of land as a building site should be taken into consideration — notwithstanding the provisions of section 16 — and the compensation payable should not be less than the amount which the land might have realized in a free transaction in the market;

10 Having prefaced that such a valuation is contrary to the express provision of the law, that is to say that "any land which is not a building site **shall be valued for the purposes of determining the compensation payable in the case of its compulsory acquisition** as rural land or as waste land as the case may be"; and the land in question is "rural land" and in fact was, up to some time ago, worked as such.

20 The plaintiff prayed that, every necessary declaration being made and every expedient direction being given, it be declared and adjudged by the Court that in determining the compensation due to the defendant for the said plots of land the provisions of section 25(1)(b) are to be interpreted as subject to the provisions of section 16 and that, therefore, the amount of the compensation is the amount which the said plots of land, which are not a "building site" but "rural" or "waste land", might have realized in a free transaction in the market according to law.

30 Having seen the statement of defence of the defendant whereby she submitted that in compulsory acquisition the fundamental principle is that compensation should be such as to fully reinstate the owner in his economic position at the time of the compulsory acquisition; that as appears from the copy of the deed of the 10th April, 1964 (in the records of Notary G. Cassar), fol. 29 of Application No. 8 of 1965 before the Land Arbitration Board, the defendant had sold land adjoining the plots which are being compulsorily acquired at a much higher price than that offered by the plaintiff nomine to the defendant; that the whole area known as "Tal-
40 ĩrireb" began to undergo rapid building development before the 16th August, 1960, because the public had chosen to develop it, and its greaer part had been rapidly built up in a few years, and, as a result, its market value had increased so much that plots were being acquired at the annual ground rent of 12s/6d and upwards per square cane; that, as it has always been held by the Courts, the fair compensation payable to the owner should be governed by the potential value;

Having seen the judgment given by that Court on the 31st October, 1967, whereby it decided the case by disallowing the demand of the plaintiff nomine and declaring that in the assessment of the compensation payable to the defendant for the aforesaid lands ac-

quired compulsorily, the provision of section 25(1)(b) above referred to should not be interpreted in the sense claimed by the plaintiff nomine, but as laid down by that Court in the reasons premised to the judgment, that is to say that several other factors — besides that of the nature of the said land — including its potential value in the open market are to be taken into account in the assessment of such compensation;

The Court ordered that in view of the circumstances of the case, each party was to bear its own costs, the registry fees to be borne by the plaintiff nomine — having considered:

“That the question under examination was reserved by the Land Arbitration Board for decision by this Court, because it represents an unusual situation in the development of land compulsorily acquired, which has created a contestation and a wide divergence between the expropriating authority and the owner of the land as regards the valuation criterion to be adopted by the said Board in the assessment of the fair compensation due to the owner; and the outcome of several other claims by owners, whose property has been compulsorily acquired, regarding the compensation to be assessed in respect of the respective plots of land situated in the neighbourhood of defendant’s land, depends on the result of this present case;

That the land in question is situated in an area of progressive and widely known building development, mainly due to the blocks of public buildings which are being erected thereon, and to the opening of a road, which is to become one of the most important traffic arteries of the Island;

That the celerity itself with which this area is being developed and the proximate possibility of the erection of internal blocks of buildings which though not built on the aforesaid main road will be communicated thereto, as well as the continuously rising market price caused this Court to ponder at length on the interpretation to be given to the law which governs this matter so as not to disturb the equilibrium between the equitable compensation due to the owner whose property has been compulsorily acquired and the authority’s need to make use of land for a public purpose.

That it is proper to say at the outset that the present dispute should not be based on the classification of the three categories mentioned in section 16 (Chapter 136), but on the value which each one of them may have at the moment of the expropriation in harmony with and taking into account what is laid down by section 25(1)(b) of the said law which reads:

“Without prejudice to any special provision contained in this Ordinance, in assessing compensation the Board shall act in accordance with the following rules: The value of the land shall, subject as hereinafter provided, be taken to be the amount which

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the land if sold in the open market by a willing seller might be expected to realize;"

That besides it does not appear that at the present stage the defendant is claiming that the land compulsorily acquired is a building site in the sense of the law, and it is for this reason that the plaintiff nomine claims that the provisions of Section 16 of the said law which reads:

10 "Any land which is not a building site shall be valued for the purpose of determining the compensation payable in the case of its compulsory acquisition as rural land or as waste land, as the case may be;"

should be applied with all the consequences resulting therefrom.

That the nature of the land compulsorily acquired is a factor which may contribute to the formation of a generic criterion about the valuation of the tenement, but it cannot be held that such criterion is exclusive, even with regard to the same category of land, because it may depend in each case on a number of other factors which substantially affect the said value, including that of the potential value which the tenement compulsorily acquired might have
20 in the open market where the offer of any purchaser may depend on the degree of actual or potential development of the land thus varying substantially the price which such land might realize under different market conditions.

That it is not out of place to observe here that the Government in the act of compulsory acquisition exposes itself, as regards the amount of compensation payable, to what may be called the ideal competition of whoever had the intention of buying the said land at the market price.

30 That the legislator has not made any pronouncement on this criterion, rather it appears that he meant to be generous with the owner in laying down that the value was to be based on the market value which might be realised "by a willing seller". This means that the same field which ordinarily has a certain value, under the changed circumstances brought about by building development, although its nature remains unchanged, is subject to a market offer which may vary its acquisition value in a determinative and progressive manner, because of its potential development in the building field.

40 That the case-law of our tribunals, long before the introduction of the law now in force, enunciated principles relating to the criteria to be adopted in this matter with regard to the assessment of the value of an expropriated tenement: "In establishing the value of a tenement for the purposes of compulsory acquisition consideration should be given not only to the purpose for which it is meant to be applied and to its present state, but also to its intrinsic susceptibility resulting from the combination of causes inherent therein which might

raise its value. Such susceptibility, which some call “potential”, should not be chimeric and merely apparent, but must be such that it might be put to use presently or in the near future, according to calculations of probability, based on factual circumstances.” (Law Reports, XVI, II, 321; XXVI, I, 515). In making such valuation, as Judge Giovanni Pullicino observed on the authority of the judgment given by the Civil Court, First Hall, on the 14th August, 1879, in re “Mamo nomine versus Psaila” — “One cannot fail to take into account the circumstance that the said tenement adjoined a public street, and that it is in a condition as to easily serve as a building site, taking into consideration the locality, the longer or lesser distance from inhabited areas, and to the houses or buildings which happen to be adjacent to it..... such circumstances would form part of the fair price, as determined by market conditions, in the hypothesis that the contracting parties were a willing vendor and a willing purchaser.” 10

That in the said valuation, therefore, consideration should be had of any potential, real and actual advantage of the thing compulsorily acquired: “The value of the property has to be inferred from all the uses to which it might be applied and not only from those to which the owner had chosen to apply it” (Cassaz. Roma, 24th January, 1895, 20 *Giurisprudenza*, Vol. XLVII, 1562).

That, moreover, the principle is elucidated and brought up to date in Halsbury, where the interpretation of the British Courts in this matter is set out as follows:

“Tribunals assessing compensation may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market. This value for future purposes is generally referred to as the potential value of the land.....” “If however the land is peculiarly suitable or adaptable for some particular purpose..... that fact must be taken into account in assessing the compensation..... If the adaptability gives it an enhanced market value, it must be taken into account, in assessing the value of the land” (Laws of England, Hailsham Edition, Vol. VI No. 19 para 43 and 44); 30

That the said principles have been adopted in recent case-law where it was expressly held that once in the law of compulsory acquisition there is no express or implied prohibition of the inclusion in the compensation payable to the owner of other elements besides 40 the value of the land compulsorily acquired, compensation should be such that the owner would be fully reinstated in his economic position at the juridical moment of the compulsory acquisition (First Hall in re “Rosanna Vella vs Group Captain Colin Hugh Deakin, E.R.D. nomine” determined on the 20th January, 1961).

That because this question has arisen because of lack of clarity about the applicability of the aforesaid Sections 16 and 25 in relation to the assessment of fair compensation payable to the owner — the defendant has felt the need to refer to another source of interpretation: the parliamentary debates held on the occasion of the passing of the law now in force.

That this element of interpretation is recognized in the *Digesto Italiano* wherein it is stated: “The preparatory works which precede the enactment of the law are one of the historical sources which have special importance and they are in fact continuously invoked in judicial practice” (Interpretation of the Law No 29); and Ricci also confirms this concept with certain safeguards: “In the search for the spirit of the law it would be useful to keep in mind the discussions which have preceded the making of the law, and the reports of the commissions and Ministers’ speeches; but the interpreter should be careful not to attribute too great an importance to such elements of interpretation.... the interpreter should fix his attention on the precedents of the law and especially on the ensemble of its provisions meant to govern a certain matter” (*Diritto Civile*, Vol. I, Part I, para. 13); because as 20 Pacifici Mazzoni observes “logical interpretation tends to discover and determine the intention of the legislator, through the logical *nexus* of the ideas contained in the law and the political and juridical reason for the same and through an examination of every circumstance of the law itself. Amongst such circumstances one has to keep in mind the historical element of the law..... as well as the motives set forth in the speeches of Ministers and of members of both houses, in the parliamentary debates.” (*Istituzioni*, Vol. I, No. 19).

That now these principles appear to have been virtually accepted in our case-law with regard to the “Objects and Reasons” (of a Bill) 30 drawn up by the Crown Advocate, in which case-law it is stated that such Objects and Reasons do not have the force of law, but are only of value for doctrinal interpretation purposes. (*Law Reports XXXVII*, I, 118, 122).

That from the parliamentary debates which preceded the making of the law in question it appears without any shadow of doubt that “there is nothing absolute in the law which leads automatically to the price” (fol. 33); “the law lays down certain norms as to whether land is a building site or not. It does not say anything about value”..... “But if values are shown by other means, they will be adopted”. (Fol. 33). 40 “When there are no other determining factors, such distances will form the criterion. Everyone agrees, everyone that is who truly works in this trade and who truly knows the value of land, that there are other intrinsic matters which do not agree with the definition; there is the value which a plot of land might realise in the market” (fol. 34 and 35); and “this definition is not creating values. It is only creating

norms. One has to see whether the areas being acquired are undergoing development” (fol. 36).

That, moreover, the interpretation given by the then Minister of Justice, Doctor Joseph Cassar, LL.D., is an eloquent explanation which shows what was the intent of the legislator at the time of the discussion of sections 16 and 25 (1) (b) aforesaid; Dr Cassar expressed himself as follows: “The law does not bind anyone as regards value, but makes clear what is and what is not a building site. That, however, is only one of the factors which lead to the value; but there will be many other factors which lead to such value.” (Fol. 38). 10

That under the circumstances and as the law appears to have been authoritatively interpreted particularly as regards the valuation criterion to be adopted, one cannot fail to agree with what Halsbury maintains in this matter, that is to say: “It is to be assumed that Parliament knows the law, even in technical matters.” (Op. cit, Vol. XXXI, para. 624), and with what Bianchi maintains: “Certainly the views and opinions expressed by those who prepared, presented and discussed the law have a merely individual value, and are as authoritative as the person who expressed them, depending on the knowledge which such person shows to be in possession of.” 20

That, in this case, one of the principal speakers who took part in the parliamentary debate, was the Prime Minister Mr. Dom Mintoff, who as an architect, when he spoke on this matter, was doing so with the full knowledge of the facts, and his opinion besides that of the Head of the Government, was also that of a technical person, endowed with a long and vast experience in the exercise of the profession of Architect and Civil Engineer.

That naturally, moreover, although the value of the land may depend on several factors including as has already been said the land’s potential in the open market “no increase in value is attributable to the tenement by reason of the advantage which it derives as a direct consequence of the works for which the authority has required the tenement” (Law Reports, XXVIII, II, 104). 30

That in view of the foregoing considerations it does not appear that the submissions contained in the first two paragraphs of the note of the plaintiff nomine (fol. 12) can be upheld because the claim therein set forth is irreconcilable with the principle laid down in section 25 (1) (b) aforesaid whereas it would alter the nature of and restrict, against the will of the legislator, the criterion which should be adopted in the valuation of the land compulsorily acquired. 40

That the Court therefore is of the opinion that in the assessment of the compensation due to the defendant for the said lands, several other factors have to be taken into consideration besides the nature of the said land including its potential value in the open market and, therefore, the provision of section 25 (1) (b) (Chapter 136) as regards

the assessment of the value of the land compulsorily acquired should not be exclusively subordinated to the provision of section 16 as claimed by the plaintiff nomine."

Having seen the note of appeal of the plaintiff nomine and his petition whereby he prayed that the said judgment be reversed and that his demand be allowed, with the costs of both instances against the defendant.

Having seen the reply of the defendant who submitted that the judgment appealed from is just and should be affirmed with costs.

10 Having seen the whole record of the case, heard the submissions by counsel, now considers as follows —

The question in this case concerns the criterion to be adopted by the Land Arbitration Board in the assessment of the price or compensation payable to the respondent for two plots of land to be acquired by absolute purchase by the appellant on behalf of the Government. The question came before the Court in the following way. By a declaration of His Excellency the Governor (G.N. 435/1960) it was declared for the purposes of the Land Acquisition (Public Purposes) Ordinance (hereinafter referred to as 20 the Ordinance), that the two plots of land in question belonging to the respondent were required for a public purpose and that their acquisition by the Government was to be by absolute purchase. The said declaration was duly served on the respondent. Subsequently the said respondent was served with a notice to treat whereby the Government offered by way of price or compensation for the said two plots of land free from and unencumbered by burthens the sums of £220. 8. 0. and £12. 5. 0. respectively. As the respondent did not accept the said sums, because she claimed that compensation should be based on the price at which she had sold for building purposes a site adjoining the plots of land in question, the appellant in 30 pursuance of the Ordinance brought the case before the Land Arbitration Board and prayed that the Board do order the transfer to him by absolute purchase of the said two plots of land, assess the relative compensation and give any necessary directions in accordance with the Ordinance. There arose before the said Board the question as to how the said two plots of land were to be valued for the purposes of assessing compensation. The respondent maintained substantially that the provision of the law which should govern the valuation is that of section 25 (1) (b) of the Ordinance in the sense 40 that the value was to be "the amount which the land if sold in the open market by a willing seller might be expected to realize"; therefore even if the two plots of land do not fall within the definition of a building site given in section 17 of the Ordinance, their potential for building purposes should still be taken into consideration. The appellant, on the other hand, maintained that the truly determinative

provisions were those of sections 16 and 17 of the Ordinance; therefore, once the two plots of land were not “building sites” in terms of the definition of section 17 (which fact does not appear to have been contested) then they should be valued, as laid down in section 16, as “rural land or waste land” — in this case as “rural land”.

The Chairman of the Board considered that this matter did not fall within the powers vested in the Board by section 23 of the Ordinance, and, therefore, reserved the matter for decision by him sitting as Judge of Her Majesty’s Civil Court, First Hall, as provided in section 24 and gave the appellant one month’s time to institute the appropriate proceedings for that purpose and, in his default, authorised the respondent to institute the said proceedings herself. 10

The appellant therefore on the 12th January, 1966, instituted the present cause. In his writ of summons, having prefaced substantially what has been stated so far and that the two plots of land in question were, in fact, rural land and up to some time before had been worked as such, prayed

“That it be declared and adjudged by this Court that in determining the compensation due to the defendant for the said plots of land the provisions of section 25 (1)(b) (of the Ordinance) are to be interpreted as subject to the provisions of section 16 and that, therefore, the amount of compensation shall be the sum which the said plots of land, which are not a “building site” but “rural” or “waste land” might have realized in a free transaction in the market according to law”. 20

By the judgment appealed from the First Court disallowed the said demand and declared that “in the assessment of the compensation payable to the respondent..... the provision of section 25(1)(b) (of the Ordinance) above referred to should not be interpreted in the sense claimed by the plaintiff nomine, but as laid down in the reasons premised to the judgment, that is to say that several other factors — besides that of the nature of the said land — including its potential value in the open market are to be taken into account in the assessment of such compensation.” 30

Bearing in mind this background of the case as above outlined and the nature of the divergence between the parties which gave rise thereto there is no doubt that the declaration so made by the first Court means that, in its opinion, a plot of land which is not a building site in terms of section 17 of the Ordinance should nevertheless be deemed, for compensation purposes, to be suitable for building purposes if it has such a potential value in the open market. The said Court, having observed that the land in question is in an area of progressive and widely known building development, because, amongst other things, “of the blocks of public buildings” (which is a clear reference to the buildings of the new 40

University of Malta) and to the opening of a road which is to become one of the major traffic arteries of the island” declared that “the present dispute should not be based on the classification of the three categories mentioned in section 16 of the Ordinance, but on the value each one of them may have at the moment of the expropriation in harmony with and taking into account the provisions of section 25 (1) (b). This means, the said Court went on to say, that “a field which ordinarily has a certain value, under the changed circumstances brought about by building development, although its nature remains
10 unchanged, is subject to a market offer which may vary the acquisition value in a determinative and progressive manner, because of its potential development in the building field.” In support of its view the first Court quoted the case-law of our Courts which had stated, *inter alia*, that in the case of compulsory acquisition, compensation should be such that the owner would be fully reinstated in his economic position prior to the expropriation, and that, therefore, in the assessment of compensation account should be had not only of the purpose to which the land is at present applied but also of “any other more beneficial purpose to which in the course of events it
20 might within a reasonable period be applied.” It has also quoted English and Italian case-law and finally, by way of an elucidation of the provisions of sections 16 and 17 of the Ordinance, as amended, it quoted the parliamentary debates on the Bill of Act. No. XXVII of 1956.

The substantial complaint of the appellant is that section 25 of the Ordinance is, in its own express words, “without prejudice to any special provision contained in this Ordinance”. Sections 16 and 17 are special provisions and therefore section 25 should be read and construed without prejudice to the provisions of the said sections
30 16 and 17. These provisions — says the appellant — are clear and categoric in the sense that land which is not a building site as therein defined is to be valued as rural or waste land as the case may be. The first Court has practically completely ignored these sections and rendered them nugatory when it held that land which is not a building site may nevertheless be valued as a potential building site. The appellant has submitted that in the interpretation of the Ordinance and its application to the present case, foreign case-law and doctrine based on laws which do not contain provisions similar to sections 16 and 17 cannot be of help, nor can any help be provided by judgments
40 given by our Court years before the Ordinance came into force in 1935 with the subsequent amendments. The said judgments were based on section 15 of Ordinance No. VII of 1868 (now section 358 of the Civil Code) which prescribed only that compensation is to be “fair” and contained no provision remotely resembling the said sections 16 and 17 of the Ordinance. Finally — the appellant submits —

neither can help be derived from what was said in Parliament, firstly because, although in our Courts there have been occasions when reference was made to the parliamentary debates for the purpose of the interpretation of the law, nevertheless our Courts have often stated that the intention shown by the legislator in Parliament is not important if it does not find its concrete expression in the language of the law: the parliamentary debates cannot control and much less contradict what the law by its express words clearly says; secondly in the present case what was said during the debates does not truly support what has been held by the first Court.

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This Court, firstly, of course, because this is due to the parties in this case and then because of the many repercussions which the decision in this case might have on other cases, has pondered at length on this question. Naturally there is no doubt that, ideally, compensation payable for property acquired compulsorily should be fair. That is what the aforesaid section 358 of the Civil Code still provides in respect of the expropriation of things which do not fall under the Ordinance. The Constitution of Malta too requires that compensation should be “adequate”. But by the said Constitution all the laws which were in force at the time when the Constitution itself came into force were “saved” and no question has been raised about this matter in the present case. Moreover, ideally, even if there is to be some sacrifice for a public purpose, this ought not to be borne only by the persons whose property is acquired compulsorily but ought to be shared by all in the same way as any advantage ought to be shared when it derives from land development due solely to development schemes and key plans initiated by the Government which raise values without any contribution and without any merit on the part of individual owners of the affected area. It appears that other countries have made provisions to achieve such objectives even if sometimes in a complicated and not wholly perfect manner.

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But, in the present case, what the Court is called upon to do, as best as it can, is to interpret and apply the law as it stands and, in its opinion, the law as it is does not support respondent’s claim as allowed by the first Court and supports, instead, appellant’s claim.

This Court agrees with the appellant that the provision of section 25 (1) (b) of the Ordinance, which lays down that the value of the land shall be the amount which the land would realize if sold in the open market by a willing seller, should be read and applied not only subject, as stated in the provision itself, to the provisions which follow it but also without prejudice to any special provision contained in the Ordinance, which words are to be found at the beginning of the section.

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Amongst the special provisions which are not prejudiced by the

general principle of section 25 (1) (b), are those of sections 16 and 17 which provide that:

“16. Any land which is not a building site shall be valued for the purpose of determining the compensation payable in the case of its compulsory acquisition as rural land or as waste land, as the case may be.

10 17. (1) Land shall be deemed to be a building site for the purposes of this Ordinance if it has a frontage on an existing street and is situated within a built-up area or, subject to sub-section (2) of this section, within a distance of not more than one hundred yards of a built-up area, measured along the axis of the street.

(2) In determining whether land is a building site by reason of the fact that it is situated within a distance of not more than one hundred yards of a built-up area regard shall be had to the probable immediate expansion of the built-up area in the direction of the land in question.

20 (3) Land falling within the definition of subsection (1) or (2) of this section shall be deemed to be a building site to a maximum depth of twelve canes.

“Land” as defined in Section 2 of the Ordinance includes “any buildings..... unless the context otherwise requires”, and there should be no doubt that in the context of the said sections 16 and 17 the reference is to land which has not been built up yet.

Now the Court does not think that there should be any doubt as regards the rule laid down in section 16. This is categorical and precise. Land which is not a “building site” cannot, for compensation purposes, be valued otherwise than as rural or waste land as the case may be. The difficulty lies in the interpretation of section 17 where it says: Land shall be **deemed** to be a building site for the purposes of this Ordinance if....” What do these words mean? It has been held that the word “deem” or “deemed” may change its meaning depending on the context. In the case “St Aubyn (L.M.) v A.G. (no. 2), (1951) 2 All E.R. 473, H.L. Lord Radcliffe said: “The word “deemed” is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.”

40 The Court considers that, in our case the word “deemed” in the context of section 17 has not been used to include in the description of a building site land which would otherwise have been excluded or, in other words, to extend the ordinary meaning of “building site”

to land which does not properly fall within the meaning of the words “building site”. Nor has it been used so that land which is or may in fact be a building site independently of the definition of section 17 may be added to land which is a building site in accordance with the said definition. In the view of the Court, the object of sections 16 and 17 is that of establishing in a conclusive and exhaustive manner which land is to be deemed a building site for compensation purposes, thus removing any question and discussion, in a way that if land does not qualify as a building site in accordance with the said definition then it cannot, for compensation purposes, be valued as such, but is to be valued as rural or waste land as the case may be. In other words this Court reads section 17 as if it said: “Land shall be deemed to be a building site for the purposes of this Ordinance if **and only if** etc.” In the Court’s opinion such interpretation emerges primarily from the sequence of the two sections. Section 16 lays down the specific rule that land which is not a building site shall be valued as rural or waste land. Section 17, which immediately follows it, lays down which land shall be deemed to be a building site for the purposes of the Ordinance. Moreover, section 17 defines in great detail which land shall be deemed to be a building site. Land so defined is that which normally may manifestly be considered as a building site. It is not enough for land to have a frontage on an existing street but it has also to be situated “within a built-up area” or within a distance of not more than one hundred yards of a “built-up area”, and in this latter case it has also to appear that the built-up area is expanding in the direction of the land in question. Not only this, but subsection 3 lays down that land falling within the definition of subsections (1) and (2) shall be deemed to be a building site to a maximum depth of 12 canes. 10

If one were to add to land **thus** deemed to be a building site, and consider as a building site, for the purposes of the Ordinance other land simply because, for example, the owner intends to build thereon, or because it is in demand for building purposes, or because building development has begun or is about to begin in the area, the purpose and object of sections 16 and 17 will, in the Court’s opinion, be totally destroyed. It will be possible to consider land to be a building site notwithstanding that it does not have a frontage on an existing street or that it is not situated in a built-up area or within a distance of not more than one hundred yards of a built-up area, and, moreover, without any limitation as to depth. 20 30 40

Therefore, it is the opinion of this Court that, for the purposes of the compensation payable to the respondent, her land which *ex concessis* does not qualify as a “building site” in terms of the said section 17, should be valued as rural land. Evidently this is not waste land because it appears that at the time of the compulsory acquisition it was cultivated and was rented for cultivation purposes.

It is true that the first Court did not hold or rather did not expressly say that the said land may be or is to be valued as a building site; but it said that, in the assessment, consideration is to be had of its potential value for **building purposes**. This Court agrees with the appellant that, for all practical purposes, the two concepts are one and the same thing. When section 17 defines which land shall be deemed to be a building site, it does not necessarily assume that the land is going to be built on, but is only assuming that the said land is **suitable** for building purposes and **is likely** to be built-up in the
 10 ordinary course of events and should, therefore, be valued according to such potential. To say that in assessing the value of land, which according to law is to be valued as rural land and not as a building site, regard should nevertheless be had to its potential value for **building purposes** in the open market (because **this** is the point at issue) is, in the Court's opinion, the same thing as saying that the land should not be valued as rural land but as a building site if in fact it is situated in a development area or if there is, in the market, a demand for it for building purposes. And this, in the opinion of this Court, is not consistent with the law.

20 This does not mean that section 25(1)(b) has no application at all: but it means that with regard to land which in accordance with section 16 should be valued as rural land, the open market which is to be taken into consideration is not the building site market but the rural land market.

The Court certainly agrees with what is stated in the judgment appealed from that, even for the same category of land there may be factors which substantially affect the value and that the law only lays down certain norms as to whether land is a building site or not and does not itself establish the value. Obviously there may be
 30 differences between one building site and another and between one rural land and another. A building site in Valletta or in a select or commercial area is one thing and a building site in a village or in a poor or depressed area is another. A building site on the outskirts of a village is one thing and a building site in the Church Square is another. A building site with surface rock foundations and which is not subject to any building restrictions is one thing and a building site covered with soil of great depth or subject to building restrictions is another. Rural land which is in part rock or waste land is one thing and good irrigated agricultural land or which may be converted into
 40 irrigated agricultural land is another. Waste land which can only serve for grazing purposes is one thing whilst land which may be worked as a quarry is another. These are certainly all factors which have a bearing on the value of the land in the market and which should be taken into consideration in determining the value: but, in the Court's opinion, the building potential of land, which otherwise according to the definition of the law is to be valued as rural or

waste land, cannot be taken into consideration.

The Court realises that this may cause great hardship to owners whose land is acquired compulsorily, which land, although it does not fall within the definition of section 17, is, for example, in the same development area as neighbouring land which falls within such definition and, therefore in the open market may have an equal or nearly equal value. On the other hand, however, as has already been said, if the definition of the said section is not deemed to be conclusive, such definition would be idle and the consequences might be absurd. For the open market, as regards the land's potential for building purposes, it may make no difference whether land is within a distance of 100 yards or less or of 105 yards from a built-up area. If in respect of this latter land one were to take into consideration the potential value of the land **for building purposes** this would put an end to any difference between the two kinds of land, notwithstanding what is stated in section 16. Likewise, in the open market land to be deemed a potential building site is in no way necessarily limited to a depth of 12 canes or to any other particular depth. If the potential value of land suitable for building purposes is taken into account, land which is not a building site in terms of section 17 may be deemed to be worth more than if it were a building site within such terms. 10 20

The Court feels that it must agree with the appellant that the precedents of our Court as well as those of foreign Courts quoted in the judgment appealed from do not help in the solution of the question in this case since — as pointed out by the appellant — such precedents did not have before them the interpretation and the application of laws containing the provisions of sections 16 and 17 of the Ordinance.

In the judgment appealed from reference was also made to the parliamentary debate on the Bill of Act. No. XXVII of 1956 amending section 17. This Court acknowledges that much of what was said in that debate, especially by the then Prime Minister, may be quoted, as it has been quoted by the first Court, in support of respondent's argument which has been embraced by it. But this Court, as it has repeatedly said in other judgements, cannot rely on parliamentary debates to control or set aside what, in its opinion, the law expressly provides. With regard to what was repeatedly said by the Prime Minister in the debate in question the Court considers the remark insistently made by the Honourable Mr. Rizzo: "But the law does not say so" to be decisive. 30 40

In the present case, moreover, there is also another factor which in the opinion of the Court further supports appellant's claim and defeats that put forward by the respondent. As appears from appellant's note of the 10th July, 1968, the land in question was, by Government Notice No. 435 of 1960, declared to be a special

development area for the purposes of the Special Development Areas Act, 1956 (Act No. IX of 1956). Section 7 of the aforesaid Act No. XXVII of 1956, so far as relevant, provides:

“7. (1) The amendments of the principal law made by section 2 (so far as they relate to the definition of ‘built-up area’) and by section 6 of this Act shall apply to all land acquired after the commencement of this Act —

(a) notwithstanding that.....

(b) notwithstanding section 3 of the Special Development Areas Act 1956 (Act No. IX of 1956) or any declaration made thereunder prior to the commencement of this Act; and nothing in that Act or any such declaration shall in respect of any land affected thereby but acquired after the commencement of this Act be construed as in any way requiring or enabling such land to be considered as a building site for the purpose of the assessment of compensation unless that land is a building site within the meaning of the amendments of the principal law made by this Act.

(2)

This was a transitory provision and was clearly intended to give **retroactive** effect, to a certain extent, to the amendments made by sections 2 and 6 of the Act. If the amendments made by section 6 (which restricted the previous definition of a building site) were, according to the said provision, to apply also to the declarations made under Act No. IX of 1956 before Act No. XXVII of the same year came into force, it has in the opinion of the Court, necessarily to be inferred *a fortiori* that the said amendments apply to declarations made after the latter Act came into force. From this it follows that land affected by a declaration under the said Act No. IX of 1956, as is the land in question, cannot be considered for compensation purposes to be a building site unless such land falls within the definition of a building site now given by section 17 of the Ordinance.

Wherefore respondent’s land cannot be valued as a building site and, if this is so, it can neither be valued as a **potential** building site, and it can be valued only as rural land. Other factors which may eventually, in the open market, have a bearing on the value of the land as rural land may certainly be taken into consideration as aforesaid, but in the opinion of this Court, not the fact that the said land, apart from the definition of section 17 of the Ordinance, may be suitable for building or may be in demand for building development.

On these grounds and in the sense of the aforesaid considerations the Court allows the appeal, reverses the judgement appealed from and allows the demand of the plaintiff nomine. Each party is to bear its own costs of both instances.

(Signed) ANT. TONNA,
Deputy Registrar.

No. 18
 Defendant's
 Petition for
 Leave to
 Appeal to the
 Judicial
 Committee of
 H.M. Privy
 Council

No. 18

Defendant's Petition for Leave to Appeal to the Judicial Committee of H.M. Privy Council

In Her Majesty's Court of Appeal

Writ of Summons No. 18/1966
 Doctor Vincenzo Depasquale Advocate, in his capacity as Acting Commissioner of Land and by a note of the 8th October, 1966, John Pullicino, LL.D., Advocate, assumed the proceedings in his capacity as Commissioner of Land vice Doctor Vincenzo Depasquale 10

v

Francesca the wife of Michele Aquilina assisted by him.

The Petition of Francesca the wife of Michele Aquilina assisted by him.

Respectfully sheweth:

That by writ of summons number 18/1966/M of the 12th January, 1966, the plaintiff nomine premised that by an application filed before the Land Arbitration Board the Commissioner of Land, having prefaced that the defendant had been served with a Governor's declaration wherein it was declared that two plots of land, one in the parish limits of Birkirkara of an area of two tmien four sghan and five point six kejllet, bounded on the North West by property of the Parish Church of Birkirkara, on the South West by property of William J. Parnis England Limited, on the East by property of Paul Micallef and on the South by the remaining portion of the land of which such plot forms part, and the other a plot of agricultural land in the parish limits of Inside and Gzira of an area of nine point two kejllet, bounded on the South by property of Francis Bezzina Wettinger and others, on the North by property of the Government of Malta, and on the South East by the remaining portion of the land of which such plot forms part, are required for a public purpose and are to be acquired by absolute purchase and that the defendant had also been served with a notice to treat whereby the competent authority offered £220. 8. 0. and £12. 5. 0. for the acquisition of the said plots of land, free from and unencumbered by burthens, as explained in the report by Edgar Caruana Montaldo, A. & C.E., and that the defendant had not accepted such compensation and had claimed instead compensation at the rate of six hundred pounds for every sixtyeight and a half (68½) square canes on the basis of the 30 40

price received by her from the sale to the Franciscan Sisters of land adjoining the plots of land in question — the Commissioner of Land prayed that the Board order the transfer of the said lands to him, assess the relative compensation and give any proper direction in accordance with the Land Acquisition (Public Purposes) Ordinance (Chapter 136) — having prefaced that the question was raised before the said Board whether for the purposes of the valuation of the land acquired compulsorily, and for the determination or otherwise of its potential value, the provision of section 25(1)(b) of Chapter 10
136 of the Laws of Malta, is to be considered by itself or whether it should be interpreted in conjunction with the provisions of section 16 of the same law, and in particular whether this latter section should be exclusively applied in the sense that if the land acquired compulsorily is not a building site in terms of the law then the land should necessarily be considered solely as “rural or waste land as the case may be” independently of its potential value as a building site — which question in the opinion of the Board exceeded its competence and should therefore be reserved as laid down in section 24
20 of the said Chapter 136; and having prefaced that the said Board by its decision of the 15th December, 1965, reserved the definition of the aforesaid question for the decision of the Chairman of the Board sitting as Judge of Her Majesty’s Civil Court and for this purpose had given the plaintiff nomine one month’s time to bring, in the manner required by law, the aforesaid reserved questions before the aforesaid Court presided over by the Chairman of the Land Arbitration Board and had ordered that in default such question might be brought forward by the defendant within the same time, and, in consequence of such directions had stayed the further hearing of the said application until the points so reserved were determined; having prefaced
30 ed that the said Francesca Aquilina was maintaining that for the purposes of assessing the amount of compensation, although the plots of land in question do not in terms of the law qualify as a building site, the value to be attributed to the land in question is not that of “rural or waste land as the case may be” but the potential value of the said plots of land as a building site should be taken into consideration — notwithstanding the provisions of section 16 — and the compensation payable should not be less than the amount which the land might have realized in a free transaction in the open market; having prefaced that such a valuation is contrary to the express provision of the law, that is to say
40 that “any land which is not a building site shall be valued for the purposes of determining the compensation payable in the case of its compulsory acquisition as rural land or as waste land as the case may be”; and the land in question is “rural land” and in fact was, up to some time ago, worked as such; prayed that it be declared and adjudged by Her Majesty’s Civil Court, First Hall that in determining the compensation due to the defendant for the said plots of land the

No. 18
Defendant's
Petition for
Leave to
Appeal to the
Judicial
Committee of
H.M. Privy
Council
—continued.

No. 18
 Defendant's
 Petition for
 Leave to
 Appeal to the
 Judicial
 Committee of
 H.M. Privy
 Council
 —continued.

provisions of section 25(1)(b) are to be interpreted as subject to the provisions of section 16 and that, therefore, the amount of the compensation is the amount which the said plots of land which are not a "building site" but "rural" or "waste land", might have realized in a free transaction in the market according to law.

That the defendant pleaded (1) that the fundamental principle in compulsory acquisition is that compensation should be such as to fully reinstate the owner in his economic position at the time of the compulsory acquisition; (2) that as appears from the copy of the deed of the 10th April, 1964 (in the records of Notary G Cassar, fol. 29 of Application No. 8 of 1965 before the Land Arbitration Board) the defendant has sold land adjoining the plots which are being compulsorily acquired at a much higher price than that offered by the plaintiff nominee to the defendant; (3) that the whole area known as "Tal-Hriereb" began to undergo rapid building development before the 16th August, 1960, because the public had chosen to develop it, and its greater part had been rapidly built up in a few years, and, as a result, its market value had increased so much that plots were being acquired at the annual ground rent of 12s/6d and upwards per square cane; (4) that the fair compensation payable to the owner should always be governed by the potential value, as it has always been held by the Courts. 10 20

That the Civil Court, First Hall, by the judgment given on the 31st October, 1967, decided the case by disallowing the demand of the plaintiff nominee and declaring that in the assessment of the compensation payable to the defendant, the provision of section 25(1)(b) should not be interpreted in the sense claimed by the plaintiff nominee, but as laid down by the said Court in the reasons premised to the judgment, that is to say that several other factors — besides that of the nature of the said land — including its potential value in the open market are to be taken into account in the assessment of such compensation; each party was ordered to bear its own costs, the registry fees to be borne by the plaintiff nominee. 30

That the plaintiff, in his aforesaid capacity, entered an appeal by a note of the 8th November, 1967, and by the petition of the 23rd November, 1967, prayed that the aforesaid judgment be reversed and that the demand contained in the writ of summons be allowed with the costs of both instances against the defendant.

That this Court of Appeal by a judgment given on the 28th October, 1968, allowed the said appeal and reversed the said judgment given by the first Court. 40

That petitioner feels aggrieved by the said decision and wishes to appeal therefrom to Her Majesty's Privy Council.

That the value of petitioner's land is much more than five hundred pounds, in fact whilst the plaintiff nominee has offered to pay only two hundred and twenty pounds eight shillings (£220. 8. 0.)

and twelve pounds five shilling (£12. 5. 0.) by way of compensation, petitioner maintains that such compensation should be assessed on the basis of six hundred pounds (£600) for every sixty-eight square canes, that is to say over six thousand three hundred pounds (£6,300).

That, besides, this Court in the reasons premised to its decision of the 28th October, 1968, declared also that the decision of the principle involved would have repercussions on several other causes which stand adjourned *sine die* until the principle decided by the said judgment is established.

Wherefore petitioner respectfully prays that this Court may be pleased to grant her leave to appeal from the said decision of the 28th October, 1968, to Her Majesty's Privy Council.

(Signed) G. PACE, Adv.
E. S. ENGERER, L.P.

This 12th day of November, 1968.
Filed by E. S. Engerer, L.P., without Exhibits.

(Signed) J. BRINCAT,
Dep. Registrar

No. 18
Defendant's
Petition for
Leave to
Appeal of the
Judicial
Committee of
H.M. Privy
Council

No. 19

Plaintiff's Answer to Defendant's Petition

In Her Majesty's Court of Appeal

Writ of Summons No. 18/1966
Doctor Vincenzo Depasquale, Advocate,
noe et

v

Francesca Aquilina

The Answer of Doctor John Pullicino, Advocate, in his capacity
as Commissioner of Land

Whereby he respectfully abides by the wise judgment of this Court.

(Signed) ENRICO CORTIS
Crown Counsel
JOS. GATT, L.P.

This 22nd day of November, 1968.
Filed by J. Gatt, L.P., without Exhibits.

(Signed) VIC APAP,
Dep. Registrar

No. 19
Plaintiff's
Answer to
Defendant's
Petition

No. 20

Decree granting Conditional Leave to Appeal

HER MAJESTY'S COURT OF APPEAL

(Civil Jurisdiction)

Judges:

His Honour Prof. Sir Anthony J. Mamo, O.B.E., C.St.J., Q.C.,
B.A., LL.D. — President

The Hon. Mr Justice Prof. J.J. Cremona, K.M., LL.D., B.A.,
D. Litt.(Rome), B.A.Hons.(Lond.), Ph.D.(Lond.), F.R.Hist.S. —
Vice-President

10

The Hon. Mr Justice J. Flores, B.L.Can., LL.D.

Sitting held on Monday, twentyfifth (25) November 1968.

Writ of Summons No. 18/1966
Doctor Vincenzo Depasquale, Advoc-
ate, in his capacity as Acting Com-
missioner of Land and by a note of
the 8th October, 1966, John Pullicino,
LL.D., Advocate, assumed the pro-
ceedings in his capacity as Commis-
sioner of Land vice Doctor Vincenzo
Depasquale

v

Francesca the wife of Michele Aquilina
assisted by him.

The Court,

Having seen the petition of the said Francesca Aquilina where-
by she prayed for leave to appeal from the judgment given by this
Court in the case in the aforesaid names on the 28th October, 1968.

Having seen the reply of the said Doctor John Pullicino, Ad-
vocate, nomine.

30

Having heard counsel for the parties and considered —

That there does not appear to be any question that the value
involved exceeds £500 and, therefore, petitioner is entitled to appeal
to the Judicial Committee of Her Majesty's Privy Council.

Wherefore the Court allows petitioner's demand and grants
her conditional leave to appeal to the Judicial Committee of Her
Majesty's Privy Council from the aforesaid judgment given by this
Court on the 28th October, 1968, in the cause in the aforesaid names,
and gives her twenty days' time from today to file the security en-
visaged by Section 4 of the Order-in-Council of the 22nd November,

1909, as amended, in the sum of five hundred pounds and three months time to see to the preparation and transmission of the record of proceedings to the Judicial Committee.

Costs reserved until a direction is given anent final leave to appeal.

No. 20
Decree
granting
Conditional
Leave to
Appeal
—continued.

(Signed) ANTHONY TONNA,
Dep. Registrar

No. 21

Defendant's Application

No. 21
Defendant's
Application

10 In Her Majesty's Court of Appeal

Dr Vincenzo Depasquale, Adv., et
v.
Francesca Aquilina et

The Application of the said Francesca Aquilina

Respectfully sheweth:

That by a decree given on the 25th November, 1968, this Court granted the applicant leave to appeal to the Judicial Committee of Her Majesty's Privy Council and gave her three months within which to prepare the record for transmission to the said Judicial Committee.

20 That the applicant has prepared the translation of the record and on the 7th instant passed the said translation to the Crown Advocate General for his approval and naturally the latter requires some time in order to be able to approve it.

That it will not be possible for the applicant to complete all the necessary preparations including the printing of the record within the time given her. Wherefore the applicant respectfully prays that this Court may be pleased to extend the time given by the aforesaid decree for a further period of three months.

(Signed) G. PACE, Adv.
E. S. ENGERER, L.P.

30

This 12th day of February, 1969.
Filed by E. S. Engerer, L.P. without Exhibits.

(Signed) G. IZZI SAVONA,
Deputy Registrar

No. 22
Decree,
H.M. Court
of Appeal

No. 22
Decree, H.M. Court of Appeal

HER MAJESTY'S COURT OF APPEAL

The Court,

Orders that a copy of the application be served on the Crown Advocate General who shall have three days time within which to reply.

This 13th day of February, 1969.

(Signed) VIC APAP,
Deputy Registrar

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No. 23
Plaintiff's
Answer

No. 23
Plaintiff's Answer

In Her Majesty's Court of Appeal

Dr Vincenzo Depasquale, Adv. noe et

v

Francesca Aquilina et

The Answer of Doctor John Pullicino, Advocate, in his capacity as Commissioner of Land

Respectfully sheweth:

That he does not oppose the demand of Francesca Aquilina 20 as the applicant has produced the translation during the last few days and the respondent needs time to see whether he agrees with the said translation.

(Signed) E. CORTIS
Crown Counsel
JOS. GATT, L.P.

This 14th day of February, 1969.

Filed by Joseph Gatt, L.P., without Exhibits.

(Signed) VIC APAP,
Deputy Registrar

30

No. 24
Decree,
H.M. Court
of Appeal

No. 24
Decree, H.M. Court of Appeal

HER MAJESTY'S COURT OF APPEAL

The Court,

Having seen the application;

Having seen the reply;

Allows the application and extends the time for another period of three months. 40

This 15th day of February, 1969.

(Signed) G. IZZI SAVONA,
Deputy Registrar

No. 25

No. 25
Defendant's
Application

Defendant's Application

In Her Majesty's Court of Appeal

In the matter

Doctor Vincenzo Depasquale nomine
et

v

Francesca Aquilina

The application of the appellant Francesca Aquilina

10 Respectfully sheweth:

That by a schedule of deposit the applicant has this day filed in the Registry of these Superior Courts a copy of the translation of the record of proceedings duly approved by counsel for the plaintiff.

That the applicant has taken steps to have the record printed for transmission to the Privy Council but does not have sufficient time within which to prepare the said record by the 25th May, 1969.

Wherefore the applicant respectfully prays that, after the said translation will have been, if necessary, amended as this Court shall deem proper, the aforesaid term be extended for a further period of
20 three months.

(Signed) G. PACE, Adv.
B. H. DINGLI, L.P.

This 10th day of April, 1969.

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

(Signed) VIC APAP,
Deputy Registrar.

No. 26**Decree, H.M. Court of Appeal**

HER MAJESTY'S COURT OF APPEAL

No. 26
Decree,
H.M. Court
of Appeal

30 The Court,

Allows the demand and extends the term as requested. The Court suggests that the few verbal corrections shown in pencil be made in the translation of the judgment of this Court (which is the only part of the translation revised by this Court) and that the same corrections be correspondingly made in the translation of the judgment given by the Civil Court, First Hall.

This fifteenth (15th) day of April, 1969.

(Signed) G. IZZI SAVONA,
Deputy Registrar

No. 27
Defendant's
Application,
15th July 1969

No. 27

In Her Majesty's Court of Appeal

In the matter
Dr Vincenzo Depasquale noe et
v
Francesca Aquilina et

The Application of the appellant Francesca Aquilina
Respectfully sheweth:

That with the approval of the Crown Advocate General she has accepted the verbal corrections suggested by the Court and made the same corrections wherever necessary in the record.

The printing of the record is now practically ready.

Wherefore the applicant respectfully prays that this Court may be pleased to grant her final leave to appeal to Her Majesty's Privy Council.

(Signed) G. PACE, Advocate
J. PRIVITERA, L.P.

This fifteenth (15th) day of July, 1969.
Filed by J. Privitera, L.P., without Exhibits.

(Signed) JOS. BRINCAT,
Deputy Registrar.

No. 28
Approval of
translation
and printing,
3rd November,
1969

No. 28

In Her Majesty's Court of Appeal

Dr Vincenzo Depasquale noe et
v
Francesco Aquilina et

The Note of the contending parties

Whereby they declare, for all ends and purposes of the law, that they approve the translation and the printing of the record of proceedings.

for the plaintiff
(Sgd.) Enrico Cortis
Crown Counsel

for Aquilina
(Sgd.) G. Pace, Adv.

This third (3rd) day of November, 1969.
Filed at the sitting by Dr E. Cortis without Exhibits.

(Signed) J. BRINCAT,
Deputy Registrar.

Her Majesty's Court of Appeal

(Civil Jurisdiction)

No. 29
H.M. Court
of Appeal
Decree
granting
final leave

Judges:

His Honour Prof. J.J. Cremona, K.M., LL.D., B.A., D. Litt.
(Rome), B.A.Hons. (Lond.), Ph.D. (Lond.), F.R.Hist.A. —
Acting President

The Hon. Fr Justice J. Flores, B.L.Can., LL.D.

The Hon. Mr Justice Prof. J.H. Xuereb, LL.D.

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Sitting held on

Monday, third (3rd) November, 1969.

Writ of Summons No. 18/1966

Doctor Vincenzo Depasquale, Advocate, in his capacity as Acting Commissioner of Land and by a note of the 8th October, 1966, John Pullicino, LL.D., Advocate, assumed the proceedings in his capacity as Commissioner of Land vice Doctor Vincenzo Depasquale

20

v

Francesca the wife of Michele Aquilina assisted by him.

The Court,

Having seen the application of the defendant Aquilina whereby, having declared that the printing of the record of proceedings was ready, she prayed that she be granted final leave to appeal to the Judicial Committee of Her Majesty's Privy Council.

30 Having seen its decision of the 25th November, 1968, whereby Francesca Aquilina was granted conditional leave to appeal to the Judicial Committee of Her Majesty's Privy Council from the judgment mentioned in the petition, costs having been reserved until a direction is given anent final leave to appeal.

Having seen the note of the contending parties filed on the 3rd November, 1969, whereby they approved the translation and the printing of the record of proceedings.

40 Allows the demand of the said Francesca Aquilina and grants her final leave to appeal to the Judicial Committee of Her Majesty's Privy Council from the judgment given by the aforesaid Court. The costs of this decree and of the decision granting conditional leave are to be borne by the said Francesca Aquilina saving her right to recover such costs, in full or in part, if and as ordered by the said Judicial Committee of Her Majesty's Privy Council.

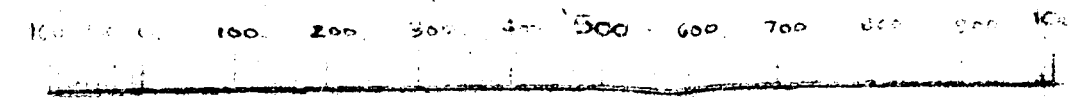
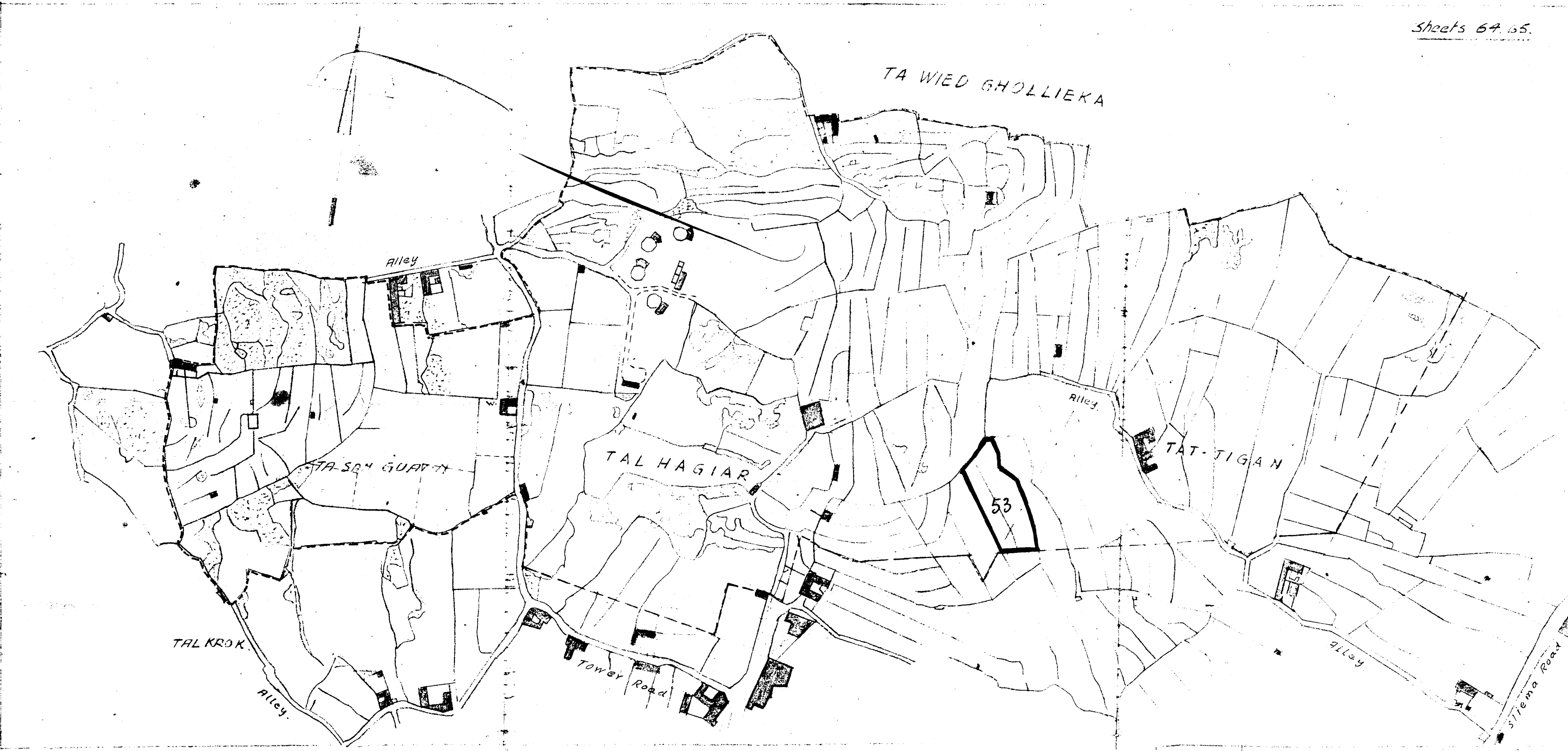
(Signed) J. BRINCAT,
Deputy Registrar.

PLAINTIFF'S EXHIBITS

LIMITS OF GZIRA / B'KARA 1

Exhibit "X"
Plan showing land in the limits of Gzira/B'Kara

Sheets 64 & 65.



DYWG 11° Reconstruction Section P.W.D.
 RE. 29/61 Valletta, 1961
 File N°
 P.W.D.
 Lands. Land Acquisition Engineer.
 1713/60

Exhibit "A A"**Government Notice No. 435 of the 16th August, 1960**

(No. 435.)

Exhibit "AA"
Government
Notice No. 435
of the
16th August, 1960

DECLARATION BY THE GOVERNOR

I hereby declare the undermentioned area to be a Special Development Area for the purposes of the Special Development Area Act, 1956 (Act No. IX of 1956).

Description of the area

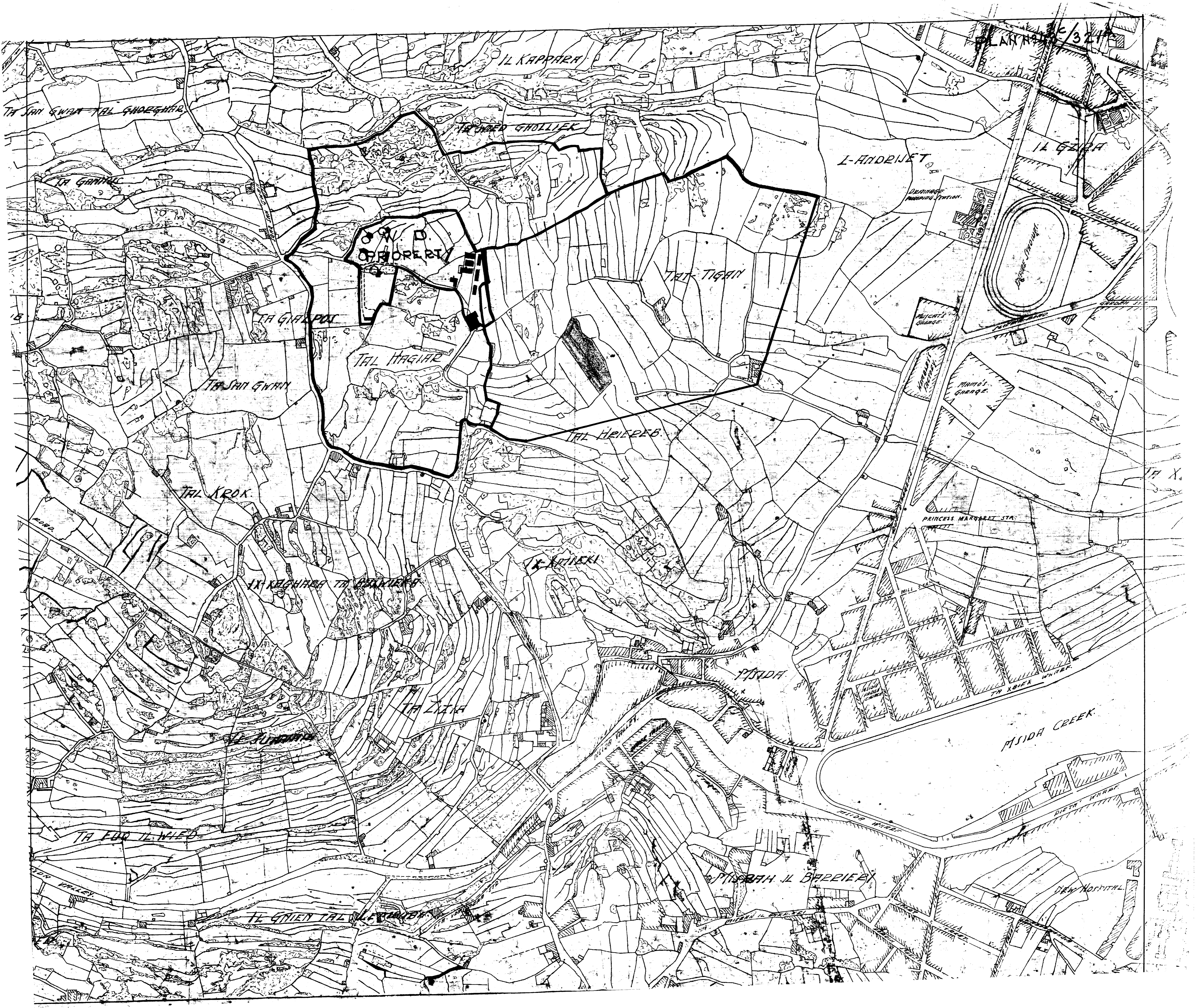
An area situated between Msida, Gzira and Birkirkara in the localities known as Tal-*Haġar* and Tat-Tigan and bounded on the North by Wied Ghollieq, on the South partly by Sqaq San Ġwann and partly by lands known as Tal-*Hriereb*, on the West by Sqaq San Ġwann and on the East by lands known as l-*Andrijiet*.

The above area is shown bordered in purple and red and includes an area edged in green on a plan No. 43C/321A signed by me.

Dated this 16th day of August, 1960.

(Signed) GUY GRANTHAM
Governor

Note. A copy of the plan referred to may be seen on demand at the Office of the Public Works, Kingsway, Valletta.



DEFENDANT'S EXHIBITS

Exhibit "A"
Extracts from Parliamentary Debates

"A"
Extract from
Parliamentary
Debates

1823

HON. DR BORG OLIVIER (Contd.): I mean in practice too, when there is an approved and published key plan which has not been revoked . . .

HON. MR MINTOFF: If the Hon. Leader of the Opposition will allow me to say a few words, what the private owner considers is the market value of the thing and not the definition of the law.

10 HON. DR BORG OLIVIER: The market value as established by the private owner? If he knows that there is a key plan, he knows that one day or another this land will be developed.

HON. MR MINTOFF: Nothing of the sort.

HON. DR BORG OLIVIER: For example the key plan envisages the construction of new roads.

HON. MR MINTOFF: Which have to be constructed by the private owner.

HON. DR BORG OLIVIER: Not by the private owner only. There were cases where, according to the key plan, roads had to be
20 built by private owners but subsequently the Government undertook the work, as happened at Siggiewi and at other places. When I was at the head of the Public Works Department the Director used to tell me of a key plan and that the roads had to be built by private owners. I used to tell him that it was in the public interest that such roads be constructed as early as possible.

HON. MR MINTOFF: Say where?

HON. DR BORG OLIVIER: I can remember a few and I will mention them.

HON. MR MINTOFF: These are exceptions.

30 HON. DR BORG OLIVIER: No, they are no longer exceptions. One administration after the other has constructed such roads, because the Government should not wait fifty years especially when it knows that such roads are in the public interest. When there is a key plan and when there has been no attempt to have it revoked, that is what will probably happen. What would you say if the Government said: There is a key plan which . . .

1904

40 HON. MR RIZZO (cont.): We have been told that although the Government has drawn up a definition, saying that Government may acquire land for any purpose, the Government's purpose is to encourage industry, that is to say to encourage indus-

"A"
Extract from
Parliamentary
Debates
—continued.

trialists to set up factories here in Malta and, therefore, in the public interest. On this I have two things to say. Firstly, conscientiously this is not likely to be believed because one cannot imagine that a person who wants to build a factory will be encouraged by the mere fact that the Government acquires for him a building site at a cheaper price: if he has the courage to come here, he will come just the same and pay for what he acquires. This will not be believed officially, because the price of the land represents such a small proportion of his outlay on the factory that the acquisition of land at a cheap price will not prove a sufficient encouragement. Besides, why should the owner of such land suffer to the benefit of the industrialist? Why should the owner suffer because the industrialist is in need of his land? (*Interruptions*)

HON. DR HYZLER: Will he not be getting its value?

HON. MR RIZZO: I mean to say that we are going to prevent an individual from bargaining about the price of the land with the industrialist and that such bargaining will be made by the Government.

HON. MR MINTOFF: That is what you say.

HON. MR RIZZO: The Government will be acquiring land cheaply and then sell it at a high price or else sell it cheaply to foreigners.

HON. DR CASSAR: We purchase at market value.

1908

HON. MR MINTOFF: This is being done today too.

HON. MR RIZZO: It is true that nowadays the rate for plots of a limited depth is different from that for plots with a depth in excess of say 10 canes, but we do not want to lay down a hard and fast rule whereby if a plot of land has a depth of 20 canes we reckon that only 12 canes of such depth constitute a building site. One cannot generalise because each case has its own merits. There may be, for example, a plot of land between two parallel streets. That part of the land abutting on an already developed street will be valued as a building site to a depth of twelve canes; the remainder of the land abutting on the other street, which may not have been developed yet, will not be considered to be a building site; and this is certainly not right. Or else a plot of land may have a part which is at a distance of 90 yards, that is to say less than 100 yards, from a built-up area and is declared to be a building site, whilst because the remaining part is at a distance of 110 yards, that is to say of more than 100 yards, from a built-up area it is declared not to be a building site. I am referring of course to the difficulties we meet with in practice, because one cannot limit by regulations what is and what is not a building site but one has to apply the true definition.

Therefore, there always remains the fact that a building site is properly speaking a site where people wish to invest their money — irrespective of the existence or otherwise of roads and key plans. That is to say if a person wishes to invest his money in a particular site, such site is a building site, even if it is ten thousand miles away from an inhabited area. That is the true definition of a building site — it depends on where one feels one should invest one's money.

"A"
Extract from
Parliamentary
Debates
—continued.

HON. MR MINTOFF: I agree with you here. We have realized this need.

10

1910

HON. DR CASSAR (cont.): . . . is not a building site, because there have to be a number of buildings which are "inhabited or capable of being inhabited by more than 100 persons."

HON. MR RIZZO: That is what there is, but, as I have said that is not the true definition of a "building site". The Prime Minister has agreed with me that the true definition of a "building site" is that plot of land where someone wishes to invest his money. That is to say if the Department has several applications for the development of Xemxija, that is sufficient for one to understand that it is a building site. Besides, the Government has published a key plan and has already issued building permits on the basis thereof.

It has also been said, Mr Speaker, that it is not right that because the Public Works Department draws up a key plan (a few lines on a piece of paper), one should take advantage of this and say: "My land has become a building site". This is true but with certain reservations, because there have been cases where the key plan drawn up by the Public Works Department has resulted to be of a locality where no one has wanted to build and, therefore, such key plan has not benefited the land in any way; but the contrary has also been the case. One typical case I may mention is Albert Town, Marsa; a typically opposite case, that is to say a case where the Government drew up a key plan and buildings started going up like mushrooms, is that of lands opposite Sant'Anton Gardens, which lands have been developed in no time.

HON. MR MINTOFF: The key plan for that area was drawn up a long time ago. I can give you the date. The key plan for that area was drawn up a long time ago, but it is only recently that development started.

HON. MR RIZZO: I do not know how long ago it was drawn up, but I know that the key plan did benefit the said land; it creat-

ed, to use the correct word, an improvement. But there always re-
mains the same factor: that someone has wanted to invest his
money there.

1993

HON. MR RIZZO: Yes, I have mentioned that myself.

HON. MR MINTOFF: And if one acquires a plot of land near the cemetery one does not acquire it as a building site unless that is one knows that an industrialist will be coming in the near future to acquire it.

Now the fact that a plot of land is a building site does not make anyone necessarily give a certain price for it. That is why I have said that we have lost a lot of time in useless discussion and that the objects of the Government have not been understood. When an architect inspects a building site the first thing he does is to establish how far it is from a built-up area, not whether one hundred persons live in it but how much of the area is already built up. 10

Now what have we deleted from the law? We have deleted a reference to key plans. For example there was a key plan covering the area from Imsida to Birkirkara; this was years ago, some 34 years ago. Now was this whole area a building site 34 years ago? 20

HON. DR BORG OLIVIER: Of course.

HON. MR MINTOFF: I was saying that when the key-plan was drawn up such land was not a building site.

HON. DR BORG OLIVIER: But it has become one.

HON. MR MINTOFF: But it has become one now. And if we say that the legislator who enacted the said law was justified to consider that land to be a building site from the start, then we can also call a building site an area where we are now planting trees because someone might five years hence decide to build a house and subsequently more houses will be built around it and thus the area will become a building site, but we are not justified to say now that it is a building site. 30

1994

HON. MR MINTOFF (Contd.): The question is not what may happen ten or twenty years hence. If we extend the criterion, to say that a place may some day become a building site, then we can say that the whole of Malta is a building site. 40

HON. MR RIZZO: What you are saying is correct, but you are saying it the other way about.

HON. MR MINTOFF: Now I am reversing your argument, so

that you may see the other side of it.

HON. MR RIZZO: You are removing the discretion of the Director of Public Works to declare a plot of land a building site — and you say that you agree with me.

“A”
Extract from
Parliamentary
Debates
—continued.

HON. MR MINTOFF: The fact is this, that initially we laid too much emphasis on the definition of a building site, about how much money it was to realize — we all have to admit this, everyone has stressed this point — and subsequently we erred in not looking at how things stood in the past. We have criticised the amendment
10 by itself as a perfect thing, and the Government sincerely says that it is not perfect. This is meant to improve matters, because we will not find perfection in this criterion, one cannot assess the market value by making a law. These are the facts. I am not saying that much of what has been said by the Opposition is not true, that there may be a plot of land which is of great value, notwithstanding the absence of a key plan. Of course! But what criterion are we to adopt, except that it is in the vicinity of a built-up area, as a first criterion. If we fail to adopt such criterion we will come to the conclusion that any plot of land has a potential value — but it is the actual value
20 that has to be considered. There is a great difference between potential and actual value. If my grandmother and my great grandmother 400 years ago . . .

1997

HON. MR MINTOFF (cont.): . . . share, whilst the powerful get the greater share for example, the banks, which make the greater profits, for example the owner of a brewery, as more people will drink beer, for example a money lender. Do not tell us that if there is prosperity, landowners will not benefit, that they will just stay at home and collect the rent.

30 HON. MR RIZZO: They are not all rich people.

HON. MR MINTOFF: I am not saying so, I am saying that prosperity spreads, and the richer you are the greater your chance to make money. That is how the world goes, at least the capitalist world — and we are still within the orbit of the capitalist world. Let us proceed. Where were we? That the Government will not be making a profit. Government's action is meant to prevent a prospective industrialist being swindled. The Government in fact is not changing values. It is not true, the Government does not accept this argument. In fact it is not changing values . . .

HON. MR MINTOFF (cont.): . . . the Government may be tempted to acquire that area for use and possession and the law lays down that the Government may acquire such area at 1939 prices and this is not fair. No Government is entitled to acquire an area at its 1939 value under the Land Acquisition Ordinance, I am saying this to show how profoundly we have studied this law, so that there might be fair play. I am referring to land and not to buildings, because buildings are governed by the rent regulation law. At present the Government is entitled by law to acquire these lands for use and possession and we are moving an amendment so that the Government might continue to follow the policy it has followed to date when acquiring buildings frozen at the 1939 value. I am going to read out this amendment now to show how we have done everything so as not to cause any hardship to the owner. This existed under the previous Government and exists even now:

"Provided further that where land is acquired by a competent authority on behalf and for the use of a third party for a purpose connected with or ancillary to the public interest or utility, the acquisition shall, in every case, be by the absolute purchase of the land."

That is to say in that case the Government has to acquire the land by outright purchase at market value. We are going to move this now so as to show that this has always been Government policy — apart from the case of reconstruction areas which are frozen at 1939 standards. Now we are going to give it legal force, as someone might make use of this law for this purpose, so that everyone might know that we are not doing this to make it easier for the Services to buy land cheaply to the detriment of the Maltese.

HON. DR PARIS: This amendment improves it.

HON. MR MINTOFF: We are amending the principal law of our own initiative and no one has thought of it. We heard a lot of unmerited praise about the principal law.

MR SPEAKER: I have to observe that the time allowed the Hon. Prime Minister has expired.

HON. DR CASSAR (contd.): In fact both in the "Objects and Reasons" of the law and in the speech I made when moving this law I said that the Government might in some cases save money in acquiring land which is private property, but this is because, as we find in the said printed Objects, as the law now stands it is artificially raising the value of land which is manifestly rural or waste. That

is to say the object of the law which we are proposing is much more realistic as regards land values. That is to say by this law we are not robbing anyone but we are stopping others from robbing the public exchequer. In fact in order to rebut the argument of the Opposition I shall read from the "Objects and Reasons" in support of the argument of this side of the House:

"A"
Extract from
Parliamentary
Debates
—continued.

10 "Under the law as it now stands, land which is manifestly rural or waste land and must, in the normal course of things, so remain for many years, is artificially raised to the importance of building site and made valuable as such to the detriment of public funds."

That is to say we are not availing ourselves of the new law to take what should justly be received by the owner in present circumstances, but we are saying that it is not fair that the owner should now receive such enhanced value because the value of that land is artificially raised, and therefore we want to remove such injustice which is to the detriment of the public exchequer and to the advantage of the private owner. We are saying that we want to regularise the position and we are making it more realistic as regards the value of the land. I am saying this so that no one will misinterpret us and say that in our speeches we have admitted that we are saving money to the detriment of the private owner. We have said that what we are doing is meant to prevent the private owner from taking advantage of an artificial rise in land values under the law as it now is, and we are legislating so as to make the value more . . .

2249

Clause 2 was carried and ordered to stand part of the Bill.
Clause 3 — Amendment of Section 5 of the principal law

HON. DR CASSAR: I beg to move the following amendment:
30 Add the following proviso immediately after the proviso which is being added by this section:

"Provided further that where the land is to be acquired on behalf and for the use of a third party for a purpose connected with or ancillary to the public interest or utility, the acquisition, shall, in every case, be by the absolute purchase of the land."

We have already explained the object of this amendment which has been referred to by the Prime Minister who said that it was to be moved. The object is that, when land is acquired in the public interest but is not meant for Government use, but is meant to be given to a third party in the public interest, the Government shall
40 be bound to make such acquisition by absolute purchase. That is to

"A"
Extract from
Parliamentary
Debates
—continued.

say the price will be the market value current at the time of the acquisition. This is being done in the interest of the landowner.

Amendment agreed to.

2253

HON. MR RIZZO: No it does not.

HON. MR MINTOFF: The law lays down certain general norms and there is nothing absolute in the law which leads automatically to the price. There is nothing absolute in the law. So much so that we have said that a building site may realise from one far- 10
thing to £5 per cane.

HON. MR. RIZZO: The law makes absolute not whether the land will realise 1d or £100 per cane but whether it is a building site or not.

HON. MR MINTOFF: The law lays down certain norms as to whether a plot of land is a building site or not. It does not say anything about its value. That is to say, everything being equal, if there is no other determining factor, there should be no doubt as to what is a building site and what is not. This is what the law says. But if there are other factors, unconnected with the law, they shall be taken into consideration. This means that if the values are shown by other means, they will be adopted. The hon. Member knows what these other means are: if one for example, purchases land at a higher price before it is frozen, and all such other things. These are the other means. The law does not lay down absolute values. 20

HON. MR RIZZO: I know also, for example, that the Director of Public Works, although in his opinion a plot of land is a building site, is not allowed by the definition to use such criterion.

2254 — 2255

HON. MR. RIZZO (contd.): And, therefore, because of that definition he will have to say that land which to-morrow will become 30
a building area cannot be considered to be a building site.

HON. MR MINTOFF: Allow me to reply. You yourself are saying that we are not concerned with whether it is worth a penny or one hundred pounds and you are thus rebutting your own argument. In the past there arose several questions; even though land was agricultural and valueless it was a building site. We used to agree that that was artificial land not a building site. In spite of everything else the value remains the market value because the fact of a "building site" is not defined in the law, which does not estab- 40
lish its value and in this manner it throws all objections out of gear.

It cannot be said that the Director is withheld from effecting payment of the value.

"A"
Extract from
Parliamentary
Debates
—continued.

10 HON. MR RIZZO: The Hon. Prime Minister will understand me when I say whether a building site is worth a penny or a hundred pounds. This does not mean that I am myself saying that a plot of land should not be sold at the value of a building site but at that of waste land, what I mean to say is that the value varies according to the locality. For example a building site at Naxxar cannot fetch the value of a building site in Valletta. Now a building site in Valletta is called a building site and one at Naxxar is not so called, each case, therefore, has to be looked at on its own merits. One cannot make a definition, but when you say that land, which is in the same position and has the same chance of becoming a building site as another, is not a building site you would be decreasing its value.

20 HON. MR MINTOFF: I do not agree with what the Hon. Member is saying. It is true that, when there are no other determining factors, such distances will form the criterion. Everyone agrees, everyone that is who truly works in this trade and who truly knows the value of land, that there are other intrinsic matters which do not agree with the definition: there is the value which a plot of land might realize in the market . . .

HON. MR RIZZO: There might be some other factors when there is a demand for the land.

HON. MR MINTOFF: That is very dangerous because where does the demand lead us? If one comes to me and tells me "I was once asked for the land and I was offered four shillings and sixpence". How is this going to be considered? The demand is an amount equal to the price at which adjoining lands were sold.

HON. DR FREDO AZOPARDI: But demand!

30 HON. MR MINTOFF: But a demand may be fictitious and I believe that no one on the other side of the House wants that there should be fraud; that is why I am saying that the value will be similar to that of the actual sales of adjoining land. That is why I am saying that the value of a building site may be from one penny to five pounds.

HON. DR FREDO AZZOPARDI: Now, therefore, on this merit, how does this affect section 2?

40 HON. MR MINTOFF: This is precisely one of the matters raised by the Opposition. They said; "What would you do, then?" We ourselves have admitted that the present criterion is neither exact nor absolute. We have said that we are proposing this as an improvement

"A"
Extract from
Parliamentary
Debates
—continued.

on the former criterion not because we believe it to be a perfect one. One of the criticisms brought forward by the Opposition was: "How is it that a plot of land situate at Siggiewi... I am referring to Siggiewi because I am remembering that it was mentioned I believe by the Hon. Mr Farrugia when he said: "I prefer a plot of land one mile away from Sliema to one in the vicinity of Siggiewi". Why? Because the probability of expansion at Siggiewi is small compared with that of Sliema.

2256

HON. MR RIZZO: But by this definition the plot of land preferred by the Hon. Mr Farrugia is being deemed to be waste land. 10

HON. MR MINTOFF: This definition is not creating values. It is only creating norms. One has to establish whether the areas being acquired are undergoing expansion. The legislator is saying: "It is not enough that land is at such a distance, if a village takes one hundred years to expand and there is no probability of its expanding it should not be deemed to be a building site."

HON. DR FRENDU AZOPARDI: As the Prime Minister is saying, the example brought forward by me in the Second Reading of this Bill is valid. I was referring to St Julians and Dragonara. Will he tell me whether there are more than one hundred yards between the outskirts of St Julians and Dragonara Palace and whether the land there is a building site? 20

HON. MR MINTOFF: What we are saying is this. Previously there was a norm which we are convinced from the records of the Public Works Department was a mere norm but which was useful when there was no other factor on which to base the value.

2257

HON. MR MINTOFF (contd.): Now we have considered that as norm it was not correct and we have tried to create another norm which, however, we ourselves admit is not perfect, because the value is the market value. But if we are to arrive at a norm based on distances we have had necessarily to do as we have done, we scrutinised key-plans, enquired what has been the practice during the past 20, 25 years, and we found that buildings were erected within the distances we have fixed here and we came to the conclusion that that is the norm. We have also said: But this is not absolute, so much so that we are qualifying it and we are saying that not only has there to be the said distance but there has also to be the possibility of expansion. That is to say we are saying that this is a mere norm which 30 40

shall have effect when there are no other factors which prove something different.

"A"
Extract from
Parliamentary
Debates
—continued.

HON. DR FRENDO AZOPARDI: The Hon Minister of Justice has specifically stated that if it is at a greater distance than one hundred yards it cannot be deemed to be a building site.

HON. DR CASSAR: But it is not the value which is specific because there are other criteria which lead to the value.

HON. DR FRENDO AZOPARDI: But that does not affect my question.

10 HON. MR MINTOFF: If there is no other evidence of its value, this is to be taken as a general norm. But if there exist other criteria, then its value will be different. That is to say there are other norms besides this one.

MON. MR RIZZO: But the law does not say so.

HON. MR MINTOFF: Because we know that that is how things are done, and we have said so also on the Second Reading. We have said that one of the valuation concepts followed by the Public Works Department is the proper value of the land and we
20 have also said that the fact that a plot of land is a building site, by itself, is not sufficient for valuation purposes...

2259

fol. 38

HON. DR FRENDO AZOPARDI (cont.): what is a building site, but the architect when he comes to decide and evaluate, in his heart of hearts will know that it is a building site even though the law does not say so, but he gives it the value of a building site, he gives it a higher value because he feels that it is a building site even though it is not so according to law. That is to say he will say that although it is not a building site according to law he will give it the value of a building
30 site. The architect will have to assess it as a building site even though the law says that it is not. And the other side have no answer to this one because it is obvious.

HON. MR MINTOFF: The architect has first to carry out researches, to find out what has been taking place, to examine all the evidence, and then assess the value.

HON. DR CASSAR: The law does not bind anyone as regards value, but makes clear which locality is and which is not a building site. That, however, is only one of the factors which lead to the value; but there will be many other factors which lead to such value.

40 The Prime Minister has already explained this.

HON. DR FRENDO AZZOPARDI: The fact remains that we have an established value in the market of a site which is suitable for development and according to law it will be attributed a value as if it were not suitable for development.

"B"
Judgment
dated
20th January,
1961

Exhibit "B"

Judgment dated Twentieth January, 1961

HER MAJESTY'S CIVIL COURT, FIRST HALL

Judge:

The Hon. Mr Justice Alberto Magri, B.Litt., LL.D.
Sitting held on Friday, twentieth (20th) January, 1961.
No. 14

Writ of Summons No. 308/60

Rosanna the wife of Pasquale Vella
assisted by him 10

v

Group Captain Colin Hugh Deakin,
E.R.D. in his capacity as Superin-
tending Engineer, Air Ministry Dir-
ectorate of Works, Malta Command
and by a note of the ninth (9th)
October, 1960, James Lawrence
Dawson, B.Sc., A.M.I.C.E., assumed
the proceedings.

The Court,

20

Having seen the Writ of Summons whereby the plaintiff, having prefaced that in the proceedings which stand adjourned "*sine die*" before the Land Arbitration Board in the names "Deakin nomine versus Rosanna Vella" the Board by a decree given on the third (3rd) March, 1960, gave the plaintiff up to the third (3rd) May, 1960, in the event of the defendant himself failing to institute proceedings by the third (3rd) April, 1960 (which he has failed to do), to institute the present suit before the Chairman of the said Board sitting as Judge of this Court, and

That according to the definition of the law (section 2 of Chap- 30
ter 136 of the Laws of Malta) "land includes any building, tree or
anything fixed in the land, and any portion of the shore, and any
easement in or over land and other rights of user and any right of
interference," and whereas that as appears from section 16 of the
said Chapter the legislator wanted to regulate for the purposes of
compensation, only land which is either a "building site" or "rural or
waste land" as confirmed also by section 23 (e) which limits the po-
wer of the Board to the assessment of compensation payable under
the provisions of the said Chapter and to the making of a declara- 40
tion for that purpose as to whether an area is a building site or waste
land;

The declaration being also prefaced, if necessary, that the land

which the defendant wants to acquire compulsorily from her and which is in the limits of Safi, in the territory "ta' Gafan", "tat-Tajjara", "ta' Xandra" and "ta' l-Ghar" of an area of eighteen tmien two sghan and eight kejllet (18T. 2S, 8K.) known as Plot 130A and B/1931, 50/41, 6/43, 27/43, 65/43 and 39/43, does not fall under any one of the categories "building site", "rural or waste land", whereas it is in the neighbourhood of stone quarries which are being worked.

That the defendant, by the judicial letter of the seventh (7th) June, 1958, offered by way of compensation one thousand seven hundred and eighty two pounds (£1,782) that is to say about ninetysix pounds (£96) a tomna, which price he would certainly not have offered had he considered the land to be "waste land" or "poor agricultural land" — whilst the plaintiff, on the basis of a valuation made by Albert Vassallo, A. & C.E., is claiming compensation in the sum of two thousand eight hundred and thirty pound (£2,830) as appears from the record of the proceedings before the said Board.

That in accordance with the general principle of chapter 23 (section 358) "No person can be compelled to give up his property or to permit any other person to make use of it, except for a public purpose, and upon payment of a fair compensation", and such principle has never been revoked;

Prayed that it be declared and adjudged that the aforesaid land is not a "building site" and neither is it "rural land" nor "waste land" but land which is "peculiarly suitable and adaptable for some particular purpose", that is to say for quarrying, which adaptibility gives it "an enhanced value", which value should be taken into consideration in the assessment of fair compensation and (2) that consequently it be declared and adjudged that section 23(e) of Chapter 136, cannot be applied to the compulsory acquisition of the aforesaid land, whereas it is in a territory suitable for the quarrying of good quality stone and for other reasons which will be submitted during the trial of the cause. With judicial costs;

Having seen the statement of defence of the defendant nomine whereby he submitted that the land in question falls, for the purposes of the compensation payable, within the competence of the Land Arbitration Board, whereas the land falls within the category of rural land or waste land or eventually of a building site, as provided in the Land Acquisition Ordinance;

Having seen the note of James Lawrence Dawson, B.Sc., A.M.I.C.E., Superintending Engineer, Air Ministry Directorate of Works, filed on the seventh (7th) October, 1960, whereby he assumed the proceedings vice Captain Colin Hugh Deakin, who has left Malta as his term of office has expired;

Having seen the other acts of the case;

Having seen the record of the proceedings before the Land

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Arbitration Board in the names "Deakin nomine versus Rosanna Vella" which now stand adjourned *sine die*;

Having heard counsel for the contending parties;

Having considered:

That the first contestation between the parties concerns the interpretation of the word "land" defined in section 2 of Chapter 136 above referred to; the plaintiff claims that it should be interpreted restrictively in the sense that it should include only the things and rights therein specified, whilst the defendant maintains that the interpretation should be extensive and include also those immovables or rights annexed to immovables which are not specified in the definition; 10

That section 2 in the case of "land", and differently from other concepts therein defined, makes use of the word "includes" and this, in the opinion of the Court, must have the normal meaning which it usually has in legislation. In this respect Sir Alison Russel says "The expression 'includes' is extensive, it means firstly what it would ordinarily mean and also something else which it does not ordinarily mean but which for convenience is declared to be included in it" (see Legislative Drafting & Forms, 4th Edition, p. 40); on the other hand, always according to the same author "The expression 'means' is explanatory and *prima facie* restrictive; it means what the definition says it means. The expression 'means and includes' should never be used since these words have different significations". In our case the legislator has not used, in respect of "land", the word "means" as he has done for the other concepts defined in section 2, but has used the word "includes" thus showing that he meant to extend the normal and ordinary sense of the word to things which otherwise would not have been included therein. The interpretation of English law, on which our own law has been modelled, is in this sense. "Land", writes Ronald Burrows, "according to English law includes everything *on* or *under the soil*, all building that you may erect on it; *all mines* that you may sink under it;" and with regard to Australia the same writer observes: "... the word land is ... *nomen generalissimum* and as it has been defined by section 5 of the Land Acquisition Act (1906)... includes in its mass everything *from the surface downwards*... The act discloses what has been variously described... as a 'purpose', an 'intention' and an 'object' of such nature as to require... *the fullest possible meaning* to be given to the word 'land'... Land is defined... but that definition is made 'inclusive' to enable the authority to take under the name of 'land' not only 'land' in the strictest sense *but also what would not strictly come within that term*" (Words & Phrases Judicially Defined, Vol. III pages 206 & 209, Ed. 1944). Even according to Halsbury, quoted by the plaintiff, "In construing the Acquisition of Land (Assessment of Compensation) Act, 1919... "Land" includes water and any interest in land or water and any easement or right in, to, or over land or water". 20 30 40

(Laws of England, Vol. VI, No. 19 Hailsham Edition).

It does not appear that section 23(a) of Chapter 136 may prove an obstacle to such extensive interpretation; which section states that the Board shall be competent to assess the amount of compensation payable under any of the provisions of the Ordinance and for the purpose to declare whether any area is a building site or agricultural or waste land. This provision should always be taken in conformity with the provision of section 2 which defines the word 'land', so that if the thing acquired compulsorily does not fall precisely within the three categories specified above, it does not mean that the Board becomes incompetent; in fact following the promulgation of Ordinance XL of 1935 (now Chapter 136 of the Laws of Malta) the only tribunal competent to take cognizance of cases of compulsory acquisition is the Land Arbitration Board (Decisions XXX, I, 57). Now if the restrictive interpretation put forward by the defendant were to prevail in the case of immovables which do not fall within one of the three categories specified by the law, we would come to an unjust and possibly absurd conclusion; in fact in such cases either compensation will not be such as to fully reinstate the owner in his economic position at the time of the compulsory acquisition (thus violating the fundamental principle which inspires this matter) or no compensation would be paid as no tribunal would be competent, which thing is repugnant to any principle of legal hermeneutics;

That in this light too one has to interpret section 16 of Chapter 136 so that it may not be in contradiction with the aforesaid basic principles;

That this renders necessary the enquiry whether the Board, in assessing the compensation payable for the tenement or right which does not fall within the three categories specified by the law, should under the circumstances take into consideration the special nature of the tenement and its potential for a particular purpose. Here too the interpretation of the English Courts is in the affirmative. "Tribunals assessing compensation", we read in Halsbury, "may take into account not only the present purpose to which the land is applied but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market. This value for future purposes is generally referred to as the potential value of the land. The principle is applicable whether the owner has acquired the land in order to use it for some particular purpose or whether he has no such present intention", and further on the same writer goes on to say: "If, however, the land is peculiarly suitable or adaptable for some particular purpose . . . that fact must be taken into account in assessing the compensation, and it is immaterial that such purpose is the one to which the promoters propose to apply it. If that adaptability gives it an enhanced market

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value, it must be taken into account in assessing the value of the land" (Op. cit. SS 43 and 44).

And this principle, in general, is acknowledged by section 25(1)(b) of our law; moreover, as this Court has expressed itself in re "The Hon. James Galizia nomine versus James Micallef" decided on the nineteenth December, 1936, in the law of compulsory acquisition now in force once there is no express or implied prohibition of the inclusion in the compensation payable to the owner of other elements besides the value of the land acquired compulsorily, compensation should be such that the owner would be *fully* reinstated in his economic position as it was at the juridical moment of the compulsory acquisition... which elements are damages which may result from the compulsory acquisition... in the case of a contrary interpretation one would have to arrive at the conclusion that the owner, in certain cases, is to be denied the right to be fully reinstated in his economic position existing at the time of the compulsory acquisition." (Law Reports XXIX, II, 1186); 10

That this interpretation has been adopted even in a case which is not envisaged by law, where it was held by the Court of Appeal that, in a case where the law has not made provision for the assessment of compensation, the general provision of Section 358 of the Civil Code should come again into force compensation being thus governed not according to the special law of compulsory acquisition but by the general law (Vide Civil Appeal 26.11.1956 in re "Said vs Mifsud Bonnici"). 20

On these grounds:

Adjudges that 1) the tenement *de quo* is included in the word "land" even as defined in the said section 2; 2) the Land Arbitration Board is vested with the power to establish the nature of the tenement forming the object of the compulsory acquisition and therefore also of the tenement in question; and 3) in assessing compensation, that Board shall take into account the nature of the tenement acquired compulsorily and its adaptability for any particular purpose according to the circumstances existing at the time of the compulsory acquisition. 30

In view of the nature of the questions involved, each party is to bear its own costs, but the Registry fees are to be borne in equal portions between them.

(Signed) VINC. PANDOLFINO
Deputy Registrar

Exhibit "C"

Aerial photograph showing "Tal-Hriereb" Area, taken before the publication of Government Notice No. 435 of the 16th August, 1960

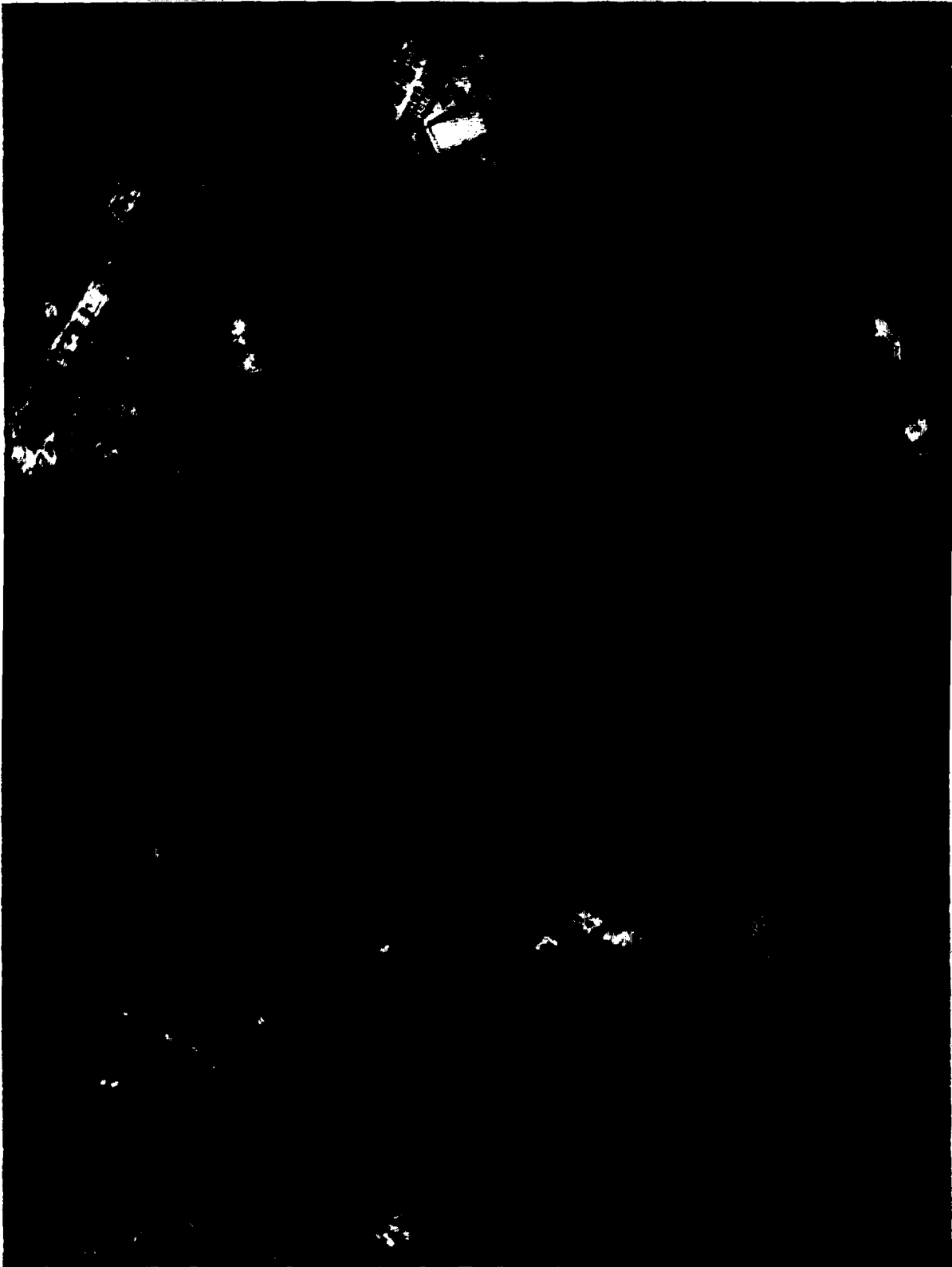


Exhibit "D"

Aerial photograph showing "Tal-Hriereb" Area, taken on the 20th November, 1964

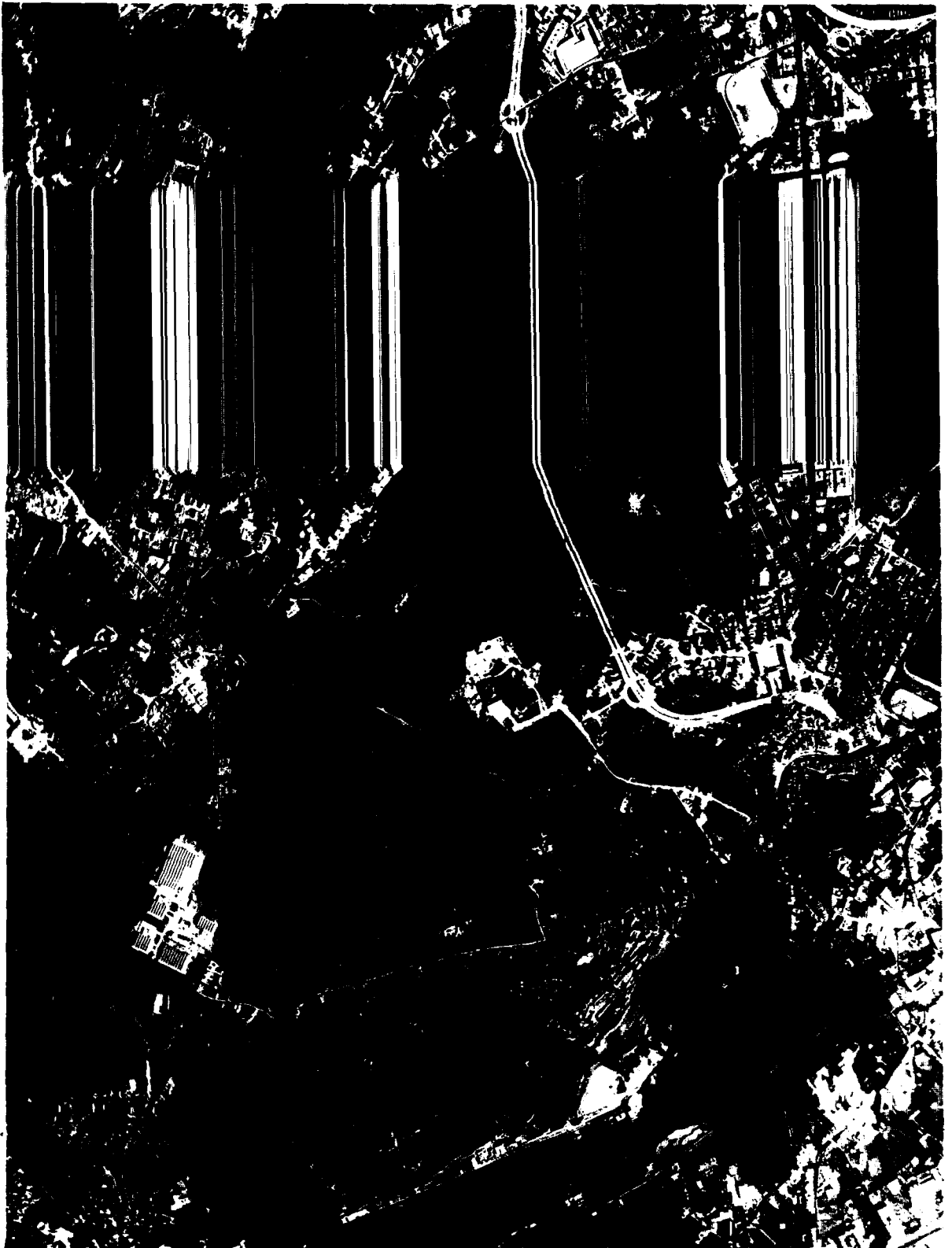
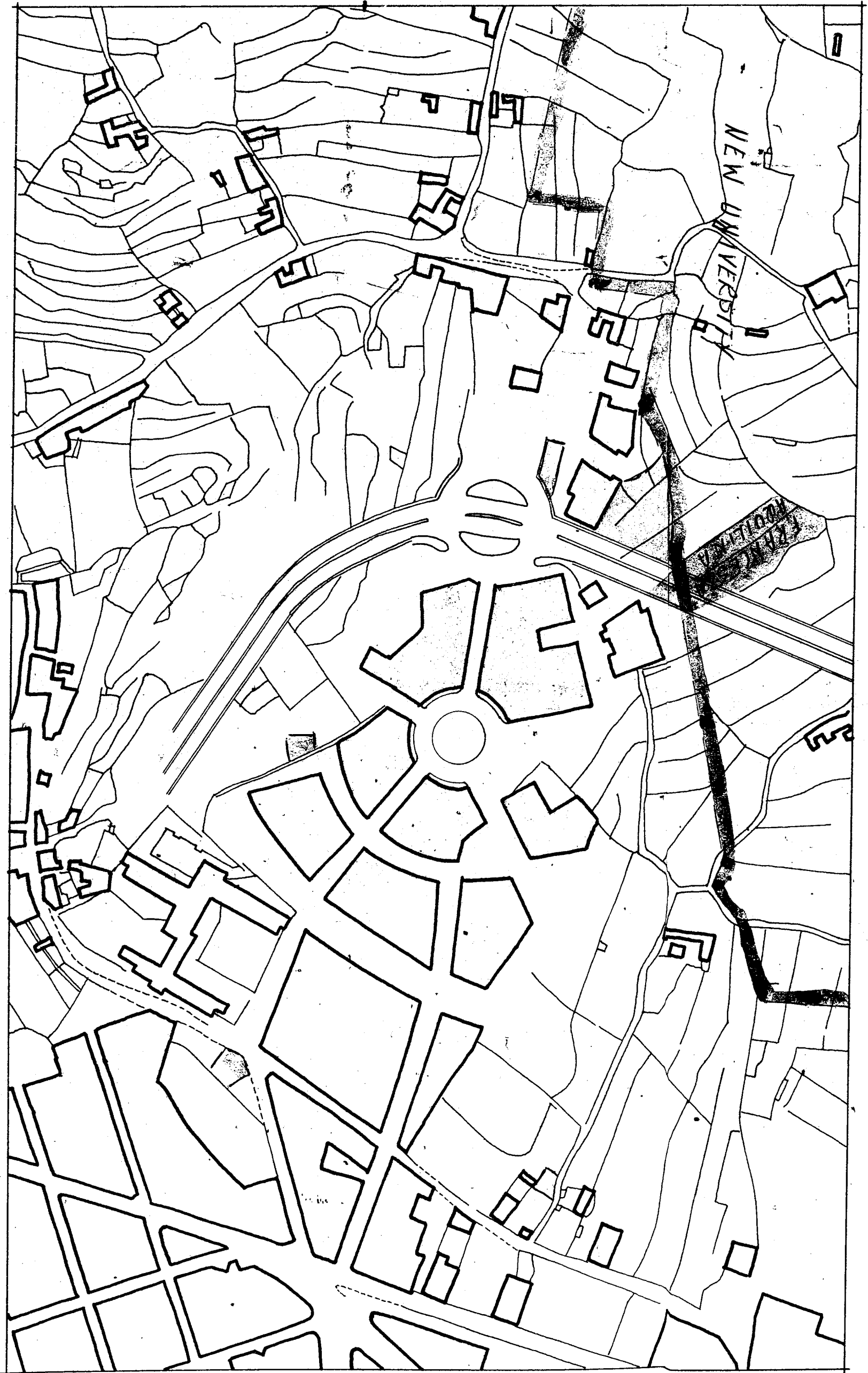
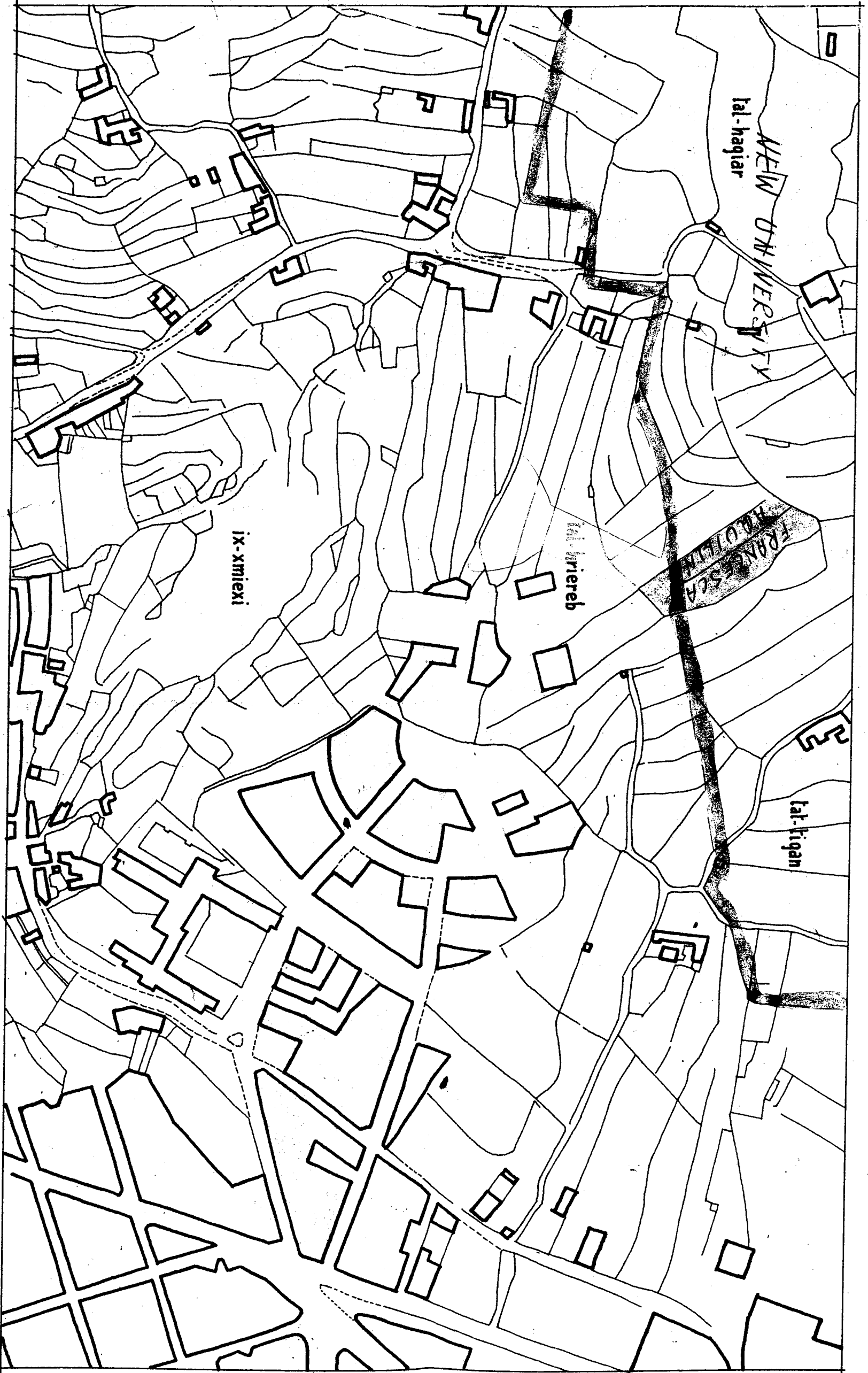


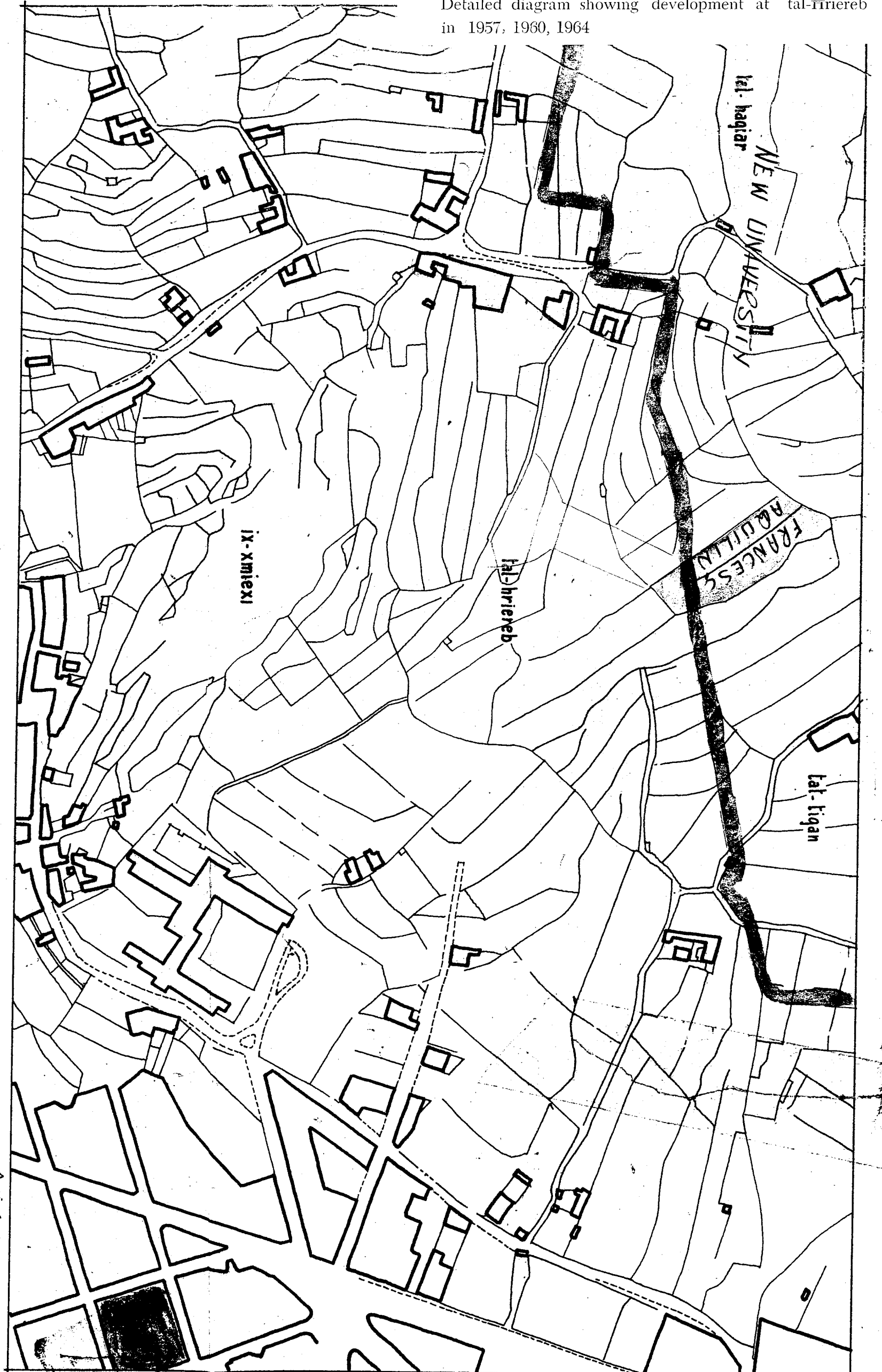
Exhibit "E"
Detailed diagram showing development at "tal-Friereb"
in 1957, 1960, 1964



NOVEMBER 64



DECEMBER 60



AUGUST 57