

12/6

# In the Privy Council.

IN APPEAL FROM HER MAJESTY'S ROYAL COURT OF APPEAL IN THE ISLAND OF MALTA AND ITS DEPENDENCIES.

**WILLIAM LEONARD, Merchant, in his own Name,**  
and as Partner in and representing the Firm,  
**ROBINSON DUCKWORTH & Co.** . . . . . *Appellant,*

VERSUS

**ROSARIO MESSINA, Merchant** . . . . . *Respondent.*

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NOT. VIN. RAPINETT, Registrar.

# In the Privy Council.

## IN APPEAL FROM HER MAJESTY'S ROYAL COURT OF APPEAL IN THE ISLAND OF MALTA AND ITS DEPENDENCIES.

WILLIAM LEONARD, Merchant, in his own Name, and as  
Partner in and representing the Firm, ROBINSON DUCK-  
WORTH & Co. . . . . *Appellant,*

*VERSUS*

ROSARIO MESSINA, Merchant . . . . . *Respondent.*

### RECORD OF PROCEEDINGS.

EXTRACTS from the Original Papers of the Law Suit formerly pending between ROSARIO MESSINA, Merchant, Plaintiff, *versus* WILLIAM LEONARD, in his own name and as partner in and representing the firm of Robinson Duckworth and Co., Defendant, decided by Her Majesty's Court of Appeal, on the 9th July, 1856, and now appealed to Her Majesty's Privy Council.

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Folio 1st of the Papers, No. 1.

#### IN THE ROYAL COMMERCIAL COURT.

ROSARIO MESSINA, Merchant, Plaintiff, *versus* WILLIAM LEONARD, both in his own name and as partner in and representing the firm, R. Duckworth and Co., Defendant.

*The humble Petition of the said Messina,*

20

Sheweth,—

That on the 9th of March, 1849, he consented to advance to Captain G. H. Corbett, of the English steamer "Osmani," the sum of £850, on a Bottomry Bond, for the necessaries and voyages of the said vessel. That as soon as he had given his assent he called on the Notary, William J. Stevens, where he found already prepared the form of a bond, with names in blank, in which it was stated that the money was chiefly to be applied to release the said vessel from a Warrant of Arrest, issued at the instance of the Defendant, without any mention of the name and state of the debtor.

That the Petitioner, not being able to speak English, had no conversation with Captain Corbett, who was in the Notary's office; but the ordinary nature of the transaction, and the frequency of similar detentions of vessels, prevented his having any suspicion.

That he was the more confident of the regularity of the operation, as he knew that the vessel was usually consigned to the Defendant, whose agents and friends managed the affair; and the Defendant himself, on the same day, and shortly before the contract took place, had of his own accord mentioned to him the wants of the vessel, and determined him to advance the money; and, far from adding anything which might have given rise to suspicion, the Defendant had stated that he himself did not enter into the transaction, for it was not convenient for him to do so in his character of consignee.

That whereupon, the Petitioner, fully trusting in the good faith of the transaction, was not even curious to ask what sort of claim was to be paid, and who was the debtor; for he felt confident that the Defendant, far from letting him lose, in his good faith, such a large sum of money, which he the Defendant himself would get,—far from encouraging him to advance money, in order that he might repay himself of an irrecoverable debt,—would have told him the real facts; or, if he had not wished to be generous, would at least have abstained from mentioning and encouraging the transaction at all.

That in the meantime the Petitioner lent the money, and the vessel was released and sailed for her destination; but he afterwards heard, to his great surprise, that on her arrival in England his agents in vain claimed the payment of the Bottomry Bond, which third parties objected to as null and void.

RECORD OF PROCEEDINGS.  
*In the Royal Commercial Court.*  
No. 1.  
Petition of Rosario Messina to the Royal Commercial Court, dated 30th March, 1850.

RECORD OF  
PROCEEDINGS.*In the Royal  
Commercial Court.*

No. 1.

Petition of Rosario  
Messina to the  
Royal Commercial  
Court, dated 30th  
March, 1850—  
(continued).

That his surprise was so far greater as the objections arose precisely out of the debt owed to the Defendant. For it was alleged—1st. That the Defendant's debt was not specially on the vessel, but was a debt personally against a certain Mongredien, a former owner of the vessel. 2nd. That Mongredien had mortgaged the vessel to another creditor, and, according to the laws of that country, had, seven months before, to wit, on the 12th August, 1848, endorsed the Certificate of Registry of the said vessel in favour of that creditor. 3rd. That Mongredien became bankrupt before the Bottomry Loan had taken place, viz., on the 10th February, 1849.

That the Petitioner, however, carried on the lawsuit which he was then obliged to institute in England, and successfully refuted the attack of collusion which the opposite party insinuated to have passed between the Petitioner and the Defendant; but the High Court of Admiralty, rejecting the collusion, pronounced against the validity of the Bottomry Bond, except for the small amount of about £150, to defray the expenses of supplies of the vessel.

That considering all the circumstances of the Case, and especially the facts, that the Defendant had long before been in correspondence with the owners of the vessel; that the aforesaid Defendant, on the 2nd of February, had let the vessel depart on her voyage from Malta to Constantinople without molesting her for the debts owed to him; that he afterwards arrested her, on her return, just after he had known of the bankruptcy of his debtor; that after the arrest, as the Petitioner is now aware of, the said Defendant suggested to the Captain to borrow money on a Bottomry Bond to release her, and employed a dependant of his to obtain the loan; and, finally, that the same Defendant prompted and decided the Petitioner to advance the money without telling him either the object for 20 which it was required or, what is more, the circumstance of the bankruptcy of the debtor, which had made the debt irrecoverable but to a very small amount, except in the manner by which the said Defendant has contrived to get paid. It was impossible not to conclude that the conduct of the Defendant was extremely irregular, illegal, and tending to circumvent the Petitioner, to whom he is therefore liable for the sum which he received through the intervention of Captain Corbett, in payment of a debt already irrecoverable.

That, whilst the lawsuit was pending in England, as well as after Judgment had been given, the Petitioner, in due time, called upon the Defendant to declare his intention on the carrying on of the Suit and of the Appeal; but the Defendant, not to commit himself, only gave evasive answers.

The Petitioner, therefore, offering the undersigned security for costs, and producing the 30 annexed Documents, A, B, C, humbly prays that this Royal Court should declare—1st. That most of the sum, as aforesaid, advanced by the Petitioner to Captain Corbett was asked for and afterwards handed over to the Defendant to repay him of debts which, by the bankruptcy of the debtor, had become irrecoverable. 2nd. That the Defendant illegally, and with unjust objects in view, induced the Petitioner to advance the aforesaid sum to the said Captain Corbett, in order that he might thus be paid of the debts owed to him.

And after such declarations, or any of them, or any other more expedient and necessary declaration that may be pronounced by the said Royal Court, *officio judicis*, and also after any more expedient measure whatever, the said Petitioner prays, that the Defendant, for the aforesaid reasons, and for others to be hereafter alleged, should be condemned to return and pay to the said Petitioner the sum 40 of £1,095, of which £850 in return and payment of the above-mentioned capital sum, and the rest for interest and costs, as they are detailed in the annexed account marked C, the said Petitioner being ready to hand over to the said Defendant whatever, out of that sum, he was able to recover after the Judgment of the High Court of Admiralty, with costs and without prejudice of any other claim of the Petitioner against the Defendant. And he prays that justice be imparted to him in this and in any other way allowed and approved of by law.

A. DINGLI, *Advocate*.P. SCIORTINO, *Advocate*.DR. COTUGNO, *Procurator Legal*.

March 30th, 1850. Produced by the said Procurator Legal, with the annexed documents, 50  
marked letters A, B, C.

I, here undersigned, constitute myself pledge and security for the said Messina, Merchant and Plaintiff, and bind myself, jointly and severally with the same, to the payment of costs in favour of whomsoever they may be due, renouncing to any legal exception, this 30th of March, 1850.

GIUSEPPE GRAVAGNA, of Dr. Emmanuele, of Valletta.

(Signed in my presence.) G. G. MICALLEF, *Registrar*.

I hereby certify to have served William Leonard, Merchant, with an official copy of the above 60  
Petition, by means of Romualdo Schembri, Usher, this 2nd day of April. 1850.

G. BATTISTA ATTARD, *Marshal*.(Signed in my presence.) G. G. MICALLEF, *Registrar*.

## Folio 6.

## DOCUMENTS PRODUCED WITH THE PETITION.

Document A., Bottomry Bond. Document B., Judgment of the High Court of Admiralty. 70  
Document C., an account of the capital sum, interest and costs.

P. SCIORTINO, *Advocate*.DR. COTUGNO, *Procurator Legal*.No. 2.  
List of Documents  
presented with said  
Petition.



## Document A, Folio 7.

RECORD OF  
PROCEEDINGS.*In the Royal  
Commercial Court.*No. 3.  
DOCUMENT A.  
Bottomry Bond,  
dated 9th March,  
1849.

Know all men, by these presents, that on the day of the date hereof, before me, William John Stevens, Notary Public, by Royal authority duly admitted and sworn, residing and practising at the Island of Malta, and the witnesses subscribed, personally came and appeared George Henry Corbett, Commander of the screw steamer or vessel under English colours called the "Osmanli," belonging to the Port of Liverpool, and now riding at anchor in the Harbor Marsamuscetto in the said Island, who bindeth and obligeth himself, and in and by these presents is held and firmly bound unto Mr. Rosario Messina, of the City of La Valetta and Island aforesaid, Merchant, in the sum of one thousand and seven  
 10 hundred pounds good and lawful sterling money of Great Britain, to be paid to the said Mr. Rosario Messina, his attornies, heirs, executors, order, or assigns, and for which payment to be well and truly made he bindeth himself; and doth in and by these presents hypothecate specially the hull, engines, boilers, and other machinery of the said steam vessel "Osmanli," with all and singular the masts, yards, sails, rigging, cables, anchors, boats, oars, tackle, apparel, furniture, and fuel to the same belonging, as well as the freight of the cargo she has now on board for Liverpool, taken in at Constantinople, Smyrna, and Malta, to and in favor of the said Mister Rosario Messina, his attornies, heirs, executors, administrators, order, or assigns. Sealed with the seal of the said Captain George Henry Corbett, and dated in the City of La Valetta at the Island of Malta aforesaid, this ninth day of March, in the year of Our Lord one thousand eight hundred and forty nine.

20 Whereas the screw steamer or vessel under English colours, and belonging to the Port of Liverpool, called the "Osmanli," register burthen two hundred and ten (210) tons or thereabouts, and whereof the above bounden George Henry Corbett is Commander, now lying in the harbour of Marsamuscetto, at this Island of Malta, having under date of the seventh of the said month of March, put into Malta, on her voyage from Constantinople and Smyrna, bound to Liverpool, to fill up with what goods might there offer, and replenish fuel, water, and provisions, was, under the same date, served by the Marshal of Her Majesty's Commercial Court of Malta with a warrant under the hand of the Judge thereof, impeding the departure of the said steamer, at the instance and suit of Messieurs Robinson Duckworth & Co., creditors, not only of the said vessel, but of other vessels belonging to the same line and owners:

30 And whereas, for the release of the said vessel, procuring her requisite fuel, provisions and stores, and for obtaining her final clearances from Malta to proceed on her aforementioned voyage to Liverpool, the said Commander, George Henry Corbett, hath been necessitated to raise money on Bottomry, which the said Mr. Rosario Messina, Merchant, having offered to lend and which he hath lent, amounting in all to eight hundred and fifty pounds, good and lawful sterling money of Great Britain:

Now the condition of the above-written bond or obligation is such, that if the said abovebounden George Henry Corbett do and shall in and with said vessel, having her aforementioned cargo on board, set sail and proceed from and out of this Port of Malta for Liverpool (calling at Gibraltar or any other port in her direct course for further fuel, if necessary); and if he, the said George Henry  
 40 Corbett, shall and do, within four days after the safe arrival at Liverpool of said vessel, well and truly pay or cause to be paid unto the said Merchant, Rosario Messina, his heirs, executors, administrators, attornies, orders or assigns, the said sum of eight hundred and fifty pounds of good and lawful sterling money of Great Britain, so as aforesaid lent, together with other fifty-nine pounds and ten shillings of like money, for maritime interest and insurance premium, at and after the rate of seven per cent. for the voyage, free of average, making together nine hundred and nine pounds and ten shillings, good and lawful sterling money of Great Britain: or, if in the said vessel's voyage from Malta, and before her arrival at Liverpool, her aforesaid port of discharge, an utter loss of the said vessel by fire, enemies, or any other casualty should unavoidably happen, to be sufficiently proven by the said George Henry Corbett, the Commander, his heirs, executors, administrators, or the owners of the said steam vessel,  
 50 then this bond or obligation to be null and void; otherwise, to be and remain in full force, virtue and effect; and it shall be lawful to and for the said Mr. Rosario Messina, his heirs, executors, administrators, attornies, order or assigns, to sue for, recover, and receive the full amount due on said bond, and take every necessary proceeding for that purpose against the said steam vessel and her freight, so in manner and mode aforesaid hypothecated in his and their favor specially by these presents.

Witness the hand and seal of the said George Henry Corbett, to duplicate bonds of the like tenor and date, but to one sole effect, the day, month, and year aforesaid.

(Signed) GEORGE HENRY CORBETT.

60 Signed, sealed, and delivered by the above George Henry Corbett, in presence of

(Signed) EMBLE CARUANA, LL.D.,

*Advocate, Malta.*(Signed) SALVATORE PISANI, *Merchant, Malta.*

The foregoing original Bottomry Bond was duly signed, sealed, and executed by the therein named George Henry Corbett, the Commander of the steamer "Osmanli," in my presence, as well as in the presence of the parties whose names are set and subscribed at foot thereof as witnesses.

70 *Quod attestor.*(Signed) WILLIAM I. STEVENS,  
*Notary Public, Malta.*A true copy—*Quod attestor.*WILLIAM I. STEVENS, *Notary Public, Malta.*

RECORD OF  
PROCEEDINGS.In the Royal  
Commercial Court.No. 4.  
DOCUMENT B.  
Judgment of the  
High Court of Ad-  
miralty in England,  
dated 15th January,  
1850.

## Document B., Folio 11.

EXTRACTED FROM THE REGISTRY OF HER MAJESTY'S HIGH COURT OF ADMIRALTY  
OF ENGLAND.

On the first Session of Hilary Term—to wit, Tuesday, the fifteenth day of January, 1850—before the Right Honourable Stephen Lushington, Doctor of Laws, Lieutenant of the High Court of Admiralty of England, and, in the same Court, Official, Principal, and Commissary General and Special, and President and Judge thereof, lawfully constituted and appointed in the Common Hall of Doctors' Commons, London.

Present: (Signed) H. B. SWABEY, Registrar. —“Osmanli,” GEO. HENRY CORBETT, M<sup>r</sup>

Alexander Pandia Petrococchino of London, Merchant, the legal holder of a Bottomry Bond on the said steam ship or vessel “Osmanli” and freight, *against* the said steam ship or vessel, her tackle, apparel, and furniture, and the freight due for the transportation of the cargo now or lately laden therein; *and against* Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, all of Liverpool, in the county of Lancaster, carrying on business under the firm of Arnold, Leete, Roscoe and Company, Brokers, the mortgagees in possession of sixty-two sixty-fourth (62/64<sup>th</sup>) parts or shares of the said steam ship or vessel, such parts or shares lately belonging to Augustus Mongredien, of Liverpool aforesaid, Merchant, a bankrupt, intervening, in a cause of Bottomree civil 20 and maritime.

ORME.  
TEBBS.

The Judge having deliberated by interlocutory decree, pronounced for the force and validity of the Bottomry Bond on the said steam ship or vessel and freight proceeded for in this cause, so far as regards the sum of one hundred and eighty-two pounds 14/1 (£182. 14s. 1d.) advanced to George Henry Corbett, the master of the said ship or vessel, to defray the expenses of supplies furnished to the same subsequently to the seventh day of March, 1849, with the maritime interest specified in the said bond, and current interest thereon, at and after the rate of four pounds per centum per annum, from the time when the said bond became due until payment thereof, condemned Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, all of Liverpool, in the county of Lancaster, carrying on business under the firm of Arnold, Leete, Roscoe and Company, Brokers, the mortgagees in possession of sixty-two sixty-fourth (62/64<sup>th</sup>) parts or shares of the said steam ship or vessel (such parts or shares lately belonging to Augustus Mongredien, of Liverpool aforesaid, Merchant, a bankrupt). Tebbs' parties, and the bail given on their behalf, to answer the action therein; and against the force and validity of the said bond in all other respects, &c.

H. B. SWABEY, Registrar.

No. 5.  
DOCUMENT C.  
An Account of the  
Capital Sum, In-  
terest, and Costs.

## Folio 13. Document C.

## ACCOUNT.

	£	s.	d.
Capital sum paid by Rosario Messina on Bond. William J. Stevens . . . . .	850	0	0
Interest from Malta to Liverpool on the steamer “Osmanli,” 7 per cent. . . . .	59	10	0
Several Affidavits, sworn before the Admiralty Judge at Malta, sent to England at the request of the lawyer of the Case . . . . .	19	7	10
Costs of the lawsuit, from the Agent of Rosario Messina . . . . .	139	4	0
Commission of 2 per cent. (instead of 5 per cent.) to the said Agent . . . . .	18	3	7
Copies of other documents . . . . .	6	1	5
Postage to this day . . . . .	2	13	2
	<hr/>		
	£1,095	0	0

S. E. &amp; O. Malta, March 26th, 1850.

No. 6.  
Protest of Contu-  
macy, presented to  
the said Royal  
Commercial Court  
by R. Messina,  
dated 16th May,  
1850.

## Folio 14.

## IN THE ROYAL COMMERCIAL COURT.

Rosario Messina, Merchant, *versus* William Leonard, Merchant, partner in and representing the firm, R. Duckworth and Co.

*Protest of Contumacy.*

The said Messina appears, and, as the Defendant has not cared to answer the Plaintiff's Petition within the term assigned to him, protests against the irregularity of his conduct, and prays that it be proceeded in his contumacy, to the decision of the Cause, according to the demands stated in the said Petition, with costs, &c.

A. DINGLI, Advocate.  
DR. COTUGNO, Procurator Legal.

Produced by the said Procurator Legal.

May 16th, 1850.

## Folio 18. (L. A.)

VICTORIA, by the grace of God Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c. &c. &c., to Giovanni Battista Attard, Marshal of the Royal Commercial Court of the Island of Malta and its Dependencies, greeting.

By our Order, and at the instance of William Leonard, Merchant, partner in and representing the firm, Robinson Duckworth and Co., you shall summon Rosario Messina, Merchant, living in this City of Valetta, to appear at the usual sitting hours before this our Court at the sitting that will be held on Saturday next, the 25th of May, 1850, and there to show cause why, in the existence of judicial as well as extrajudicial proceedings which have taken, and perhaps are still taking, place in England, where there is still a Suit pending on the subject, and which proceedings are chiefly, if not entirely, in reference to the grounds on which the said Plaintiff founds the Action he brought before this our Court against the Defendant in his said capacity, by a Petition he presented to the said Court on the 30th March, 1850, should not this our Court, after every expedient declaration *officio judicis*, and also after the restitution *in integrum*, if it be necessary (which, however, the Defendant, *nomine*, &c., does not deem necessary), of the said Defendant, *nomine*, &c., against the contumacy he incurred by the lapse of the usual time to answer, grant to the Defendant in the said capacity a beyond sea term, at the discretion of the Court, in order to obtain and have sent from England some necessary documents for his just defence against the demands made by the said plaintiff, Rosario Messina, Merchant, by the said Petition against the Defendant, *nomine*.

And, with direction that the said Cause be not entered on the Rolls for a hearing before the lapse of the said beyond sea term, to which the above instance refers, all with costs; and that the Plaintiff appear personally, under pain of the usual legal injunctions.

You shall also admonish the said Plaintiff that, even if he should not appear on the day, place, and hour aforesaid, our Court shall, in his contumacy, proceed to pronounce judgment, according to justice, on the demands of the said Defendant, even with regard to costs, on the same day of the hearing of the Cause, or on any other following day that the Court shall at the time appoint.

And, within twenty-four hours, you shall report to the said our Court the exhibition of these presents to the said Plaintiff, and his serving with a true copy thereof, or any obstacle encountered in the execution.

Given at our Royal Commercial Court in the Island of Malta and its Dependencies, witness our trustworthy and well-beloved Doctor of Laws, Giacomo Pantaleone Bruno, Judge of our Court, this 24th May, 1850.

G. BRUNO.

I do hereby certify to have served Rosario Messina, Merchant, with an official copy of the present summons, by means of Romualdo Schembri, Usher, this 24th May, 1850.

G. BATTISTA ATTARD, *Marshal*.

RECORD OF PROCEEDINGS.  
In the Royal Commercial Court.  
No. 7.  
Summons of Wm. Leonard for a beyond sea term to produce Papers from England, dated 24th May, 1850.



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## Folio 20.

EXTRACT FROM THE REGISTRY OF JUDGMENTS ENTERED ON THE REGISTRY OF THE ROYAL COMMERCIAL COURT IN MALTA, ETC.

*Royal Commercial Court of the Island of Malta and its Dependencies. Whitsunday Term.*

Judge—Dr. Giacomo P. Bruno.

Consuls—John Grant, G. L. Schembri.

Sitting XIV., Saturday, 1st June, 1850. XX. Case.—William Leonard, Merchant, partner in and representing the firm, Robinson Duckworth and Co., *versus* Rosario Messina, Merchant.

The Court decides, that the Defendant be restituted *in integrum*, in order to produce his Answer within a month from this day, which is granted to him as a beyond sea term, to obtain from England all the documents that he may deem necessary for his own defence. Costs of the Contumacy, and of the present Decree, to be paid by the summoner.

G. G. MICALLEF, *Registrar*.

True copy.

G. G. MICALLEF, *Registrar*.

No. 8.  
Order of the Royal Commercial Court, dated 1st June, 1850, for restitution *in integrum* to Wm. Leonard.

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## Folio 21.

EXTRACT FROM THE REGISTRY OF JUDGMENTS ENTERED ON THE REGISTRY OF THE ROYAL COMMERCIAL COURT OF MALTA.

*Royal Commercial Court of the Island of Malta and its Dependencies. Whitsunday Term.*

Judge—Dr. Giacomo P. Bruno.

Consuls—John Grant, G. L. Schembri.

Sitting XIV., Saturday, 1st June, 1850. XIX. Case.—Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name and as partner in and representing the firm, R. Duckworth and Co.

The Court, in view of the restitution *in integrum*, granted on the collateral summons to that effect, adjourns the present Cause to another day, to be appointed after new pleadings.

G. G. MICALLEF, *Registrar*.

True copy.

G. GAETANO MICALLEF, *Registrar*.

No. 9.  
Order of the Royal Commercial Court, dated 1st June, 1850, adjourning the Cause.

RECORD OF  
PROCEEDINGS.

*In the Royal  
Commercial Court.*

No. 10.  
Order of the Royal  
Commercial Court,  
dated 6th July,  
1850, further ad-  
journing the Cause.

### Folio 22.

EXTRACT FROM THE REGISTRY OF JUDGMENTS ENTERED ON THE REGISTRY OF THE ROYAL  
COMMERCIAL COURT OF MALTA.

*Royal Commercial Court of the Island of Malta and its Dependencies. Whitsunday Term.*

Judge—Dr. Giacomo P. Bruno.  
Consuls—John Grant, G. L. Schembri.

Sitting XXVIII., Saturday, July 6, 1850. II. Case.—William Leonard, Merchant,<sup>10</sup>  
partner and representing the firm, Robinson Duckworth and Co., *versus* Rosario  
Messina, Merchant.

The Advocate of the Summoner being engaged in another Court, the Court adjourns the  
present Cause to the sitting of next Tuesday, 9th instant, when it shall be placed the first on  
the Rolls.

Sitting, Tuesday, 9th July, 1850. Consuls—Gio. Battista Schembri, William S. Eynaud.  
XVII. Case.

The Court decrees, that the present Cause be adjourned to the sitting of Saturday, 13th instant,<sup>20</sup>  
in order that it might be heard before the Consuls, John Grant and G. L. Schembri, who formed part  
of the Court when the Decree of the 1st June, 1850, was pronounced.

True copy. G. GAETANO MICALLEF, Registrar.  
G. G. MICALLEF.

### Folio 23.

No. 11.  
Letter from W.  
Duff to Messrs. R.  
Duckworth & Co.,  
dated 15th June,  
1850.

5, Nicholas Lane, Lombard Street, London,<sup>30</sup>  
15th June, 1850.

Gentlemen :

With reference to my letter to you of this date, I beg to hand you herein my  
Declaration to the refusal of the Registrar of the High Court of Admiralty to grant copies of the  
papers in the Suit touching the Bottomry Bond on the "Osmanli," and a case submitted to Her  
Majesty's Advocate, duly certified.

I am, Gentlemen, your obedient Servant, For W. Duff,

NT. CARTER.

Messrs. R. Duckworth and Co., Malta.

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### Folio 24.

No. 12.  
Lord Mayor's Cer-  
tificate, dated 15th  
June, 1850.

To all to whom these presents shall come, I, Thomas Farncomb, Lord Mayor of the City of  
London, do hereby certify, that on the day of the date hereof personally came and appeared before  
me William Duff, named in the Declaration hereunto annexed, being a person well known and worthy  
of good credit, and who did before me solemnly and sincerely declare to be true the several matters  
and things mentioned and contained in the said annexed Declaration, pursuant to an Act of<sup>50</sup>  
Parliament passed in the sixth year of the reign of King William the Fourth. In faith and  
testimony whereof I, the said Lord Mayor, have caused the Seal of the office of Mayoralty of the said  
City of London to be hereunto put and affixed.

Dated in London, the fifteenth day of June, in the year of our Lord one thousand eight  
hundred and fifty.

L. S.

(Signed) REYNAL.

60

### Folio 25.

No. 13.  
Declaration of Wm.  
Duff, dated 15th  
June, 1850.

I, William Duff, of the City of London, Notary Public, duly admitted and sworn, do solemnly  
and sincerely declare, that on the twelfth day of June instant I did, at the request of Messrs. R. Duck-  
worth and Company, of Malta, the Defendants in a Suit instituted in the Commercial Court of that  
Island, apply personally to Henry Birchfield Swabey, Esquire, the Registrar of the High Court of  
Admiralty of England, and request of him to furnish me, for the use of the said Messrs. R. Duckworth  
and Company, with official copies of all the proceedings in a certain Suit, lately depending in the<sup>70</sup>  
said High Court of Admiralty of England, touching the validity of a certain Bottomry Bond upon the  
ship "Osmanli;" and that the said Henry Birchfield Swabey did thereon refuse to furnish such copies  
without the consent of the respective Proctors in the said Suit first had and obtained. And I further  
declare, that I afterwards applied to Malcolm Orme, Esquire, and Charles Tebbs, Esquire, the two  
Proctors for the several parties to the said Suit in the said High Court of Admiralty of England, for such  
consent, and that they the said two Proctors did positively and absolutely refuse to give such consent,

on the ground that an appeal from the decision of the Judge of the said High Court of Admiralty of England to Her Majesty the Queen in Council had been asserted. And I make this solemn Declaration conscientiously, believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present Session of Parliament, intituled an Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof; and for the more entire suppression of voluntary and extrajudicial Oaths and Affidavits, and to make other provisions for the abolition of unnecessary Oaths."

RECORD OF PROCEEDINGS.  
*In the Royal Commercial Court.*  
No. 13.  
Declaration of Wm. Duff, dated 15th June, 1850—  
(continued).

10

(Signed) WILLIAM DUFF.

Declared at the Mansion House, London, this fifteenth day of June, 1850.

Before me.

(Signed) THOMAS FARNCOMB, Mayor.

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Folio 26.

Liverpool, 14th June, 1850.

No. 14.  
Letter from Nicol Duckworth to R. Duckworth & Co., dated 14th June, 1850.

Malta—Messrs. R. Duckworth and Co.

20

Dear Sir:

In reply to your request that we would furnish you with office copies of the documents of the Cause of the "Osmanli's" Bottomry Bond, lately tried in the Admiralty Court in this country, we regret to say that, so far, all our applications have been fruitless, as your not being party to the Suit throws you, so to speak, out of Court, and the Proctors on both sides refuse to give permission for such copies to be taken.

30

We have alike been unsuccessful in procuring for you a certificate from the registrar of the said Court that the *Suit is still pending*; Messina, through his agents, having appealed to the Privy Council against the Decision of the High Court of Admiralty, independently of this Appeal, the Court refuses copies on the ground of the Cause being considered *sub judice* for 12 months after sentence.

We have requested such proofs, as under these peculiar circumstances can't be obtained, to be sent out to you; and we cannot doubt that your Commercial Court will not permit Messina to proceed in two actions (here and in Malta) for one of the same things, but will, on the contrary, assist you in procuring the necessary evidence from this country, as well as the affidavit made by Messina in Malta, and produced in the Admiralty Court, which we have heard read by the attornies of the mortgagee (the other party to the Suit), that he had full and *complete knowledge* of the nature of the arrest of said "Osmanli," not only for that vessel's debt, but for the entire debts of the owners\* or concerned in her and the other screw vessels.

\* Sic

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We cannot for a moment *suppose* the case of your Court forcing you to trial with your hands so tied up; your position is indeed a very cruel one, and only wants being properly represented to get your Court's assistance in procuring you the additional evidence you ask.

We are, Dear Sir, Yours truly,

(Signed)

NICOL DUCKWORTH & Co.

Per French steamer, *via* Marseilles.

Messrs. R. Duckworth and Co., Malta.

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Folio 28.

5, Nicholas Lane, Lombard Street,  
London, 15th June, 1850.

No. 15.  
Letter from W. Duff to R. Duckworth & Co., dated 15th June, 1850.

Messrs. R. Duckworth & Co., Malta.

THE "OSMANLI."

Gentlemen:

Having been engaged on behalf of your correspondents, Messrs. Nicol Duckworth and Co., in endeavouring to procure official copies of the proceedings in the Suit of Bottomry, lately prosecuted in the High Court of Admiralty against this vessel, pursuant to the instructions contained in your letter to those gentlemen of 1st instant; I have to inform you that I cannot find any means of attaining that object, the Registrar of the Court, and the Proctors on each side having refused my applications, and Sir John Dodson, Her Majesty's Advocate, having given his decided opinion on a case submitted to him, that the Court will not grant the required copies; and in order that you may be prepared to satisfy your Court on the subject, I have forwarded to your address by this evening's mail my Declaration made before the Lord Mayor of London, and exemplified under the City seal, and the Case submitted to Sir John Dodson with his opinion thereon, officially certified by me, and my signature legalized by the City seal.

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If your Advocate should deem it advisable to follow up the suggestion of Sir John Dodson, I presume the Commercial Court of your Island would, on a representation of the circumstances, grant a requisition to the High Court of Admiralty, setting forth that a Suit is pending in order to adjudicate, on which copies of the proceedings and evidence adduced in the last-mentioned Court are indispensable, and requesting that they may be forwarded in the usual official form.

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Hoping that the Documents I have forwarded will answer their intended purpose,

I remain, Gentlemen,

Your most obedient Servant,

WILLIAM DUFF.

RECORD OF  
PROCEEDINGS.*In the Royal  
Commercial Court.*No. 16.  
Lord Mayor's Cer-  
tificate, dated 15th  
June, 1850.

## Folio 30.

To all to whom these presents shall come, we, Thomas Farncomb, Lord Mayor, and the Aldermen of the City of London, do hereby certify that William Duff, who hath signed the annexed instrument, is a Notary and Tabellion Public, by Royal authority duly admitted and sworn, and that to all acts, instruments, and other writings by him signed and attested, full faith and credit is and ought to be given in Court and without.

In faith and testimony whereof the Seal of the office of Mayoralty of the said City of London is hereunto put and affixed. Dated in London, this fifteenth day of June, 1850.

L. S.

REYNAL.

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No. 17.  
Certificate of Wm.  
Duff, dated 15th  
June, 1850.

## Folio 31.

I, William Duff, of the City of London, Notary Public, duly admitted and sworn, do hereby certify that Sir John Dodson, Knight, Doctor of Civil Law, who hath signed the opinion hereunto annexed, is Her Majesty's Advocate, and an Advocate practising in the High Court of Admiralty of England. In witness whereof I have hereunto set my hand and seal of office, at London, this fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty.

In testimonium veritatis.

L. S.

WILLIAM DUFF, *Notary Public.*No. 18.  
Case and Opinion of  
Sir John Dodson,  
dated 13th June,  
1850.

## Folio 32.

## THE "OSMANLI."

This vessel was arrested, and proceedings taken against her, on a Bottomry Bond, in the High Court of Admiralty, by M. Petrocochino, the holder; and in about the month of January last, the bond was pronounced in part, but the decision of the Court was against it to a considerable extent.

This result having been communicated to Mr. Messina, of Malta, the obligee or taker of the bond, he has commenced proceedings in the Commercial Court at Malta against Messrs. R. Duckworth and Co. of that island, on the ground of fraud and concealment, for recovery of the amount of the bond pronounced against, amounting, with interest and expenses, to one thousand pounds.

The Defendants in such action, Messrs. R. Duckworth and Co., are advised that it is essential to their defence to said action, that official copies of the proceedings in the Admiralty Court should be immediately sent out to Malta, to be used before the Commercial Court in the action there.

It is important that the copies should be transmitted by the mail of the 15th June.

Application has been made to the Registrar of the Court for such copies, but he refused to grant same without the sanction of the Proctors engaged in the cause; and application having been made to those gentlemen, they also refuse to consent to such copies being granted. One of them having entered a Protocol of Appeal to the Queen in Council.

You are requested to advise whether the Court of Admiralty would, under the circumstances, order official copies to be granted to Messrs. R. Duckworth and Co., on an application made to it for that purpose; or whether any and what steps can be taken to obtain them.

I am of opinion that the Court of Admiralty would not, under the circumstances stated, order official copies to be granted to Messrs. Duckworth and Co.

It is possible that, upon application made in due form from the Commercial Court at Malta, the Court of Admiralty might make the requisite order.

JOHN DODSON.

Doctors' Commons, June 13th, 1850.

No. 19.  
Summons of Wm.  
Leonard for an ad-  
jourment of the  
beyond sea term,  
dated 2nd July,  
1850.

## Folio 40. (L.A.)

VICTORIA, by the grace of God Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., to Giovanni Battista Attard, Marshal of the Royal Commercial Court of the Island of Malta and its Dependencies, greeting.

By our Order, and at the instance of William Leonard, Merchant, partner in and representing the firm, Robinson Duckworth and Co., you shall summon Rosario Messina, Merchant, living at Valetta, to appear, at the usual sitting hours, before this our Court, at the sitting that will be held on Saturday next, the 6th of July, 1850, and therein show cause why, in the existence of an Appeal to Her Majesty in Privy Council, interposed by the Plaintiff's agent in London, from the Judgment of the High Court of Admiralty in the suit that therein was pending for a Bottomry Bond against the English steamer "Osmanli" (formerly commanded by Captain George Henry Corbett) and her freight, and against Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, of Liverpool, asserted mortgagees of the said vessel, and against other person or persons; and of the pendency still of the said Suit, which prevents official copies of documents and proceedings out

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of the papers of the said Suit being obtained (unless they be demanded by this our Court) without the consent of the Proctors of both parties, which consent they have refused; and in view of the absolute necessity of such official copies, to enable the Summoner in his aforesaid capacity to produce his answer and rightly to defend himself, should not the beyond sea term granted by this Court, with its decree of June 1st, 1850, to the Summoner, in his said capacity, in order to answer in the Suit instituted against him before the said Court by the Plaintiff and not yet elapsed, be prorogued by this said our Court for another period which the Court itself may deem suitable. At the same time be ordered, that in the name of the said Court, and in the way that it may deem fit and convenient, a formal demand or request be sent to the said High Court of Admiralty in England, to the effect that official

10 copies of documents and proceedings in the said Suit against the "Osmanli" and her freight, against Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, and some-

20 time other persons, be granted to the summoner in his said capacity. And be also declared, that it be not proceeded further in the said Suit against him instituted, before obtaining, or before it be possible to obtain, such copies here in Malta. And any other better provision be imparted *officio judicis*; and any previous expedient declaration with costs.

You shall also admonish the said Plaintiff that, if he should not appear on the day, place, and hour aforesaid, our Court shall proceed, in his contumacy, to give judgment, according to justice, on the demands of the said Summoner, and on the costs, on the same day of the hearing of the Case, or on any other day that the Court shall then appoint.

20 And, within twenty-four hours, you shall report to this our Court the exhibition of these presents to the said Plaintiff Messina, and the serving of the same with a true copy thereof, or any obstacle encountered in the execution.

Given at our Royal Commercial Court in the Island of Malta and its Dependencies. Witness, our trustworthy and well-beloved Dr. of Laws, Giacomo Pantaleone Bruno, Judge of our Court, this 2nd July, 1850.

G. P. BRUNO.

I do hereby certify to have served Rosario Messina, Merchant, with an official copy of the present summons, this 3rd July, 1850.

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GIO. BATTISTA ATTARD, *Marshal*.

### Folio 42.

ROYAL COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.  
Whitsunday Term.

Judge—Dr. Giacomo P. Bruno.

Consuls—John Grant, G. L. Schembri.

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Session XXXI., Saturday, July 13, 1850. 1st Case.—William Leonard, Merchant, partner in and representing the firm, Robinson Duckworth and Co., *versus* Rosario Messina, Merchant.

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The Summoner made the same demand as under No. 2, Sitting XXVIII. The Court—In consideration of the offer made by Messina, Merchant, to Leonard, Merchant, immediately to furnish him with an order to the said Messina's Proctor, in England, to give his consent that Leonard, or an agent of his, might have a copy of all or part of the papers stated in the summons—decrees, that the term of a month, already granted by its Decree of June 1st, 1850, be, by anticipation, prorogued to the 31st of next August, up to which day an answer must be given; and in default, proper steps be

60 taken by the interested party for the regular decision of the Cause. Costs reserved.

True copy.

G. G. MICALLEF, *Registrar*.

G. G. MICALLEF, *Registrar*.

### Folio 43.

IN THE ROYAL COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.

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Rosario Messina, Merchant, Plaintiff, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co., Defendant.

Answer of the said William Leonard, Merchant, in his own name, and in his said capacity. He humbly alleges, that the demands made by the adversary's libel are not only unjust and illegal, but rash and vexatious, and are not the least worth attending to.

And, in the first place, the Plaintiff's libel cannot stand at all, this Royal Court, in the present state of things, having no jurisdiction to take cognizance thereof; for the Suit formerly instituted by the said Plaintiff Messina, before the High Court of Admiralty in England, is now still pending on Appeal; and to that Suit the one now instituted before this Royal Court is so much subordinate, con-

70 sequent, and dependent, that it cannot be brought before any Judge, as long as the former Suit is pending. Therefore, the Defendant humbly prays that this Royal Court, in view of the said dependency, should declare, in the present state of things, it has no jurisdiction to judge on this Cause on the demands contained in the Plaintiff's libel, with costs.

Without prejudice to the said preliminary exception, and only in the unexpected case that this Royal Court should hold and affirm its jurisdiction, the Defendant, in his said capacity, pleads his right to demand that this Royal Court should discharge him from attending the present Suit; and

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RECORD OF PROCEEDINGS.

*In the Royal Commercial Court.*

No. 19.

Summons of Wm. Leonard, for an adjournment of the beyond sea term, dated 2nd July, 1850—

(continued).

No. 20.

Order of the Royal Commercial Court, dated 13th July, 1850, proroguing the term.

No. 21.

Answer of Wm. Leonard, presented to the said Court on 23rd September, 1850.

RECORD OF  
PROCEEDINGS.

In the Royal  
Commercial Court.

No. 21.

Answer of Wm.  
Leonard, presented  
to the said Court on  
23rd September,  
1850—  
(continued).

this for two reasons—the first of which is, the inconclusiveness of the Plaintiff's libel, as, from its premises, there follows no obligation on the Defendant, a thing absolutely necessary in a legal syllogism, to entitle one to demand that a person should be condemned to give anything: and in the unlooked-for case, that this Royal Court should not hold the opposite libel as inconclusive. The second reason is, the said afore-alleged pendency. For a subordinate and secondary Suit cannot be treated whilst the principal and primary Suit, upon the result of which the secondary one depends, is still pending. Messina never did, nor does now, nor ever can maintain, that the Defendant, either in his own name or in his other aforesaid capacity, had ever any dealing with him; but there is some fact assumed (which is neither apparent nor inferable) which has made the Defendant liable for the money advanced by Messina, if it be not repaid to him; a fact not ascertained, whilst the Suit in England is still pending on Appeal. The question whether the Defendant be or be not liable, cannot be judicially examined, before the damage for which he is assumed to be answerable has actually taken place. It is of no avail to allege, that Messina called on the Defendant to state whether he wished that the said Suit pending should be continued as his own Suit; as such an interpellation is utterly absurd, for the reason that the Suit in England never was nor is a Suit of the Defendant or of his firm; he never had, either in his own name or in any other capacity, anything to do with it, and the continuation or non-continuation thereof does not regard him at all. His meddling now in those proceedings would be equivalent to his giving in, in the present Suit. Here he only avails himself of the mere fact of the said pendency, which furnishes him with the present exception; with that Suit itself he has nothing to do. And therefore, with regard to this point, he humbly prays that this Royal Court should discharge him from attending the present Suit, with costs.

Without prejudice to the said preliminary exceptions and demands in the order, the manner, and the terms here above stated, the Defendant, descending to examine the merits of the case, observes, that, even on that point, not only the illegality and injustice, but even the rashness and vexatious character of the contrary demands and instances, appear most clearly, and come under the eyes from a simple narration of the facts passed between the Defendant and Messina, which facts are simply these:—

In July, 1849, the said Merchant, Rosario Messina, applied to the Defendant (who neither in his own name, nor in the name of his said firm, had ever had any dealing with him on the subject for which he was applied to, nor had in any other way whatever become bound towards him), and told him that a Bottomry Bond had been executed here at Malta in the month of March of the same year by the said Messina and Captain G. M. Corbett, master of the English steamer "Osmanli," on her way to Liverpool, which bond had become a subject of litigations in England, where they had refused to pay the sum advanced at Malta, on the ground that the Defendant and the said Messina had colluded and made a Bottomry Bond appear in favour of the latter for an interest which in reality did not belong to Messina, but to the Defendant. Whereupon Messina asked the Defendant to give him an Affidavit, exclusive of such a collusion, and of an understanding between them with regard to the said Bottomry Bond, as he had had nothing to do with Defendant about that bond.

The Defendant, according to his practice and the practice of others in like cases, applied for legal advice on the subject, and received the following opinion:—"That the *onus probandi* rested with him who alleged the collusion. That where, as in the case, there had been no collusion, it could never be proved. That the Affidavit asked from the Defendant being therefore useless, the demand for it could only be intended to entangle him in an affair which did not regard him at all, in order to give foundation to some claim against him in case of defeat." This was therefore advisable, that the Defendant, who had had no part whatever in the dealings, nor in any question thereto relating, should continue not to meddle, at least willingly, with affairs which regarded neither his fact nor his interest.

The Defendant having conformed to this opinion on the 6th of August of the same year, 1849, whilst Captain Corbett, with the said English steamer "Osmanli," was also at Malta; the said Merchant, Messina, served both the Defendant in his above-stated capacity of partner, and the said Captain Corbett, with a Protest before this Royal Court (annexed Document A); from which it was easy to perceive Messina's wish to plan some pretension against the Defendant, in his said capacity, though at the same time it was equally perceivable that he could find no ground to go upon.

In the first part of the said Protest, Messina related by what manner he had come to agree to execute the Bottomry Bond, a thing which did not concern in the least the Defendant, who, even according to Messina's own statement, had no part or intervention in that contract. In this part Messina admitted that he had been informed that part of the sum he advanced to Captain Corbett was required to release the "Osmanli," of which the latter was the Master, from a detention to her departure; and also, that the Bottomry Bond (contrary Document A. fol. 7), drawn up in English, and in which the thing was stated, had been faithfully translated into Italian for him by the Notary who executed it.

In the second part of the said Protest, Messina stated that he afterwards had learnt that that part of the money which was to release the ship from detention was paid to the Defendant, who had arrested her; from which circumstance, which, according both to law and to sound reason, is utterly irrelevant, Messina wished to draw the following hypothetical consequence as the measure in abstract of any possible claim of his against the Defendant, and against Captain Corbett, viz.:—that "if any thing had passed between the Captain and Leonard, in consequence of which the restitution of the sum furnished by the Petitioner be refused or delayed, they should be accountable to him:" a strange proposition, but however strange, if true, it would be resolved in favour of the Defendant—strange, for in the like way that the Defendant had nothing to do with Messina, or with his operations, dealings, and interests, Messina had nothing to do with the Defendant's operations, dealings, and interests; and, therefore, the dealings of either of them with third parties could not render them liable to each other, or give rise to any obligation in favour of the one against the other. If true, it would be resolved in favour of the Defendant, for between him and Corbett nothing had passed which could have caused the refusal or delay of returning to Messina the sum he had advanced according to his said hypothetical and abstract proposition. And, in effect, the Judgment given



against him by the English Court was grounded on no such thing, but only on the want of power in Captain Corbett to bind the "Osmanli."

And here it must be specially and particularly noticed that such a proposition, hypothetical and abstract, and also without foundation—and even if it had foundation (which is not the case) resolved in favour of the Defendant—was omitted by Messina as the measure of every possible claim he had, as it has already been said, on the 6th of August, 1849; that is to say, four months after the beginning of the lawsuit in England, which began on the 4th of April, 1849, and after all the papers in that Suit had been produced; and also, two months but five days after, Captain Corbett had given in to the Court a written account, in his own way, of the circumstances which he maintained to have taken  
10 place, which Affidavit had been produced on the 11th of June, 1849.

Yet, in the aforesaid Protest, Messina did not inform the Defendant that there was any Suit pending—did not call on him to be a party in any proceedings, although at that moment, being acquainted with all that had been alleged, he, in refutation, was sending Affidavits from Malta, one of which made by himself. He gave no other notice by the said Protest to the Defendant, except that he had heard that the said Bottomry Bond had not been paid.

In the third part of his Protest, Messina protested against the Defendant only for not having furnished him with Affidavits (which the result proved to be unnecessary), and not on the ground of anything supposed to have passed between the Defendant and Captain Corbett.

The Defendant answered, on the 8th August, 1849, with a Counter Protest, by which he  
20 declared that Messina's Protest was unreasonable and even captious, it being intended to circumvent him; and added, that he neither had had nor had anything to do with Messina, to whom he was not in any way accountable; that what had passed between Messina and Captain Corbett concerned the Defendant no more than what passed between him and others could concern Messina; that the hypothetical and abstract proposition, inserted in the said Protest with the clause "if anything," was absurd; and, finally, that he had nothing to do with any payment which Messina might or might not have received of any debt that might be owing to him, either in England or elsewhere; and therefore he counterprotested against him, as the whole better appears from the annexed copy of the said Counter Protest, marked B, to which the Defendant refers, &c.

This Counter Protest silenced Messina; and as he had instituted the Suit in England without  
30 any knowledge of the Defendant, and had carried it on without informing him of it, in the like manner he brought it to an end as he chose, as a thing which regarded only him; and the Defendant felt sure that he should never hear anything more of that affair.

But when, after several months, the English Court gave Judgment against him, then, with a new Protest, of January 30th, 1850, Messina came out with fresh pretensions against the Defendant, not only as partner in his commercial firm, but in his own name too. Annexed document, marked C.

By this new Protest, couched in obscure, ambiguous, and generic terms, Messina maintained that he was entitled to claim from the Defendant, in his own name and in his capacity of partner as above, the sum which he, Messina, had paid to Captain Corbett, and every other loss, expense and interest, he had incurred in consequence of the unfavourable Judgment given against him in the Suit in England,  
40 of which suit then, for the first time—*i. e.*, after it had been lost—he gave notice to the Defendant, saying, against the truth, that it had been pronounced against the validity of the Bottomry Bond (a thing, however, that neither did, nor does in any way, regard the Defendant), for "it had been entered for the payment of simple debts, to the detriment of privileged debts with mortgagees." He said that he had a right to make such a claim "for various reasons," "and for the circumstances which took place "here when the Bottomry Bond was agreed upon, and especially for the way in which the Petitioner "*(i. e.*, Messina) had been induced to enter into it; whilst the said Leonard, who had advised it, was "even aware of the bankruptcy of the owner"—expressions, as it has been said, vague, obscure, and generic, and, in so far as they have, in their vagueness, any meaning,—though deprived of such details as might have given them any weight,—they are mere inventions, sophisms, and subterfuges of the  
50 Plaintiff, all calculated to disguise this complete change in his Case, and to alter the facts—inventions, refuted not only by the proofs furnished by the said Messina in London—not only by Messina's first Protest of August 6th, 1849—not only by the silence he kept on the Defendant's Counter Protest of August 8th, 1849, when he knew all that had been truly and falsely alleged in the Cause—not only by the answer on the same day, 8th August, 1849, given at Malta to Messina's first Protest, and of the 6th of August by Captain Corbett, who stated that "the transactions that have taken place "between himself and Messina are most sincere and natural, as well as those between himself and "Leonard, the Petitioner having done nothing but what the laws allow, and what was essentially "required at the time in the interest of the ship 'Osmanli'" (thus contradicting much of what he had "stated in London), and therefore styled the said Messina's first Protest as irregular, whimsical, and  
60 "vexatious, but refuted also by the allegations and by the sworn Affidavit of Messina himself in the "lawsuit in England."

Messina ended his Protest by calling on the Defendant to state his intention, as if the Suit in England had been his, whether he wished that the Appeal, interposed from the first Judgment, should be carried on in his interest.

To this second Protest of Messina, the Defendant, by his Counter Protest of the 8th of February (annexed document, marked D), gave a laconic but suitable answer.

Two months after this second Protest Messina produced his present libel, which may be called a real master-piece of forensic proceedings; for, notwithstanding the long time taken in framing it, it is impossible to perceive the grounds of the demands therein advanced, as it has already been shown  
70 by the preliminary exception of inconclusiveness against the said libel.

In the said libel the Plaintiff states—1st, That he advanced money to Captain Corbett, on a Bottomry Bond, for the necessities and voyages of the Osmanli. 2nd, That no sooner had he agreed to the Bottomry loan than he called on the Notary, Stevens, where he found prepared a form of Bond with names in blank. 3rd, That at that moment he was informed (though in his Protest of the 6th of August he says he was informed of it afterwards), that the money he had to advance was to be chiefly applied to release the vessel from a Warrant of Detention issued at the instance of the said firm

RECORD OF PROCEEDINGS.

*In the Royal Commercial Court.*

No. 21.

Answer of Wm. Leonard, presented to the said Court on 23rd September, 1850—

(continued).

RECORD OF  
PROCEEDINGS.*In the Royal  
Commercial Court.*

No. 21.

Answer of Wm.  
Leonard, presented  
to the said Court on  
23rd September,  
1850—  
(continued).

of the Defendant. 4th, That, as he did not know English, he had no conversation with Captain Corbett (but, in his protest of the 6th August, he expressly admitted, and the admission is implied in his present petition, that the Bottomry Bond was translated to him into Italian); but the ordinary nature of the operation, and the frequency of such cases of detention, prevented his having any doubt. So far, it is impossible, even with a microscopic lens, to discover the smallest grounds for an action against the Defendant on the part of the Plaintiff, who evidently has proceeded with his eyes wide open.

Messina goes on to say, in the 5th place, that the Bottomry loan was managed by the agents and friends of the Defendant, which is utterly untrue; nor does he stop there, but adds that, on the same day of the Bond, the Defendant himself had, of his own accord, mentioned the wants of the vessel and induced him to advance the money. 10

Now, even if Messina were able to prove, by a thousand witnesses, his last statement, he could not be allowed to do it; such a statement being entirely excluded by the Affidavit on oath of the merchant Messina himself, before the High Court of Admiralty, in England, which is on the Records of the said High Court, and of which a suitable Copy will be produced to this Court. For no one is allowed to improve his position (this is said, assuming for a moment that he would gain anything by it) by producing evidence to prove that he had committed a delinquency, as it would be his having deposed what was not true before the said High Court. But, even if such an allegation were admissible, every one would see how absurd it is that the Defendant, who did not wish to meddle at all with that transaction, should, of his own accord, have informed Messina of the wants of the ship and induced him to advance the money. All these things are alleged for mere superabundance; for even if the 20 Defendant, instead of others, had arranged the whole transaction for the Captain, that would not alter the question, as he neither had *nor has* any doubt either about his own right to arrest the vessel, or the right of the Captain to bind her, or the right that Messina acquired by such a transaction.

All the other allegations contained in the Plaintiff's libel, even supposing them for a moment all proved, are alike inconclusive to substantiate any claim against the Defendant. And, in effect, the 7th, *i. e.*, the payment of the money and the release of the vessel, was made to Corbett, with Corbett, for Corbett, and not for the Defendant.

The 8th, with regard to the exceptions alleged in London, does not concern the Defendant at all.

The 9th, relative to the Suit carried on in that city in the way that Messina chose, does not even regard the Defendant, who had no part in or meddling with it. 30

The 10th, which turns on the Defendant having been in correspondence with the owners of the vessel, his having let her depart from Malta for the Levant and afterwards detained her on her return, proves nothing against the Defendant, and only starts inapt questions. Without correspondence, how could the Defendant have been a creditor? It is in the free option of the creditor to take steps for his payment. The nature of his claim was necessarily stated in the Affidavit upon which the Warrant was issued. The issue of the Warrant showed that the Defendant, a partner as aforesaid, wished to be paid.

The 11th, that the Defendant acted so in consequence of the news he received of the bankruptcy of the owners of the vessel, is an exception which in any possible case whatever would always be impertinent. If there had been a transfer to Messina of the sums owed to the Defendant perhaps, 40 and only perhaps, such an hypothetical fact might, at least in some case, have had some influence. But the case here is of two persons who rely on the security of the vessel; first, the Defendant by his arrest, and afterwards Messina, by his Bottomry Bond.

The Defendant relied on his arrest, and on the issue of his Suit against the vessel at Malta; Messina relied on his disbursement, and on the validity in England of his Bottomry Bond. No transaction or security whatever in favour, either of the one or the other, took place between Messina and Leonard. Had the Bottomry Bond been upheld, and the Defendant, in his said names, eventually compelled to return the money he had received, he could not have gone against Messina. In the like manner, the validity of the Bottomry Bond having been excluded, Messina cannot go against the Defendant, for between them there is not, nor ever was, any transaction or obligation of any kind; 50 and on the contrary it is to be noticed, that it was not in consequence of any step or omission of the Defendant, partner as aforesaid, nor of the nature of his claim, that the Suit was decided in first instance against Messina, but because that Judge held that the Captain detained had no power validly to bind the vessel, except for the necessaries for that one voyage of return,—a result that no one could have dreamt of, neither the Defendant who arrested the vessel nor the Captain who mortgaged her, nor Messina, who advanced the money to the Captain,—a result not dreamt of at Malta, either by the Defendant's advocate, or by the advocate of the Captain, or by Messina's advocate, or even by the English lawyers who defended the Suit for him in England; for according to all appearances, if not to certainty, as far as there can be certainty in lawsuits, the Judgment would be reversed on appeal by the addition of proofs that were at first omitted. Nor could the bankruptcy of the owners, if all of 60 them had failed, have been any obstacle to it; for the Suit was not carried on against them, and there never appeared any one who ought to have represented their concern if the bankruptcy had been verified and continued.

But the fact is, that the Defendant's dealings had been with a Company, and with their Masters and vessels, and that only one of the partners, the merchant Mongredien, became bankrupt. And although neither the nature of the claim of the Defendant, a partner as aforesaid, nor any other things, are subjects that Messina is entitled to discuss with the said Defendant, who had no dealings with him, and was in no way bound towards him; yet, from the aforesaid fact, it is evident how indisputable the debt in favour of the Defendant was, however the adversary may choose to call it an irrecoverable debt.

It is clear from the Plaintiff's libel, that he, Messina himself, is convinced that there is nothing in all he has so far alleged which may give him the smallest grounds against the Defendant, either in his own name or as partner in and representing his firm. It is, on the contrary, a most simple question, *i. e.*, of a Master, who, finding the departure of his vessel arrested in a half way port in the course of her voyage by a competent authority, at the instance of a true and real creditor, in order to release her, and thus enable her to continue her journey with her cargo to the port of her destination, instead 70

of her being detained and finally sold, after taking advice from an able counsel, applies for and obtains from a third person on a Bottomry Bond a sum with which he pays off the creditor and provides the vessel with necessaries for the prosecution of her voyage, at the end of which, a Court of First Instance pronounces against the validity of the said Bottomry Bond, for want of powers in the Captain to contract it, a thing which was not dreamt and could not be dreamt of by any one; and if any one could have dreamt of it, the lender on a Bottomry Bond might as well have done so.

Messina, therefore, being thus convinced at the end of his Petition whilst pretending to sum up, together with the declarations he demands, seems to have intended to institute an *actio doli* against the Defendant, which goes on to prove his conviction that he had no other action, for the *actio doli* is 10 only allowed when there is no other action open.

But how can an *actio doli* be supported, when not only there was not, but there could not have been, any fraud? for every one knows that fraud can never be supposed, but must be proved in the most conclusive manner; and it is also a rule, that any construction must be preferred which excludes it.

As for the Plaintiff's statement of having informed the Defendant of the pendency in the Court of First Instance in England, it is a mere invention, contrary to truth, as it was shown above.

The Defendant, therefore, for these and for other reasons, which if necessary will be alleged when the case comes to a hearing, without prejudice to his aforesaid preliminary exceptions and instances, humbly prays—both in his own name, in which character he had nothing to do with the affair in 20 question, and as partner in and representing his firm—that all the demands contained in the Petition of the said Rosario Messina, Merchant, be rejected and excluded, and consequently the Defendant, in both the names he has been summoned, discharged from them, with every necessary previous declaration and every necessary provision, *officio judicis*, with costs; and thus he prays that justice be administered, in this or in any other better way allowed by law.

This 23rd September, 1850.

Presented by the said Legal Procurator, with the annexed Documents, marked from letter 30 A to D.

I do hereby certify to have served Rosario Messina, Merchant, with an official copy of the present Answer. This 5th October, 1850.

Signed before me.

J. GRIFFITH, *Advocate.*

WILLIAM J. STEVENS, *Notary,*  
*Legal Procurator.*

G. BATTISTA ATTARD, *Marshal.*

G. G. MICALLEF, *Registrar.*

RECORD OF  
PROCEEDINGS.  
*In the Royal  
Commercial Court.*

No. 21.  
Answer of Wm.  
Leonard, presented  
to the said Court on  
23rd November,  
1850—  
(continued).

40 Folio 61. Document A.

EXTRACT FROM THE VOLUME OF PROTESTS ENTERED ON THE REGISTRY OF THE ROYAL COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.

*In the Royal Commercial Court of Malta.*

Rosario Messina, Merchant, *versus* Captain George H. Corbett, of the English steamer "Osmani," and William Leonard, Merchant, partner in and representing the firm, Robinson Duckworth and Co.

The Protest of the said Messina, humbly sheweth, that on the 8th March last, whilst the said 50 steamer was in this port, an agent of the said Captain, called Giuseppe Mauno, proposed to him to advance to the said Captain a sum of money on Bottomry of the aforesaid vessel for her necessaries.

That he knew neither the master nor the owners of the vessel, nor was then informed of the nature of her wants; but he undertook to advance what was required, in consideration of the vessel, and not of the said persons, who were unknown to him.

That on the following day, *i. e.* the 9th March aforesaid, he was informed that the sum required was £850, of which part was intended to release the vessel from a Warrant of Detention, and the rest to provide her with fuel and other necessaries for her voyage from Malta to Liverpool, and that without that sum the vessel would not have been able to continue her voyage, to the greatest injury of the said vessel and her cargo.

60 That on these grounds, which by the laws of this Island, as well as by common jurisprudence, are acknowledged as just and legitimate, for the validity of a Bottomry Bond with all its privileges, he, on the said 9th of March, actually advanced to the said Captain Corbett the said £850 by a cheque on the Malta Bank, No. 962, and had the corresponding Bottomry Bond with the said Captain drawn up by the Notary, William John Stevens, which bond being in English, with which he is not acquainted, was translated for him into Italian by the Notary at the moment of its execution, and in Captain Corbett's presence.

That according to the said bond, the said sum, with the interest thereupon agreed, was to be repaid to Messina and his agents four days after the safe arrival of the vessel at Liverpool; but he heard, with great surprise, that the vessel arrived there and the payment did not take place.

70 That he has afterwards learned, however, that that part of the said sum which was to release the vessel from the arrest, was paid to the said Leonard, *nomine*, &c., who for certain debts owed to him, had arrested the vessel; therefore, had any transaction taken place between the said Corbett and the said Leonard, in consequence of which the repayment of the sum advanced by the Plaintiff was to be refused or delayed, they would be liable towards him.

That lately he asked the said Leonard to give him a sworn Affidavit of the truth of all the circumstances of this affair, whether he, Leonard, had any interest in the said Bottomry, and also

No. 22.  
DOCUMENT A.  
The Protest of  
Rosario Messina,  
dated 6th August,  
1849.

RECORD OF  
PROCEEDINGS.  
*In the Royal  
Commercial Court.*

No. 22.  
DOCUMENT A.  
The Protest of  
Rosario Messina,  
dated 6th August,  
1849—  
(continued).

whether Leonard himself, or Captain Corbett, or other persons in his presence had ever mentioned to him the existence of other mortgages or loans on the vessel; but the said Leonard, for absurd, unjust, and capricious motives, has given him as yet no Affidavit whatever, although he promised it several weeks ago through the Notary, William John Stevens.

He therefore, after giving formal notice of the aforesaid facts to the said Captain Corbett and William Leonard, *nomine*, &c., and entering a protest against them for whatsoever damages, expenses, and loss he may in any way incur in consequence of Corbett and Leonard's fact, and of their unjust, illegal, and capricious proceeding, by the present Protest, he pronounces them to be in fraud, fault, and *culpa lata, levis et etiam levissima*, in this and any other better way allowed by law.

A. DINGLI, *Advocate*. 10  
A. MICALLEF, *Legal Procurator*.

6th August, 1849. Presented by the said Legal Procurator.

I do hereby certify to have served, by the Usher Zuelo, Captain George H. Corbett and William Leonard, Merchant, with an official copy of the present Protest. This 6th of August, 1849.

G. B. ATTARD, *Marshal*.

True copy. G. G. MICALLEF, *Registrar*.

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### Folio 64. Document B.

EXTRACT FROM THE VOLUME OF PROTESTS ENTERED ON THE REGISTRY OF THE ROYAL  
COMMERCIAL COURT OF MALTA.

*In the Royal Commercial Court of Malta.*

Rosario Messina, Merchant, *versus* Captain George H. Corbett, of the English steamer  
"Osmanli," and William Leonard, Merchant, partner in and representing the firm,  
Robinson Duckworth & Co. 30

Counter Protest of the said merchant, Leonard, in the aforesaid name. He respectfully states that the opposite Protest is not only illegal and erroneously directed against him in his said capacity, but is also unreasonable and deprived of common sense, and what is more, fraudulent, as it is intended to wrest from him some expression which might afford a pretext to move a Suit against him; for he never had, either in his said capacity or in his own name, anything to do with Messina, in whose favour he never entered into any obligation acknowledged by law. Therefore Messina's inventive imagination and warm fancy can only conceive and comprehend what claim he may have against him.

He does not in the least concern himself about what may have taken place between the merchant Messina and Captain Corbett, as it does not regard him at all, for he has nothing to do with other people's dealings, whatever they be; and, in like manner, Messina has nothing to do with his 40 (Leonard's) transactions whatsoever, which the said Messina so absurdly chose hypothetically and in abstract to discuss by his Protest with the clause "if any."

In conclusion, he, in his said capacity, has nothing to do with any payment that the said merchant, Messina, may or may not receive in England or in any other part of the world, and does not intend to meddle with affairs which do not concern him in the least. If Messina thinks he has any legal right to compel him in his said capacity to take part in the affair, let him take steps to assert it as by law.

He therefore, in his said capacity, although he considers the contrary Protest not worthy of any answer, yet, in order that his silence may not be construed against him, by this and any other like act, solemnly counter-protests against the irregularity, illegality, invalidity, and utter want of foundation of the contrary Protest, and any other thing against which the law allows him to protest; and does 50 solemnly counter-protest against the said merchant, Rosario Messina; and, without prejudicing his right to compel the said Messina to fix a legal term within which he should judicially state any imaginary claim of his, he pronounces him to be in fraud, delay, and *culpa lata, levis et etiam levissima*, by this and by any other better way allowed by law.

J. GRIFFITH, *Advocate*.

Notary, WILLIAM JOHN STEVENS, *Legal Procurator*.

Presented by the Legal Procurator on the 8th August, 1849.

I do hereby certify to have served Rosario Messina, Merchant, with an official copy of the present Counter Protest, this 9th August, 1849. 60

G. B. ATTARD, *Marshal*.

True copy. G. G. MICALLEF, *Registrar*.

### Folio 67. Document C.

EXTRACT FROM THE VOLUME OF PROTESTS ENTERED ON THE REGISTRY OF THE ROYAL  
COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.

*In the Royal Commercial Court of Malta.*

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name and as partner in  
and representing the firm, Robinson Duckworth and Co. 70

The Protest of the said Messina humbly showeth, that he had advanced to Captain Corbett, of the English steamer "Osmanli," a sum of £850 on Bottomry of the said steamer, which sum the said

No. 24.  
DOCUMENT C.  
The Protest of  
Rosario Messina,  
dated 30th January,  
1850.

Corbett instantly handed over to the said Leonard, *nomine*, &c., in payment of debts which the latter maintained were due to him by the owner of the steamer.

That he was obliged to carry on a Suit in London, for the payment of the said loan, with other creditors to whom the steamer had previously been mortgaged; in which Suit the Court of Admiralty pronounced against the validity of the Bottomry Bond, on the ground of its being entered in for the payment of simple debts, to the prejudice of privileged or mortgaged debts.

That, for several reasons, for what took place here when that Bottomry was executed, and specially for the way in which he had been induced to enter into it, whilst the said Leonard, who had advised it, knew even the bankruptcy of the owner, he is justly entitled to call on the said Leonard, *nomine*, &c., for the payment of the sum he advanced, its interests, and all other losses of which he must be indemnified by Leonard—deducting £150, for which sum alone the said Judgment had held the Bottomry Bond to be valid.

That in order that a supposed omission should not entail upon him any damages, he has already appealed from that Judgment; but, considering the heavy expenses that will be incurred, he does not deem right to prosecute it without the approval of the said Leonard, *nomine*, &c., to whom the affair belongs.

He, therefore, after giving formal notice of the aforesaid facts to the said Leonard, *nomine*, &c.—in order to avoid that Leonard might ever justly complain of the nonpursuance of the said Appeal, and found upon it any exception—by the present act, calls on him to state whether it be his will that the said Appeal should be pursued at his risk; and declares that he, Messina, relying upon his claims against the said Leonard, *nomine*, &c., does not care to prosecute it. At the same time, he protests against the said Leonard, *nomine*, &c., for all damages, expenses, and losses arising from the above-stated facts, and for anything else for which he is entitled to protest, and reserves to himself to proceed against the said Leonard as by law, if the latter does not willingly reimburse him the said sum, and the expenses and damages, and expenses incurred, and to that effect pronounces him to be in fraud, delay, and *culpa lata, levis et etiam levissima*, by this and by any other better way which the laws allow.

DR. A. DINGLI, *Advocate*.

P. SCIORTINO, *Advocate*.

DR. COTUGNO, *Legal Procurator*.

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Presented by the said Legal Procurator on the 30th January, 1850.

I do hereby certify to have served William Leonard, Merchant, with an official copy of the present Protest, this 1st February, 1850.

True copy.

G. B. ATTARD, *Marshal*.

G. G. MICALLEF, *Registrar*.

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### Folio 69. Document D.

EXTRACT FROM THE VOLUME OF PROTESTS ENTERED ON THE REGISTRY OF THE ROYAL COMMERCIAL COURT OF MALTA.

*In the Royal Commercial Court of Malta.*

Rosario Messina, Merchant, *versus* William Leonard, Merchant, both in his own name and as partner in and representing the firm, R. Duckworth and Co.

Counter Protest of the said merchant, Leonard, *nomine*, &c.

He humbly sheweth, that if, after his Counter Protest presented in this Royal Court on the 9th of August, 1849, in answer to the previous Protest of the said merchant, Messina, of the 6th said month, he now again answers to the unjust pretensions of the latter, in the new form in which they are stated in the Protest by the said Messina, just presented in this Court, on the 30th of January last, he does so not because he sees any necessity for doing it, but merely for superabundance, in order that it should never be supposed that, by his silence, he gave any countenance to the aforesaid unfounded claims.

He has already alleged all he had to allege against such pretensions, by his said Counter Protest, which he now fully refers to, and fully and in every respect ratifies; but he cannot, at present, abstain from noticing how great is Messina's boldness, who, after having up to this time maintained the validity of the transaction between himself and Captain Corbett, after having protested against the latter, after having asked an Affidavit, and even after having carried on a Suit in England, now chooses to shift his ground, and, because the English law seems to have gone against him, claim that he, Leonard, should be answerable for the result.

He, *nomine*, &c., has nothing to do either with the transaction between the merchant Messina and Captain Corbett, or with the Suit which Messina asserts to have carried on in England. The supposed facts, on which Messina intends to base his claims, being mere inventions, cannot afford any foundation.

Such supposed facts are not only unjust but absurd. He, Leonard, had arrested here at Malta a ship of his debtor, and, if Messina chose to advance to the Captain the means of releasing her, it was Messina's duty to know with whom and how he was dealing; for neither he, Leonard, has anything to do with Messina's dealings, nor Messina with his; and much less has he, Leonard, *nomine*, &c., anything to do with the Suits that Messina may or may not have in England, or with the result or continuation thereof—being things which do not regard him at all, either for the profit or loss that may arise from them, and in which he had had no part whatever.

He, therefore, by this similar act, has counter-protested, and does counter-protest, against the irregularity, illegality, invalidity, and utter want of foundation even of this second and different con-

RECORD OF PROCEEDINGS.

*In the Royal Commercial Court.*

No. 24.

DOCUMENT C.

The Protest of Rosario Messina, dated 30th January, 1850—

(continued).

No. 25.

DOCUMENT D.

The Counter Protest of Wm. Leonard dated 8th February, 1850.

## RECORD OF PROCEEDINGS.

In the Royal Commercial Court.

No. 25.

## DOCUMENT D.

The Counter Protest of Wm. Leonard, dated 8th February, 1850—  
(continued).

trary Protest, and any other thing against which he is by law allowed to counter-protest against the said Rosario Messina, Merchant, whom he by this, and by any other way granted by law, pronounces to be in fraud, delay, and *culpa lata, levis et etiam levissima*.

J. GRIFFITH, *Advocate*.NOTARY WILLIAM-JOHN STEVENS, *Legal Procurator*.

Presented on the 8th February, 1850, by the said Legal Procurator.

I do hereby certify to have served Rosario Messina, Merchant, with an official copy of the present Counter Protest, this 9th February, 1850. 10

G. B. ATTARD, *Marshal*.

True copy.

G. G. MICALLEF, *Registrar*.

## Folio 72.

August 31st, 1850. Presented by the Procurator, No. 307. (L. A.)

No. 26.  
Summons of Wm. Leonard for a further beyond sea term, dated 20th September, 1850.

VICTORIA, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., &c., to G. B. Attard, Marshal of the Royal Commercial Court of the Island of Malta and its Dependencies, greeting. 20

By our Order, and at the instance of William Leonard, Merchant, as partner in and representing the firm, Robinson Duckworth and Co., you shall summon Rosario Messina, Merchant, living in the town of Valletta, to appear, at the usual sitting hours, before this our Court, at the sitting that will be held on Tuesday next, the 24th September, 1850, and there show cause why—considering the late arrival of the documents, for the obtention of which from England a beyond sea term was granted by a Decree of this our Court of the 1st of June, 1850, and was afterwards prorogued by another Decree of the same our Court of the 13th July, 1850, till the end of the present month of August, and for other considerations to be stated when the Case is heard—and after the previous restitution *in integrum* of the Summoner against the said last sentence, in so far as it declared the said prorogation peremptory, should not the said term be prorogued for another period, which this our Court may deem suitable, or, at the worst, considering the circumstances of the case, should not a new term be granted, in order to produce his Answer, with costs. 30

You shall also monish the said Messina, that even if, on the day, place, and hour aforesaid, he should not appear, the said our Court shall, in his contumacy, proceed to impart judgment according to justice, on the demands of the said Summoner, even with respect to costs, on the same day of the hearing of the Case, or on any other following day that the Court shall at the time appoint; and of the exhibition of these presents, and the serving of the said summoned party, or any one for him, with a true copy thereof, or of any obstacle encountered in the execution, you shall report to the said our Court within 24 hours. 40

Given at our Royal Commercial Court of the Island of Malta and its Dependencies. Witness, our trustworthy and well-beloved Doctor of Laws, Giacomo Pantaleone Bruno, Judge of our Court, this 20th September, 1850.

G. BRUNO.

G. GRIFFITH, *Advocate*.NOTARY W. J. STEVENS, *Legal Procurator*. 50

I do hereby certify to have served Rosario Messina, Merchant, with an official copy of the present summons, by means of Vincenzo Catruffo, Usher. This 20th September, 1850.

G. B. ATTARD, *Marshal*.

## Folio 73. (On the back.)

No. 27.  
Order of the Royal Commercial Court, dated 24th September, 1850.

EXTRACT FROM THE VOLUME OF JUDGMENTS ENTERED ON THE REGISTRY OF THE ROYAL COMMERCIAL COURT OF MALTA AND ITS DEPENDENCIES. 60

Victoria Term.

*Royal Commercial Court of the Island of Malta and its Dependencies.*

Judge—Dr. Giacomo P. Bruno.

Consuls—Francesco Saverio Farrugia, Salv. Giuseppe Vella.

Sitting V., Tuesday, 24th September, 1850. XII. Case.—William Leonard, Merchant, *nomine*, &c., *versus* Rosario Messina, Merchant. The present Case was withdrawn by the Advocate Griffith on behalf of his client, having already presented his Answer. 70

G. G. MICALLEF, *Registrar*.

True copy.

G. G. MICALLEF, *Registrar*.

## Folio 74.

IN THE ROYAL COMMERCIAL COURT OF MALTA.

Rosario Messina, Merchant, Plaintiff, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, Robinson Duckworth and Co., Defendant.*Messina's Reply.*

He respectfully sheweth, that if the present Suit needed any extrinsecal conjectures to be decided  
10 in favour of the Plaintiff, a great many of them could be found in the distortions of the facts and of  
the law with which the contrary answer teems.

The Defendant places in the front rank a series of most inapt propositions, called by him  
preliminary exceptions, which are erroneous in logic, in law, and in fact, and only show his own  
convincement of his wrong. He objects—

1st. Pendency before other tribunals.

2nd. Inconclusiveness of the Plaintiff's libel.

3rd. Dependence of the present Suit upon another Suit, which is supposed to be pending  
elsewhere.

However tiresome it may be to enter into such most absurd cavils, it is necessary however to  
20 refute them before entering on the merits, and the more so, as they show the weakness of the  
Defendant's reasons.

PENDENCY.—This allegation, though apparently a distinct exception, is the same as that given  
in the 3rd place, and called dependence of the present Suit upon another Suit still supposed to be  
pending before other tribunals. In both exceptions, the Defendant relies exclusively on that  
dependence. It is not a question, then, to see whether this identical Suit between the same parties  
and on the same subject is being carried on elsewhere, which is generally understood by pendency,  
but only whether there be pending another Suit to which the present Suit is subordinate. But this  
other Suit elsewhere pending, on which the Defendant places so much reliance, exists only in his own  
imagination. There was once a Suit pending before the Court of Admiralty in England, at the  
30 instance of the Plaintiff, for the payment of a Bottomry Bond, which has given rise to the present  
Suit; but that Suit was decided and definitely ended for the Plaintiff, who, since the 30th of last  
January (more than eight months ago), formerly declared by a Protest against the Defendant, that he  
did not intend to carry on, in his own interest, the Appeal from the adverse judgment, but would do  
so only if the Defendant chose to have it carried on in his interest (Document A).

To that Protest the Defendant answered on the 8th February last, by a jumble of big words  
without any meaning, in a Counter Protest, which was very difficult to understand in all its parts, but  
which clearly explained in some passages that he did not care about that Appeal—Document B.  
And, indeed, he said, "He (Leonard), *nomine*, &c., has nothing to do either with the transaction between  
"the merchant Messina and Captain Corbett, or with the Suit, which Messina asserts to have carried on  
40 "in England:" and, a little further on—"much less has he anything to do with the Suits that Messina  
"may or may not have in England, or with the result or continuation thereof, being things that do not  
"regard him at all." Neither, then, for the Plaintiff nor for the Defendant, is there any longer the Suit  
to which the present Suit is supposed to be subordinate; and thus is this first exception removed.

On reading the said Counter Protest, one wonders at the embarrassment in which the Defendant  
seems now to be. In that Counter Protest, he boldly and boastfully fully ratified a Counter Protest of  
the 8th of August, 1849, by which he called on the Plaintiff to bring forward his demands, and  
threatened a Suit to compel him to bring them, within a certain period, before this Royal Court. In  
the present answer, being quite afraid, he endeavours in every way to remove, even for a short time,  
that same Suit which at first he courted.

INCONCLUSIVENESS OF THE PETITION.—The Plaintiff stated in his Petition that he had been  
circumvented by the Defendant, when the latter, with a view to get £850 in payment of a lost debt,  
suggested to Captain Corbett to borrow money on Bottomry, concealed the debtor's bankruptcy, and  
caused the Plaintiff to advance that sum. After this proposition, omitting the minor one containing  
the law applicable to such a case, he stated his demand. Perhaps, in order that some persons should  
understand an argument, it is necessary always to express the minor of the syllogism, but the Plaintiff  
thought he might follow the daily legal practice without being obliged to conform to the Defendant's  
taste. This is all the inconclusiveness of the Petition; and on such trifles the Defendant hopes to  
stand the Suit.

DEPENDENCY.—This 3rd proposition, as it has been stated, is only a tiresome repetition of the  
60 1st; and, therefore, there is nothing to add to what has already been observed on the 1st.

On the merits—omitting all that the Defendant has uselessly accumulated on the wisdom of the  
advice received, on the lessons that ought to have been sent to the advocates and judges of the  
Admiralty Court in England, on the suspicions he had formed, on the alarm that the interpellation of  
the Plaintiff about the course of the Suit in England gave him,—his exceptions seem to be two:—  
1st. Want of foundation in fact, for non-existence of agreement or binding transaction. 2nd. Want of  
making him a party to the Suit pending in England.

On the 1st exception on the merits, the Plaintiff admits that there never was any transaction  
between him and the Defendant, but maintains that some binding facts took place which make the  
latter liable by an *actio doli et in factum*. And the Defendant, who in a part of his Answer said  
70 that those facts were not stated in the libel, in another part of the Answer, admits to have found  
them, but dares flatly to deny them.

Not being possible singly to examine the propositions of the Answer, as they are thrown  
together through a heap of extracts from the previous Protests, the Plaintiff deems expedient to state  
in detail some facts in which the Defendant took a part when the web was being prepared in which  
any one who *bonâ fide* advanced money on the said Bottomry Bond was to be entangled. These  
facts are narrated upon oath by Captain Corbett, in a solemn Affidavit before the Admiralty Court in

RECORD OF  
PROCEEDINGS.*In the Royal  
Commercial Court.*No. 28.  
Reply of Rosario  
Messina, dated 2nd  
November, 1850.

RECORD OF  
PROCEEDINGS.

In the Royal  
Commercial Court.

No. 28.

Reply of Rosario  
Messina, dated 2nd  
November, 1850—  
(continued).

England, a copy of which is hereto annexed; especially as the Defendant referred to it in his Answer, as hereafter will be said (Document C).

From that Affidavit it appears—that Captain Corbett, on arriving at Malta with the “Osmanli” from Constantinople, on her way to Liverpool, on the 7th March, 1849, about 8 o'clock A.M., wrote a note to the Defendant, in which he told him of the bankruptcy of the owner of the steamer, Augustus Mongredien, and asked from him coals and other necessaries for the voyage, to which the Defendant answered that within two hours he would attend to him.

That instead of provisions, about 10 o'clock A.M., the Captain saw appear a Warrant of Arrest, issued at the instance of the said Defendant for debts against Mongredien, and soon afterwards he was informed by the Defendant himself that the debt was against the Steam Company for expenses 10 incurred for the “Osmanli” and other vessels of the said Company on previous voyages. After long debates with the Defendant and his counsel on the validity of that warrant for those causes, it was at first proposed to draw up a Bottomry Bond in favour of the Defendant; but afterwards, to give a better colour to the transaction, it was agreed to have the Bottomry Bond with a third party, with whose money the Defendant should be paid. The minute of the bond was on the occasion ordered to be prepared with names in blank.

There are many things to notice in the aforesaid Affidavit of Captain Corbett; but there was, besides, another fact of the highest import. The steamer “Osmanli,” since the 12th August, 1848, had been mortgaged by her owner, Mongredien, to the firm Arnold, Leete, Roscoe & Co., of Liverpool, in whose favour her certificate of registry had been, according to the English law, duly 20 endorsed, as it appears from the annexed Documents (D, E). The steamer thus mortgaged was no longer subject to the simple debt owed to the Defendant, and yet in the bond it was stated in generic terms that it was to pay a debt against the owner of the “Osmanli,” without stating who this owner was.

The Plaintiff, *bonâ fide* believing that it was an honest transaction, and trusting particularly in the apparent openness with which a few hours before the contract the Defendant himself had spoken to him of the necessity in which Captain Corbett was placed of giving that Bottomry Bond, and of his delicate position as the consignee, which prevented his advancing himself what was required, was not careful to take advice from advocates or experienced persons, went on the appointed hour to the notary's office, had a literal translation of the bond, which he found already prepared in English; and 30 although he was surprised to hear that the money required was to be handed over to the Defendant, who had not told him a word about it, yet he did not suspect any fraud, and paid the money in the supposition that it was to go in extinction of the debts of the steamer or of her owners.

These features of the Case are in themselves too eloquent to need any comment; but it is well shortly to notice two points:—1st. That the Captain gave as security to the Plaintiff an object already for 62/64 given as security to others under the peculiar English form of “mortgage,” in order to pay the Defendant a debt, which through the bankruptcy of the debtor, could not be recovered. 2nd. That these facts were concealed from the Plaintiff, though all or some of them were known by the Defendant, who profited by them to the damage of the Plaintiff.

The aforesaid facts give rise to most important consequences. The Captain, by mortgaging the 40 steamer a second time to pay old simple debts which did not affect the first mortgagee, committed a *stellionato* (mortgaging the same thing twice, without stating the pre-existent mortgage), and both he, and all those who gained by that transaction, became answerable for the repayment or the restoration of damages. And the Defendant, who fraudulently got paid of a lost debt by representing it as good, by suggesting to the Captain to borrow money on bottomry, and by concealing the truth of the bankruptcy of the debtor from the Plaintiff, committed also a distinct machination, for which he was besides fully accountable.

The liability incurred by the Defendant, on the two aforesaid grounds, consists in the obligation to pay or return the money advanced by the Plaintiff in Malta, with its interest, and with the expenses incurred when the money was advanced, as well as subsequently in England, which disbursements 50 were entailed on the Plaintiff by the machination planned in favour of the Defendant, by the Defendant himself and Captain Corbett. For, without the previous mortgage of the vessel, the Plaintiff's claim would have been admitted with preference, either as bottomry or as debt, with a special mortgage; and, without Augustus Mongredien's bankruptcy, the Plaintiff would also have received from him his money, for the reason, at least, that it had been advanced to pay his debts; but under those circumstances its recovery was impossible, and those identical circumstances, whilst they were well known to the Defendant and Captain Corbett, were fraudulently concealed from the Plaintiff, who, had he known them, would not certainly have advanced to them that sum.

It is useless to observe, that the Defendant's only motive in obliging the Captain to borrow money on bottomry for the payment of the debt owed to the Defendant himself, was his wish to 60 restore the loss of his claim by Mongredien's bankruptcy. To be convinced of it, it is enough to consider that the Defendant never had before taken any step to realize those debts, though they had originated several years before, and Mongredien's steamers, “Osmanli,” “Aram,” and “Levantine,” had in the interval touched at this island every month (as it appears from the annexed separate Document F), and though the Defendant was partner of a firm established in the city of Liverpool, where Mongredien dwelt. The hurried and violent way in which he acted in March, 1849, by arresting the steamer which was consigned to him, and had entered the port on her voyage, could be prompted only by the news of the bankruptcy. He then resorted to artifice. No one in Malta knew even the name of the owner of the vessel. It was, therefore, enough not to divulge that 70 unfortunate event to entrap a capitalist to sacrifice himself, and relieve the Defendant from difficulty, by paying the debts owed to him. This was not the prudence and vigilance commended by the laws; it was planning a plot against a man in good faith. The Defendant was not trying, by foresight and promptitude, to remove an anticipated loss, but was endeavouring, by artifice and dissembling, to cast a debt which could no more be realized, artfully to transfer a loss already incurred, from his shoulders to the shoulders of another person in good faith, to gain by a third party's loss.

Now it is understood what in August, 1849, was a profound mystery, *i. e.* the motive that made



the Defendant refuse an Affidavit which the Plaintiff, at the suggestion of his Counsel in England, demanded from him with regard to the sincerity and good faith of the transaction. That Affidavit ought to have been made upon oath before a Delegate and Judge of the Admiralty Court at Malta; and the Defendant—fully remembering how he had compelled Captain Corbett to borrow money on bottomry in order to hand it over to him in payment of a bankrupt debt, with full knowledge of the bankruptcy and in direct evasion of the law—did not venture to make it. The consciousness of his own wrong was the great cause of that blunt refusal given, after having long flattered the Plaintiff, and after having had many drafts prepared. The heap of unintelligible phrases and thundering words accumulated in the Counter Protest of the 8th August, aforesaid, is now accounted for by the

10 want he then felt of concealing his own wrong in a quantity of words. The Plaintiff was quite right when, by his Protest, he showed to perceive that something unfair had passed between the Defendant and Captain Corbett, in consequence of which he might lose his money, and added, "If any trans-

action had taken place between the Captain and Leonard, in consequence of which the repayment of "the sum advanced by the Plaintiff were to be refused or delayed, they would be answerable." Unfortunately, what then was a distant, and, perhaps, even exaggerated suspicion, is now a sad reality. A machination had passed between Captain Corbett and the Defendant, in consequence of which the Plaintiff has been deprived of his money; and the Defendant again, in his Answer, singles out those words of the Plaintiff, in the hope of destroying them by a series of propositions, aiming at dialectic form; but the time of the boasting is over, now that all the true facts are known. Those words,

20 quoted in the Answer, tell against him, and show that the Plaintiff, from the first moment he formed a suspicion, told the Defendant that he was responsible.

The Defendant, referring to Captain Corbett's Affidavit, which is now produced with the present reply, asks why the Plaintiff, knowing what Corbett had solemnly affirmed, did not bring then forward his demands? The reason is a simple one, for the Plaintiff had not then incurred any loss, as the Judgment on the Bottomry Bond Suit in England had not yet been pronounced. It is remarkable, the contradiction in which the Defendant here, as elsewhere, stumbles; whilst he maintains, even at this moment, that the Plaintiff's demands, owing to an Appeal supposed to be pending in England, have been unseasonably introduced, on the other side he alleges that the same demands ought to have been brought forward since August, and perhaps even June, 1843 (1849 *qy.*).

30 The Defendant, carefully searching in the papers which took him so many months to read and to study, and of which a good many had already been communicated to him by the Plaintiff since July, 1849, seems pleased to have found the Plaintiff's Affidavit in the lawsuit ended in England. Therein he thinks he is so lucky as to find a statement of the Plaintiff which excludes his meddling with the Bottomry Bond, and on that supposition he builds his defence; for, in his view, that statement ought now to hinder any proof of his irregular conduct; but that statement is of no avail to him.

The Plaintiff stated in that document that he had lent money on a Bottomry Bond, through the agency of Giuseppe Mauno, who, in Captain Corbett's name, had asked him for it; that the Defendant had not plainly and directly requested him to advance it; that there had been no understanding of guarantee with the Defendant; and that he had advanced the money at his own risk.

40 What can be argued from these words? What the Plaintiff said then he repeats now. The Defendant had not plainly and directly asked for the Bottomry loan, and had promised no reimbursement; but this excludes neither the fact of the meeting in the Exchange the morning of the 9th of March, nor the conversation by which the Defendant informed the Plaintiff of the wants of the vessel, without mentioning the debt due to himself, nor the Defendant's statement that he would have entered himself into the transaction, if he had not been prevented by a feeling of delicacy, as he was the consignee of the vessel. What does, then, that statement contain, which may hinder now the Plaintiff from proving those circumstances? or, in other words, How could even the assertion of those circumstances clash with the terms of that statement? The Plaintiff might quote the opinion of the English Judge on the subject, who, without any previous acquaintance with the facts, on the words of the Affidavit itself, pronounced that it did not exclude a previous communication on the subject between the Plaintiff and the Defendant; but there is no necessity of quoting such an eminent person for the explanation of words which the common sense of the most uneducated man would be able to understand.

50 The Court will appreciate the worth of the Defendant's boast, when that Affidavit is produced by him. Another argument of the Defendant is based on his own ignorance of the consequences of his Warrant of Arrest. He says that he was acting regularly, for he relied on his warrant as the Plaintiff had relied on the validity of his Bottomry Bond. In the first place, no one can believe, or even out of courtesy pretend to believe, that the Defendant had ever thought of obtaining any result, if he had had to take steps to be paid by virtue of that warrant. No such gross ignorance is possible as not to see that the curators of the bankrupt debtor would successfully have objected to the proceeds of the

60 vessel arrested after the bankruptcy going to pay the simple debts owed to the Defendant. In the second place, the Defendant, by the fact of his concealing the bankruptcy, evinced his conviction that he had to expect nothing without a machination based on that concealment.

No less absurd is the other argument, that if the Plaintiff's Bottomry Bond had been pronounced valid, and the Defendant were condemned to repay what he unduly received after the bankruptcy of the debtor, the Plaintiff would not have reimbursed him thereof. Independently of the absurdity of the hypothesis of supposing that there is any one who could molest the Defendant for the money received from the Plaintiff, the proposition that the latter is not bound in any way towards him is very true, but the consequence inferred from it is illogic. From the fact that the Plaintiff, who acted *bonâ fide*, is not liable towards the Defendant, it does not follow that the Defendant should not be liable towards

70 the Plaintiff, who incurred damage by his fraudulent acts.

The Plaintiff deems it useless to enter into a discussion with the Defendant on the validity of such a Bottomry Bond as he advised Captain Corbett to contract, and which the Plaintiff, being ignorant of the facts, had the misfortune to agree to. If the Defendant, or his advocate, who is alluded to in the Answer, thinks that Bottomry Bond valid, the Plaintiff, on the contrary, is of opinion that a machination between a master and a creditor, without mortgage, for the object of paying the latter out of the proceeds of a thing mortgaged to another person, cannot be valid wherever the

RECORD OF  
PROCEEDINGS.

In the Royal  
Commercial Court.

No. 28.

Reply of Rosario  
Messina, dated 2nd  
November, 1850—  
(continued).

laws are in accordance with reason, justice, and general expediency, though that machination be disguised as a Bottomry Bond. But of this point the Royal Court will take no more cognizance than it refers to the present Cause, with regard to which the aforesaid observations of the Defendant only prove the constant contradiction of his arguments; for, whilst he seems to be certain of the success of an appeal from the Judgment of the Admiralty Court in London, he refuses to have that Appeal carried on in his own interest.

The Defendant concludes his argument, in support of his 1st exception on the merits, by stating that there neither was nor could have been any fraud on his part, and that, at all events, fraud must be proved in a most conclusive manner and every meaning resorted to which excludes it. Such a conclusion evidently shows that the Defendant's only hope rests on the assumption that the Plaintiff will not succeed to prove the circumstantial facts on which his demands are based. But he is greatly mistaken; there is fraud, and every element of the case shows it.

Let, however, the Defendant observe that the law grants the *actio doli* or the *actio in factum*, not only if one, being aware of the insolvency of another, affirms his solvency for the sake of gain, but also when a creditor causes his insolvent debtor to borrow money from another that he might be paid. Let him also observe that all those who gain by a *stellionato* are, by law, bound to indemnify him who suffered by it. Let him, finally, observe that even a fraud by a third person renders him liable who gained by it. It is true that the proof of a fraud must be most conclusive; but, as the law does not prescribe any special form for such a proof, any direct or conjectural means, sufficient to convince the Judge of the existence of fraud, is admissible as a proof.

On the 2nd exception on the merits, the exception that no notice was given of the Suit formerly pending in England is an objection on which it is not possible that the Defendant himself can have any reliance. In the first place, it is to be noticed, that his own answer teems with extracts from the Plaintiff's Protests, by which the latter told him of that Suit, and with other extracts from his own Counter Protests, by which he declared that he did not choose to know anything about it. And, if there was nothing else, his Counter Protest of the 8th of August, 1849, by which he threateningly urged the Plaintiff to bring on his action against him, would be enough to prove that he had understood that the Plaintiff, according to his Protest of the 6th of August, would have proceeded against him if the result of the Suit in London obliged him to do so. What better notice could the Plaintiff have given him before the 8th of August? What other notice was possible after that day, when the Defendant, whilst stating that he did not wish to take any part in the Suit in London, refused to meddle with it in any way, and even invited the Plaintiff soon to introduce his instance at Malta?

In the second place, the Defendant's exception is in contradiction with what he himself objected in another part of his Answer. He alleged that he was not bound by any agreed guarantee in favour of the Plaintiff, with whom he had had no dealing. But, if it were so, what kind of notice did he wish to have? Those are properly entitled to be made parties to a pending suit who, being bound to guarantee, must appear and defend that suit, the result of which they would immediately feel; and not those who, by their own fact, are bound to indemnify another in consequence of a totally different action. In the latter case, the only way open is that of protesting in the manner and in the terms according to which the Plaintiff protested on the 6th of August, 1849.

And, finally, is it not an effrontery to state that no notice of the Suit was given, whilst the Plaintiff had for that Suit so often requested the Defendant to make an Affidavit of the truth of the facts that had given rise to the said Suit, and had directly, and through his legal advisers, communicated to him all the papers and documents sent from London, and had *bonâ fide* left them all with him for many weeks?

The Plaintiff, who has been longer than he intended, deems expedient to bring his reply to a conclusion. He is convinced to have demonstrated—1st, That the abovestated facts, partly already proved, and partly to be proved when the Cause is heard, most fully justify that he was maliciously induced to enter into the said Bottomry Bond by a machination between Captain Corbett and the Defendant, in order that, by concealing the bankruptcy of the debtor and the previous mortgage of the ship, the latter might be paid of a debt without mortgage. 2nd, That the Defendant, either for having compelled and encouraged Captain Corbett to borrow money on a Bottomry Bond for the said object, or for having asserted as good an irrecoverable debt, or for having gained by the loss of the Plaintiff, through the fraudulent proceeding of Captain Corbett, is bound to indemnify the Plaintiff of every loss he has incurred, by re-paying him the sum stated in the account produced with the libel. 3rd, That the Defendant's Answer, far from containing anything that may invalidate the Plaintiff's reasons, exuberates with arguments which more clearly prove his wrong.

Whereupon, the Plaintiff humbly prays that this Royal Court, without attending to the Defendant's objections, should pronounce in conformity with the instances contained in the libel, and thus impart justice in this or any other better manner by the law allowed.

P. SCIORTINO, *Advocate*.

A. DINGLI, *Advocate*.

DR. COTUGNO, *Legal Procurator*.

2nd November, 1850. Presented by the said Legal Procurator, with the quoted Documents marked from letter A to letter F.

I do hereby certify to have served William Leonard, Merchant, with an official copy of the present reply, by means of Vincenzo Cutruffo, Usher. This 8th November, 1850.

Signed in my presence.

J. ATTARD, *Marshal*.

G. G. MICALLEF, *Registrar*.

## Folio 85.

NOTE OF DOCUMENTS PRODUCED BY ROSARIO MESSINA, MERCHANT, IN SUPPORT OF HIS REPLY.

DOCUMENT A.—Protest of the Plaintiff of the 30th January last, by which he informed the Defendant of the result of the Suit, and called on him to state whether he wished that the Appeal should be carried on in his interest; otherwise, the Plaintiff would give it up.

10 DOCUMENT B.—Counter Protest, in answer, of the 8th February following, by which the Defendant stated that he did not choose to know anything of the Suit decided, or of any Appeal.

DOCUMENT C.—An authentic copy of Captain Corbett's Affidavit before the Admiralty Court in London, to which the Defendant refers in his Answer, and in which there are stated many most important facts.

DOCUMENT D.—A copy of the transfer and mortgage of the "Osmanli" by Mongredien, in favour of Arnold, Leete, Roscoe and Co., on the 12th of August, 1848, with the consent and presence 20 of the creditors, to whom the said steamer had first been mortgaged.

DOCUMENT E.—An authentic copy of the Certificate of Registry of the "Osmanli," showing the endorsement in favour of Arnold, Leete, Roscoe and Co., in consequence of the said transfer.

DOCUMENT F.—A list of the arrivals and departures of the steamers "Osmanli," "Levantine," and "Aram," for several months, previous to March, 1849, to prove how many opportunities the Defendant had for enforcing his claims; and to demonstrate, in consequence, that the hurried Warrant of Arrest of March, 1849, must have been prompted by a recent cause, which could be no other but the news then, or a few days before, received of Mongredien's bankruptcy.

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P. SCIORTINO, *Advocate.*

DR. COTUGNO, *Legal Procurator.*

RECORD OF  
PROCEEDINGS.

*In the Royal  
Commercial Court.*

No. 29.

Note of Documents  
presented by said  
R. Messina in support  
of his Reply.

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Folio 86. Document A.

40 EXTRACT FROM THE VOLUME OF PROTESTS ENTERED ON THE REGISTRY OF THE ROYAL  
COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.

*In the Royal Commercial Court of Malta.*

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co.

50 Protest of the said Messina.—He humbly showeth, That he had furnished Captain Corbett, of the English steamer "Osmanli," with a sum of £850, on Bottomry of the said steamer, which sum the said Corbett immediately handed over to the said Leonard, *nomine*, &c., in payment of debts which the latter asserted were due to him by the owner of the steamer.

That, whereas he had to sustain a lawsuit in London for the payment of the said Bottomry Bond against other creditors, to whom the steamer had previously been mortgaged, the Admiralty Court pronounced against the validity of the Bottomry Bond, on the ground of its being made to pay debts without mortgage to the prejudice of mortgaged or privileged debts.

60 That, for various reasons, and for what took place here when that Bottomry Bond was agreed upon, and especially for the way in which he had been prevailed upon to enter into it, whilst the said Leonard, who suggested it, knew even the bankruptcy of the owner, he is justly entitled to claim from the said Leonard, *nomine*, &c., the payment of the sum he advanced, with its interest and all other damages, of which Leonard must indemnify him, except £150, for which only the Bottomry Bond was held as valid by the said Judgment.

That, meanwhile, not to be liable to damages for supposed omission, he has brought an Appeal from that Judgment; but considering the heavy expenses which would be incurred, he does not deem it advisable to carry it on without the approval of the said Leonard, *nomine*, &c., to whom the affair regards.

70

He therefore, after giving formal notice of the aforesaid facts to the said Leonard, *nomine*, &c.,—and to avoid that the said Leonard might ever complain that the said Appeal was not carried on, and thereon found any exception,—by this act calls on him to state whether he chooses that the said Appeal should be carried on at his risk, as otherwise he, Messina, relying on his claim against the said Leonard, *proprio et nomine*, &c., will not continue it. At the same time he protests against the said Leonard, *proprio et nomine*, &c., for all the damages, expenses and interests, arising from the above

No. 30.  
DOCUMENT A.  
The Protest of  
Rosario Messina,  
dated 30th January,  
1850.

RECORD OF  
PROCEEDINGS.  
In the Royal  
Commercial Court.

No. 30.  
DOCUMENT A.  
The Protest of  
Rosario Messina,  
dated 30th January,  
1850—  
(continued).

stated facts, and for everything else for which he is allowed to protest; and reserves to proceed against him, as by law, if the said Leonard will not willingly reimburse him of the said sum and interest, and of the expenses and damages incurred, and by this and any other better way by the law allowed, pronounces him to be in fraud, delay, and *culpa lata levis et levissima*.

— A. DINGLI, *Advocate*.  
P. SCIORTINO, *Advocate*.  
DR. COTUGNO, *Legal Procurator*.

January 30th, 1850. Presented by the said Legal Procurator.

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I do hereby certify to have served William Leonard, Merchant, with an official copy of this Protest.

This 1st February, 1850.

J. B. ATTARD, *Marshal*.

True copy.

G. G. MICALLEF, *Registrar*.

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Folio 88. Document B.

No. 31.  
DOCUMENT B.  
Counter Protest of  
Wm. Leonard,  
dated 8th February,  
1850—see No. 25.

Counter Protest of Leonard, Merchant, omitted here, having been already inserted at fol. 69 of the papers, page 15.

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Folio 91. Document C.

No. 32.  
DOCUMENT C.  
Certificate of  
Malcolm Orme,  
Notary, dated 9th  
March, 1850.

I, Malcolm Orme, of Doctors' Commons, London, Notary Public, by Royal Authority duly admitted, do hereby certify that I have carefully compared and examined the paper writings hereunto annexed, the same being official copies of an Affidavit duly made and sworn to by George Henry Corbett, on the eleventh day of June, one thousand eight hundred and forty-nine, with three Accounts annexed thereto, marked respectively with the letters A, B, and C, with the original Affidavit and Accounts remaining, filed amongst the Records in the Registry of the High Court of Admiralty of England; and that the same agree with the said originals in all respects, and are true and correct copies thereof. And I do further certify, that Henry Birchfield Swabey, whose name is set and subscribed to the said paper writings, is Registrar of the said High Court of Admiralty of England, and that he set and subscribed his name to the said paper writings in my presence.

In testimony whereof, I have hereunto set my hand and seal this ninth day of March, one thousand eight hundred and fifty.

MALCOLM ORME,  
*Notary Public*.

(L. S.)

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Folio 92, Tergo.

EXTRACTED FROM THE REGISTRY OF HER MAJESTY'S HIGH COURT OF ADMIRALTY OF ENGLAND.

A.

Dr. A. Mongredien, Esq., and Owners of the Screw Steamers "Levantine" and "Osmanli," in General Account and Interest Account to 9th March, 1849, with R. Duckworth and Co. Cr.

1846.					1847.					
October 18.	Freight of a parcel forwarded per "Pottinger," containing copy of the Log of the steamer "Levantine," Capt Easterby—				September 21.	Balance of Passage-money per "Aram," as per account under this date.	36 10 0	535	19,795	
	7/6, curr. @ sc. 12 per £	4 6 0	873	4,365	October 2.	Recovered from R. C. Mann, a seaman discharged from steamer "Aram," balance over-paid him by Captain Easterby, 5/ sc. 3 0 0				
November 10.	6 months' rent, in advance, of a Store rented for coals purchased for supply of the steamers to 30th April, 1847, at \$100 per annum = \$50 @ sc. 2½	125 0 0	850	106,250		Proportion of Police expenses in which he was condemned)	0 6 3			
							3 6 3	524	2,096	
1847.					1848.					
April 17.	Noting Protest of the steamer "Aram," and fair copy of the same, not charged in the accounts of the voyage	6 3 0	692	4,152	July 15.	Balance due on accounts of "Secret" under this date	113 7 4	237	27,018	
May 8.	Printing Bills of Lading and Receipts, binding the latter, paper, &c.	25 9 12	671	17,446	November 2.	Do. do. do. do.	108 10 7	127	13,843	
" 12.	3 months' rent, in advance, of coal store to 30th July, as above—				1849.					
	\$25	62 6 0	667	42,021	January 1.	Freight per "Levantine" to Constantinople, as per List, omitted from the accounts of the voyage, £10. 0s. 5d., curr. @ sc. 12 per £ =				
" 27.	Expenses on a Bals per "Levantine," carried forward to Constantinople and returned per "Tagus"	1 9 12	652	1,304		120 3 0				
June 26.	Captain Booth's (of the "Levantine") order to Lawrence, Boatman, presented after the accounts of the voyage were closed	23 1 4	622	14,306	February 6.	Recovered from H. E. the Governor, expenses in Liverpool on packages forwarded 16th December last, 17s. 6d., curr. @ sc. 12	114 2 17	67	7,638	
					" 12.	Recovered from do. on tub butter, and small box, per your letter of 15/ @ sc. per £	10 6 0	31	341	
							9 0 0	25	225	
		248 11 8		189,844						
							396 6 11		70,956	

23

RECORD OF PROCEEDINGS. In the Royal Commercial Court. No. 33. Extract from the Registry of H. M. High Court of Admiralty, being the Account Current, dated 9th March, 1849. Marked A.

*A. Mongredien, Esq., and Owners of the Screw Steamers "Levantine" and "Osmanli," in General Account and Interest Account to 9th March, 1849,  
with R. Duckworth and Co.*

1847. August 24.	Amount brought forward . 6 months' rent, in advance, of coal store for cargoes of the "Sarah Maria Ann" and "Cookson," to 23rd Feb., 1848, at \$100 per ann. = \$50 sc. 2½ . . . . .	248 11 8		189,844		Amount brought forward .	396 6 11	70,956	
September 18.	Error in cost of coals, &c., per "Aram," as per account under this date, sc. 942 : 4 : 4 having been charged in the general account of the voyage instead of sc. 952 : 8 : 8; difference sc. 10 4 4 Error in addition of general account of the voyage, 1/4 @ sc. 12 per £ . . . sc. 0 7 4	125 0 0	563	70,375		/			
October 2.	Paid wages to seamen discharged from the "Aram," say— J. Russell . 2/6 = sc. 1 6 0 R. Daley . 2/6 = sc. 1 6 0 G. Mount . 2/6 = sc. 1 6 0 <hr style="width: 10%; margin-left: 0;"/> 4 6 0	10 11 8	538	5,918					
1848. February 15.	Less the proportion of po- lice expenses in which they were condemned 1 6 9	2 11 11	524	1,572					
	Expenses of a gang of porters kept in waiting for the steamer "Aram;" 19 persons for 14 nights, at 6d. each per night, £6.13s., @ sc. 12 per £. 79 9 12								
	Boats and lighters, also detained in expectation 9 0 0	88 9 12	388	34,532					
" 28.	6 months' rent, in advance, of coal store, as above, to 23rd August .	125 0 0	375	46,875					
		601 7 19		349,116				396 6 11	

A. Mongredien, Esq., and Owners of the Screw Steamers "Levantine" and "Osmani," in General Account and Interest Account to 9th March, 1849,  
with R. Duckworth and Co.

Dr.

Cr.

1848.	Amount brought forward.	601 7 19		349,116		Amount brought forward .	396 6 11	70,956
March 12.	Expenses of a Gang of Porters kept in waiting for the steamer "Levantine," 20 persons for 4 nights, @ 6d. per night, £2., @ sc.12 per £ . . . . . 24 0 0							
	Repairing 49 coal bags, and filling same in readiness . . . . . 12 1 13	36 1 13	362	13,032				
August 28.	Freight of a parcel chalks per "Secret," forwarded to J. Guillot, Genoa, per "Rosland" steamer, fcs. 10.60, @ 6 per franc . . . . . 5 3	6 0 0	193	1,158				
September 2.	Expenses on same . . . . . 0 9							
	6 months' rent, in advance, of Coal-Store, as above, to 23rd February, 1849 . . . . .	125 0 0	188	23,500				
November 9.	Freight, &c., of a box containing \$300, landed ex "Secret," and sent forward per French steamer to Constantinople, being for Spanish Ambassador there, fcs. 10.80, @ 115½ grains per franc = sc. . . . . 5 2 8							
	Expenses, shipping bills, lading, &c. . . . . 0 9 0	5 11 8	120	720				
1849.	Charges on coals for the "Levantine," prepared upon lighters against her arrival, which were afterwards stranded during the gale on 27th and 28th ult., as per account . . . . .	204 5 9	95	12,036				
		979 2 9		399,562				

25

RECORD OF  
PROCEEDINGS.  
In the Royal  
Commercial Court.  
No. 33.  
Extract from the  
Registry of H. M.  
High Court of Ad-  
miralty, being the  
Account Current,  
dated 9th March,  
1849. Marked A.  
(Continued)

Dr. A. Mongredien, Esq., and Owners of the Screw Steamers "Levantine" and "Osmanli," in General Account and Interest Account to 9th March, 1849, Cr.  
with R. Duckworth & Co.

		979 2 9		399,562		Amount brought forward	396 6 11	70,956
1849.	Amount brought forward .					/		
Feb. 3.	Boat hire, &c., to and from "Levantine," after closing Accounts, on 1st instant .	2 7 4						
	Supplies to Captain Pitcairn, after same, say—							
	1 doz. Cognac	£0 19 0						
	Brandy . . .							
	8 lb. Tobacco . .	0 4 0						
	3 lb. Tea . . .	0 4 6						
	1 lb. best Tea . .	0 3 0						
	¼ lb. Snuff . . .	0 0 6						
	Curr <sup>y</sup> . . .	£1 11 0						
	@ <i>sc.</i> 12 <i>per</i> £ .	18 7 4						
		21 2 8	34	714				
March 5.	Cost of coals supplied to steamer "Levantine," say, 1st January, 70 tons.							
	31st ,, 26¼ ,,							
	96 ,,							
	(part of 300 tons purchased 11th November last), which we now bring into debit in consequence of the dishonour of our draft £406. 3s. 9d., sterling, proportionate cost as above, bearing interest from 11th November, £130. 6s. 4d., @ Ex. 48½ Ex. . .	1,612 2 0	118	190,216				
" "	Captain Pitcairn's draft, dated 1st Feb- ruary, for balance of our disburse- ments under that date, not accepted on presentation, £36. 10s. 10d. @ 48½ Ex.; interest <i>per</i> and from 1st February . . . . .	453 9 6	36	16,344				
		3,066 4 3		606,836				





Folio 93, Tergo.

EXTRACTED FROM THE REGISTRY OF HER MAJESTY'S HIGH COURT OF ADMIRALTY OF ENGLAND.

B.

**Dr.**      *A. Mongredien, Esq., and Owners of the Screw Steamer "Osmanli," in Account Current and Interest Account to 9th March, with R. Duckworth and Co., Malta.*      **Cr.**

1847. May 7.	Paid Captain Paul's orders, presented after the accounts for the voyage were closed and vessel sailed from Malta—say, to L. Mislak, for curr <sup>r</sup> . £2 1 0 " " " 0 6 3 2 7 3 @ sc.	28 4 4	672	18,816			
1848. March 29.	Cost of a piece Canvass, taken by Captain Mara, not included in accounts, dated 1st ulto. £2. 6s. 10 <sup>1</sup> / <sub>4</sub> d.— Curr <sup>r</sup> @ sc. 12 p <sup>r</sup> £	28 1 7	345	9,660			
April 25.	Balance in our favour upon accounts handed under this date . . . .	16 1 4	318	5,088			
September 12.	Ditto, handed under this date, cash average date 13th August . . . .	322 4 1	208	66,976			
" "	Our commission upon homeward freight, as per account— £1. 5s., curr <sup>r</sup> @ sc. 12 p <sup>r</sup> £	15 0 0	178	2,670			
" 13.	Paid Captain Mara's order to Pilot, presented after the accounts for the voyage were closed, \$2 . . . .	5 0 0	177	885			
December 16.	Balance in our favour upon accounts handed under this date . . . .	302 4 19	83	25,066			
" "	Cost of oranges for ship's account, as per invoice . . . . .	301 2 16	83	24,983			
" 17.	Freight of a parcel received from Smyrna, addressed to Captain Mara, containing ship's papers, forwarded to Southampton per "Erin," curr <sup>r</sup> 7/6 sc. 12 p <sup>r</sup> £ . . . . .	4 6 0	82	410			
		1023 0 11		154,554			
					/		563,646

*A. Mongredien, Esq., and Owners of the Screw Steamer "Osmanli," in Account Current and Interest Account to 9th March,  
with R. Duckworth and Co., Malta.*

Dr.

Cr.

1849.		Brought forward . . . . .	1,023 0 11		154,554				
February 3.	Charges and disbursements for supplies, &c., outward voyage, as per accounts under this date . . . . .		186 9 1	34	6,358				
March 5.	Cost of coals supplied to the steamer at various times (part of 300 tons, purchased 11 Nov. last), which we now bring into debit in consequence of the dishonour of our draft, per £406. 3s. 9d. stg.— say, on 18 Nov., 1848 . . . . . 70 tons " " 16 Dec. " . . . . . 51 " " " 3 Feb. 1849 . . . . . 57 " <div style="text-align: center;">178 tons.</div> proportioned cost as above. Interest from 11 Nov., £241. 2s. 1d. @ Ex. 48½ Ex. . . . .		2,982 8 16	118	351,994				
" 9.	Cost of 25¾ tons coals, shipped on homeward voyage, remainder of the above quantity, proportioned cost. Interest from 11 Nov. 1848, £34. 15s. 4d. @ Ex. 48½ Ex. . . . .		430 1 5	118	50,740				
					563,646				563,646
" "	Cost of 54¼ tons, purchased for homeward voyage, to complete the quantity of 80 tons, shipped here as per invoice, £72. 19s. 11d. @ Ex. 48½ Ex. . . . .		903 0 10						
" "	Charges and disbursements shipping the above, and supplies to the steamer, as per accounts . . . . .		259 2 14						
" "	Proportion, protest and charges on protested bill, £406 3 9								
	Cost of 300 tons of coals returned to us, say— Protest and stamp . . . . . £0 17 0 Banking commission, 1% . . . . . 4 1 3 Postage . . . . . 0 6 0 <div style="text-align: right;">5 4 3</div>								
	Proportion on 203¾ tons, £3. 10s. 11d. @ 48½ curr <sup>r</sup> .		43 10 8						
	Carried forward . . . . .		5,828 9 5						

RECORD OF  
PROCEEDINGS.  
*In the Royal  
Commercial Court.*  
No. 34.  
Extract from the  
Registry of the same  
Court, being the  
Account Current,  
dated 9th March,  
1849. Marked B.  
(Continued)



RECORD OF  
PROCEEDINGS,  
In the Royal  
Commercial Court,  
No. 34.  
Extract from the  
Registry of the same  
Court, being the  
Account Current,  
dated 9th March,  
1849, marked B.  
(Continued)

Dr.

*A. Mongredien, Esq., and Owners of the Screw Steamer "Osmanli," in Account Current and Interest Account to 9th March, with R. Duckworth and Co., Malta.*

Cr.

1849.	Brought forward . . .	5,828	9	5
March 9.	Proportion of expenses, advertising, &c., to this date . . .	15	7	4
	Proportion of our charge for agency from 1846 to the present time, £60 currency, one-half . . .	306	0	0
	Proportion of postages from 1846 to date . . .	19	9	18
" "	Charges incurred, sequestering the steamer for the amount of our credit and releasing her after payment obtained; Solicitors and Advocates' accounts . . .	56	4	8
	Premium on British silver 24s. 1d., for payment of court fees 3% . . .	0	5	2
	Expenses incurred by Marshal of Court for Guards on board . . .	7	6	0
	Notary's account for drawing up Bottomry Bond in favour R. Messina . . .	26	0	0
	Paid Advocate, E. Caruana, by Captain Corbett's order, fees for consultations, &c. . .	37	6	0
	<u>Interest on Nos. 563, 646, @ 6% per annum . . .</u>	127	9	10
		93	11	6
		6,445	11	3
" "	Balance brought down . . .	6,445	11	3
	Extra supplies, after closing the above, as per account furnished Captain Corbett . . .	155	7	0
	<u>sc.</u>	6,601	6	3

Examined with original,  
J. M. ORMER.

1849.				
March 9.	Balance carried down . . .	6,445	11	3
	<u>E. &amp; O. E.</u>	6,445	11	3

Malta, 9th March, 1849.  
R. DUCKWORTH & Co.  
B.

This is the Account marked B, referred to in the Affidavit of George Henry Corbett. Sworn before me, this eleventh day of June, 1849.  
(Signed) R. A. PAYNE,  
H. B. SWABBY, Registrar.

Folio 96.

EXTRACTED FROM THE REGISTRY OF HER MAJESTY'S HIGH COURT OF ADMIRALTY OF ENGLAND.  
C.

Memorandum for Captain Corbett and Owners of the Screw Steamer "Osmanli," &c.

RECORD OF PROCEEDINGS.  
In the Royal Commercial Court.  
No. 35.  
Memorandum of Capt. Corbett, dated 9th March, 1849.  
Marked C.

<b>Cr.</b>			
10	Freight from Malta to Constantinople, collected here, as per account	£5 18 1	
	Less commission	0 10 0	
		£5 8 1	
	Cash proceeds of Bottomry Bond for £850, @ sc. 12 per £		@ sc. 12 . . . . . sc. 64 10 4
	Balance of freight and passage-money as per account,		10,200 0 0
	£20. 8s. 4d., @ sc. 12 per £		245 0 0
	Cash from him \$ @ sc. 2 6		47 6 0
			<hr/> 10,557 4 4
<b>Dr.</b>			
20	Amount due to us in account, St <sup>r</sup> . "Osmanli"		sc. 6,601 6 3
	Ditto ditto, "Levantine"		3,217 6 3
	Paid in sovereigns	£59 0 0	
	British silver	0 14 8½	
		£59 14 8½	
	@ sc. 12 per £		sc. 716 9 18
30	Premium on coins, @ 3%	21 6 0	
			738 3 18
			<hr/> sc. 10,557 4 4

E. & O. E.  
Malta, 9 March, 1849.

(Signed) R. DUCKWORTH & Co.

C.

This is the Memorandum marked C, referred to in the Affidavit of George Henry Corbett, sworn before me this eleventh day of June, 1849.

40 (Signed) R. A. PAYNE,  
H. B. SWABEY, Registrar.

Folio 97.

EXTRACTED FROM THE REGISTRY OF HER MAJESTY'S HIGH COURT OF ADMIRALTY OF ENGLAND.  
In the High Court of Admiralty.

No. 36.  
Affidavit of Capt. G. H. Corbett, made on 11th June, 1849.

50 The "Osmanli"—George Henry Corbett, Master.

Appeared personally, George Henry Corbett, of Liverpool, in the county of Lancaster, Master Mariner, and made oath that, on the twelfth day of January last, Deponent was appointed Master of the above-named steam ship or vessel "Osmanli" by Augustus Mongredien, of Liverpool aforesaid, Merchant, who was then owner of sixty-two sixty-fourths of the said steamer, the other two sixty-fourths belonging to Anthony Easterby, Master Mariner, who was then, and still is (as this Deponent believes), residing in South America. That Deponent, on being so appointed Master of the said steamer, set sail with her from Liverpool on the same twelfth day of January last, on a voyage to the Levant; and in the course of such voyage, in pursuance of the instructions of the said Augustus Mongredien, called both at Gibraltar and at Malta, and at the latter place landed passengers and goods, and replenished the fuel of the said steamer, and took some goods on board for Constantinople, and set sail with the said steamer from Malta for Constantinople on the 3rd February last, and, having arrived at Constantinople, there ended his voyage.

60 That Deponent, having taken on board a cargo there and passengers for the voyage home to Liverpool, sailed with the said steamer from Constantinople on the twenty-first February last; and, in further pursuance of his sailing instructions from the said Augustus Mongredien, again called at Malta on such homeward voyage, arriving there at six A.M. on the seventh March last; and at eight o'clock of the same morning this Deponent sent a note to Mr. William Leonard, as managing partner of the firm of Robinson, Duckworth and Company, of Malta, Merchants, who were the agents there of the said Augustus Mongredien, and in the said note Deponent alluded to the failure of the said Augustus Mongredien, and requested the said William Leonard to make the needful arrangements for a supply of coals and small stores for the voyage home of the said vessel from Malta. That, in answer to such note, Deponent received a verbal message from the said William Leonard, to the effect that the coals required should be sent on board in the course of two hours. That, instead thereof, about ten o'clock of the same morning, this Deponent was served with the official copy Warrant hereunto annexed arresting the said steamer. That, having been so served with the said Warrant, this Deponent sent

RECORD OF  
PROCEEDINGSIn the Royal  
Commercial Court.

No. 36.

Affidavit of Capt.  
G. H. Corbett, made  
on 11th June, 1849  
—(continued).

another note to the said William Leonard, requesting him to meet this Deponent at the Quarantine Office at Malta; and the said William Leonard met this Deponent accordingly at the said Quarantine Office, at three o'clock of the same day. That, on this Deponent then enquiring the meaning of the arrest of the said vessel, the said William Leonard informed him it was for debts due to Robinson Duckworth and Company from the Levant Steam Company (a title by which the owners of the said steamer were sometimes called or known, they being owners of two other steamers, called the "Levantine," and the "Aram," employed by the said Augustus Mongredien on voyages between Liverpool and the Levant, and intended to form a line of steamers for those voyages). That this Deponent thereupon enquired of the said William Leonard if he meant debts contracted by the said steamer "Osmanli" whilst she was under his (Deponent's) command? and the said William Leonard replied 10 "No; for the debts of the Company for all the vessels," or to that effect. That Deponent enquired of the said William Leonard what was the amount of such debts, and the said William Leonard replied that it was upwards of seven hundred pounds, but that he could not state the precise amount, as the accounts were not made up. That this Deponent then expressed his opinion to the said William Leonard that it was not legal to detain Deponent for other parties' debts, and the said William Leonard replied that he, the said William Leonard, was acting under the advice of his solicitor, and that until the claims were liquidated, the "Osmanli" could not go to sea. And Deponent further made oath, that on the next morning but one, namely, on the ninth March last, a meeting took place between this Deponent and the said William Leonard, who was accompanied by Mr. Griffiths, his advocate or professional adviser, and by William John Stevens, a Notary, employed by the said 20 Robinson Duckworth and Company in all notarial transactions connected with the aforesaid steam vessel, there being present at such meeting, and Mr. Caruana, an advocate or professional adviser employed by this Deponent on that occasion, when, after much discussion, it was agreed that a Bottomry Bond should be executed by this Deponent in favour of the said Messieurs Robinson Duckworth and Company, and the said William John Stevens was instructed to prepare such bond. That the said Mr. Griffiths then suggested to the said William Leonard that Messieurs Robinson Duckworth and Company should not take the bond on their own account, but a third party should be found to advance the money, and that an advertisement should be made to that effect, but which was objected to by the said William Leonard, on the ground of want of time for it; and the said William Leonard then undertook to find a person who would advance the money; and a further 30 meeting was appointed for that afternoon between two and three o'clock. That such further meeting took place between five and six o'clock that afternoon (the bond not being ready before that time), at the office of the said William John Stevens, on which occasion Rosario Messina, a Merchant, of the town of La Valletta, in Malta, was introduced to this Deponent by the said William Leonard, as prepared to lend the money. That the Bottomry Bond now proceeded on in this Cause, had been previously prepared (blanks being left therein for the name of the party in whose favour it was to be given, and for the amount of the principal sum to be advanced, and the interest). That, previous to such second meeting, the supply of coals which this Deponent required for the voyage home from Malta of the said steamer "Osmanli," as well as sundry small stores which he also required for the same voyage, had been sent on board the said steamer "Osmanli" by the said William Leonard; and on the occasion of such last 40 meeting, but before the arrival thereof of the said Rosario Messina, this Deponent enquired of the said William Leonard what was the amount of the debts owing to the said Messieurs Robinson Duckworth and Company, for which the said William Leonard required the said bond to be given; and the said William Leonard replied, that the accounts were not quite made up, but that he estimated the amount, including the said last-mentioned supply of coals and small stores, would exceed the sum of eight hundred pounds; and the said William Leonard suggested that the sum to be advanced should be eight hundred and fifty pounds, and he would hand over any surplus to this Deponent for the service of the said steamer "Osmanli." That on the arrival of the said Rosario Messina, the rate of interest on the sum to be advanced was fixed at seven per cent., this Deponent at the same time protesting against the same as usurious, and the blanks in the bond being supplied, the same was 50 executed by this Deponent. That the said Rosario Messina thereupon handed to this Deponent a cheque for the sum of eight hundred and fifty pounds, which cheque this Deponent delivered, in the presence of the said Rosario Messina, to the said William Leonard, having first indorsed it; and the said Rosario Messina quitted the office of the said William John Stevens, not having made any enquiry of this Deponent as to what the money was required for, or otherwise. That such meeting lasted only about a quarter of an hour, and that, save on such occasion, no intercourse whatever passed between this Deponent and the said Rosario Messina. That about two hours after the execution of the said bond, the said William Leonard delivered to this Deponent the accounts hereunto annexed, marked A and B; and also the memorandum hereunto annexed, marked C; the same being respectively signed by the said William Leonard, in the name of the said firm of Robinson Duckworth and 60 Company; and the said William Leonard handed to this Deponent the sum of fifty-nine pounds fourteen shillings and eight pence, being, as the said William Leonard alleged, the balance due to this Deponent on the said bond, such sum including nineteen dollars, which this Deponent had given the said William Leonard to get exchanged for gold, and eighteen pounds received by the said firm of Robinson Duckworth and Company for the passage-money of three persons from Malta to Liverpool, and seven pounds sixteen shillings and five pence for a balance of freight received by the said firm at Malta for the outward voyage of the "Osmanli," leaving as the net balance on the said bond the sum of thirty-one pounds only. And that this Deponent, on so receiving the said balance, expressed his inability to check the said accounts, and told the said William Leonard that it must be done in England, or to that effect; and the Deponent further made oath, that the account current, 70 marked A, purports to be a general account, and interest account, of Augustus Mongredien and owners of the screw steamers "Levantine" and "Osmanli," with Robinson Duckworth and Company, commencing eighteenth of October, one thousand eight hundred and forty-six, and ending ninth of March, one thousand eight hundred and forty-nine, and that the balance of account therein stated to be due to the said Robinson Duckworth and Company is scudi 3,217 : 6 : 3, which is equal in sterling money to two hundred and sixty-eight pounds, or thereabouts; but that no part of such sum

was owing in respect to the said vessel "Osmanli" on her last homeward voyage, namely, the voyage in course of prosecution at the date of the said bond, the whole of such balance being due in respect of the steam vessels "Levantine" and "Aram," and of former voyages of the "Osmanli," with the exception of some trifling charges, amounting together to less than twenty shillings, in respect of a vessel called the "Secret." And the Deponent further made oath, that the account hereto annexed, marked B, purports to be an account current and interest account between Augustus Mongredien, and the owners of the screw steamer "Osmanli," with Robinson Duckworth and Company, commencing seventh of May, one thousand eight hundred and forty-seven, and ending ninth of March, one thousand eight hundred and forty-nine, and that the balance of account therein stated to be due to the said Robinson Duckworth and Company is scudi 6,601 : 6 : 3, which is equal in sterling money to five hundred and fifty pounds, or thereabouts. And the Deponent further made oath, that the whole of such sum refers to former voyages of the "Osmanli," with the exception of the following items :—

		Scudi.
1849.	March 9. Cost of 25 $\frac{3}{4}$ tons coals, shipped on homeward voyage	430 1 5
	Cost of 54 $\frac{1}{2}$ tons, purchased for homeward voyage, to complete the quantity of 80 tons	903 0 10
	Charges and disbursements, shipping the above, and supplies to the steamer for homeward voyage, as per account	259 2 14
20	Notary's account, for drawing up Bottomry Bond in favour of Rosario Messina	26 0 0
	E. Caruana, law charges	37 6 0
	Extra supplies, per homeward voyage	155 7 0
		1,810 0 0

(which is equal, in sterling money, to one hundred and fifty pounds, or thereabouts); and also with the exception of the item of "proportion of charge for agency," a part of which refers to the said last homeward voyage of the "Osmanli"; but this Deponent believes that such charge for agency is improper, inasmuch as the said Messieurs Robinson Duckworth and Company charge a commission on their disbursements for the "Osmanli," which is the ordinary mode by which merchants are paid for their agency under similar circumstances.

On the eleventh day of June, in the year of our Lord one thousand eight hundred and forty-nine, the said George Henry Corbett was duly sworn to the truth of this Affidavit, at Liverpool, in the county of Lancaster.

Before me, (Signed) R. A. PAYNE, a Master Extra. in Ch<sup>y</sup>.

(Signed)  
G. H. CORBETT.

H. B. SWABEY, Registrar.

#### Folio 99. Document D.

I, Malcolm Orme, Notary Public, by Royal authority duly admitted, do hereby certify that I have carefully collated the paper writings hereunto annexed, marked D and E, with the original documents, also marked D and E, now remaining in the Registry of the High Court of Admiralty of England, annexed to the Answer to the Act on Petition in a Cause of Bottomry, civil and maritime, lately depending in the High Court of Admiralty of England, entitled "The Osmanli," and that the same agree therewith in all respects. And I further certify, that the signature "H. B. Swabey, Registrar," set and subscribed to the said documents, is the signature of Henry Birchfield Swabey, who is the Registrar of the High Court of Admiralty of England, and that he set and subscribed his name to the said documents in my presence. In testimony whereof, I have hereunto set my hand and seal this twenty-seventh day of June, one thousand eight hundred and fifty.

L. S.

MALCOLM ORME, Notary Public.

#### Folio 100. D.

EXTRACTED FROM THE REGISTRY OF HER MAJESTY'S HIGH COURT OF ADMIRALTY OF ENGLAND.

This Indenture, made the twelfth day of August, one thousand eight hundred and forty-eight, between Augustus Mongredien, of Liverpool, in the County of Lancaster, Merchant, of the first part; James Cunliffe, of Lombard Street, in the City of London, and Samuel Brooks, of the same place, Bankers, carrying on business under the style or firm of Cunliffe, Brooks, and Company, of the second part; of Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, all of Liverpool aforesaid, Brokers, and co-partners, carrying on business under the firm of Arnold, Leete, Roscoe, and Company, of the third part.

Whereas, by an Indenture dated on or about the eleventh day of April last, and made between the said Augustus Mongredien of the one part, and the said James Cunliffe and Samuel Brooks of the other part,—reciting, that the said Augustus Mongredien, at the date of the Assignment or Bill of Sale thereinafter recited, was the owner of fifty-nine sixty-fourth parts (the whole into sixty-four parts or shares being divided) of and in the ship or vessel called the "Osmanli," with her engines, boilers, and machinery; and which said ship or vessel, in pursuance of an Act of Parliament passed in the eighth and ninth years of the reign of Her present Majesty Queen Victoria, had been duly registered at the port of Liverpool; and a copy of the Certificate of such Registry was in the words and figures or to the purport and effect following, that was to say :—

No. 47. Certificate of the British Registry.

RECORD OF PROCEEDINGS.

In the Royal Commercial Court.

No. 36.

Affidavit of Capt. G. H. Corbett, made on 11th June, 1849  
(continued).

No. 37.

DOCUMENT D.  
Certificate of Malcolm Orme, dated 27th June, 1850.

No. 38.

Indenture, dated 12th August, 1848, made between Mongredien, of 1st part; Cunliffe and Brooks, of 2nd part; Arnold and others, of 3rd part.

RECORD OF PROCEEDINGS.

In the Royal Commercial Court.

No. 33.

Indenture, dated 12th August, 1848, made between Mongredien, of 1st part; Cunliffe and Brooks, of 2nd part; Arnold and others, of 3rd part—(continued).

No. 3. This is to certify that, in pursuance of an Act passed in the eighth and ninth years of the reign of Queen Victoria, intituled, "An Act for Registering of British Vessels," Augustus Mongredien, of Liverpool, in the County of Lancaster, Merchant, having made and subscribed the declaration required by the said Act, and having declared that he, together with Peter Borrie, of the City of London, Engineer, and Anthony Easterby, of Liverpool, aforesaid, Master Mariner, are sole owners (in the proportions specified on the back hereof), of the ship or vessel called the "Osmanli," of Liverpool, which is of the burthen of two hundred and ten  $\frac{2}{100}$  tons, and whereof E. Mara is master; and that the said ship or vessel was built at Dumbarton, in the County of Dumbarton, and launched twenty-second October, in the year one thousand eight hundred and forty-six, as appears by a certificate under the hands of Denny, Brothers, the builders, dated the eighth November, one thousand eight hundred and forty-six; and Alexander Macintyre, Acting Tide Surveyor at the port of Dumbarton, having certified to us that the said ship or vessel has one deck and three masts, that her length from the inner part of the main stem to the fore part of the stem post aloft is one hundred and twenty-seven feet one tenth; her breadth, in midships, is twenty-three feet three tenths; her depth, in hold at midships, is thirteen feet three and a half tenths; that she is propelled by steam, with an engine room forty-one feet—tenths in length and ninety four feet  $\frac{23}{100}$  tons, that she is schooner-rigged, with a standing bowsprit, is round sterned, clinker built, has no galleries, and a man bust figure-head. And the said subscribing owners, having consented and agreed to the above description, and having caused sufficient security to be given, as is required by the said Act, the said ship or vessel, called the "Osmanli," has been duly registered at the port of Liverpool. Certified under our hands, at the Custom House 20 in the said port of Liverpool, this eighth day of February, one thousand eight hundred and forty-seven.

E. ARNAUD, *Collector*.  
T. POWELL, *Comptroller*.

Names of the several Owners within-mentioned.	Number of Sixty-fourth Shares held by each Owner.
Augustus Mongredien . . . . .	Fifty-nine 59
Peter Borrie . . . . .	Three 3
Anthony Easterby . . . . .	Two 2

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E. ARNAUD, *Collector*.  
T. POWELL, *Comptroller*.

30

And, also reciting, that, by a Deed Poll, in writing, under the hand and seal of Peter Borrie, named in the before-mentioned certificate, and dated the thirty-first day of March, one thousand eight hundred and forty-eight, the said Peter Borrie, for the considerations therein mentioned, assigned to the said Augustus Mongredien his three sixty-fourth parts or shares in the said vessel and her engines, boilers, and machinery, and all other her appurtenances. And, also reciting, that the said Augustus Mongredien was indebted to the said James Cunliffe and Samuel Brooks in a large sum of money, lent and advanced by way of discount, loan, or otherwise. It was witnessed that, for the considerations therein mentioned, the said Augustus Mongredien did grant, bargain, sell, assign, transfer, and set 40 over unto the said James Cunliffe and Samuel Brooks, their executors, administrators, and assigns, all those sixty-two sixty-fourth parts or shares of him the said Augustus Mongredien, of and in the said ship or vessel called the "Osmanli," then on her voyage to the Levant, and particularly mentioned and described in the thereinbefore recited Certificate of Registry, and of and in all and singular her engines, boilers, and machinery, and the masts, sails, sail yards, anchors, cables, ropes, cords, guns, gunpowder, ammunition, small arms, tackle, apparel, boats, oars, and appurtenances whatsoever, to the said ship or vessel belonging or in anywise appertaining, and all his right in all policies of insurance effected on the said ship, to hold and enjoy the same, unto the said James Cunliffe and Samuel Brooks, their executors, administrators, and assigns, subject to a proviso for re-assignment of the said parts and shares of the said ship and premises thereby assigned, upon payment, by the said 50 Augustus Mongredien, his heirs, executors, or administrators, within one calendar month after notice in writing for that purpose given to him or them by the said James Cunliffe and Samuel Brooks, their executors, administrators, or assigns, of all and every the sum and sums of money due and owing from him to them, in respect of any monies then lent or thereafter to be lent or paid by the said James Cunliffe and Samuel Brooks, to or for the use or on account of the said Augustus Mongredien, together with lawful interest, and also subject, in case of default in payment as aforesaid, to a power of sale, for better securing and raising and paying unto the said James Cunliffe and Samuel Brooks, their executors, administrators, and assigns, all and every the sum and sums of money, interest, and costs, due to the said James Cunliffe and Samuel Brooks, their executors, administrators, and assigns, on the security of the Indenture now in recital: And whereas the said power of sale, contained in the hereinbefore-recited Indenture, has never been exercised: And whereas the said Samuel James 60 Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, have accepted bills for the accommodation of the said Augustus Mongredien, to the amount of five thousand pounds; and the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, hold a security from the said Augustus Mongredien on his fifty-nine sixty-fourth shares of a vessel, called the "Levantine," and on the policies of insurance therein expressed, to indemnify them for having so accepted the said bills, and to secure the payment of all sums of money due and to become due from time to time from the said Augustus Mongredien to them the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, on a balance of accounts between him and them, not exceeding in the whole five thousand pounds: And whereas, in lieu of the said security so held by the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, the said Alexander Mongredien hath proposed to the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, that they should accept and take such transfer of the said sixty-two sixty-fourth shares of the said vessel called the "Osmanli," as is herein- 70 after contained; and they have agreed so to do; and the said James Cunliffe and Samuel Brooks have, at the request of the said Augustus Mongredien, agreed to concur in these presents, for the purpose of joining in the transfer of the same sixty-two sixty-fourth shares, and of releasing the same,



in the manner hereinafter expressed, from all claims and demands which they may have thereon by virtue of the hereinbefore-recited Indenture or otherwise, they being satisfied with other security from the said Augustus Mongredien for the repayment of the sums so secured to them by the hereinbefore-recited Indenture as aforesaid. Now this Indenture witnesseth, that in pursuance of the said respective agreements, and in consideration of the premises, and of the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, having accepted bills to the amount of five thousand pounds, for the accommodation of the said Augustus Mongredien as aforesaid, and having given up to him the said security so held by them, the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, as aforesaid, as he doth hereby expressly acknowledge: he, the

10 said Augustus Mongredien, doth, by these presents, grant, bargain, sell, assign, transfer, and confirm: and the said James Cunliffe and Samuel Brooks, in consideration of the premises, and of ten shillings to each of them in hand, well and truly paid on the execution hereof by the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, the receipt whereof is hereby acknowledged, at the request and by the direction of the said Augustus Mongredien, testified by his execution hereof, do, and each of them doth, by these presents, release and discharge, and also assign, transfer, and confirm unto the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, and assigns, all those the said sixty-two

20 sixty-fourth parts or shares of and in the said ship or vessel called the "Osmanli," now on her voyage to \_\_\_\_\_, and particularly mentioned and described in the hereinbefore recited or noticed Certificate of Registry; and of and in all and singular her engines, boilers, and machinery, and the masts, sails, sail yards, anchors, cables, ropes, cords, guns, gunpowder, ammunition, small arms, tackle, apparel, boats, oars, and appurtenances whatsoever, to the said ship or vessel called the "Osmanli," belonging or in anywise appertaining; and also all the right, title, and interest of them, the said Augustus Mongredien, and James Cunliffe, and Samuel Brooks, and each of them, of and in all policies of insurance effected or to be effected on the same ship or vessel and her appurtenances, and all benefit and advantage of the same policies of insurance respectively; and all powers, rights, remedies and authorities, for the recovery of the monies secured or to be secured, and to become due and payable in respect thereof; and all the right, title, interest, trust, possession, property, claim and demand, whatsoever, both at law and in equity, of them the said Augustus Mongredien, James Cunliffe, and Samuel

30 Brooks, and each of them, in, of, or to the said ship or vessel, to have, hold, receive, take and enjoy, the sixty-two sixty-fourth parts or shares of and in the said ship or vessel called the "Osmanli," and the said policies of insurance respectively; and all and singular other the premises hereby intended to be assigned, with their and every of their appurtenances, unto the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, and assigns, freed and absolutely discharged and exonerated of and from the hereinbefore-recited indenture, and the equity of redemption thereunder, and also from the sum and sums of money, interest and costs, thereby intended to be secured, and all claims and demands of the said James Cunliffe and Samuel Brooks in respect thereof, subject nevertheless to the proviso or agreement for redemption hereinafter contained; that is to say, provided always, and it is hereby declared and agreed, that if the said Augustus

40 Mongredien, his heirs, executors, or administrators, shall, upon demand, pay unto the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, or assigns, all and every the sum and sums of money which they shall be called upon to pay, and shall pay, by reason of their having accepted the aforesaid bills, or any renewals or substitutes thereof, with interest thereon, at the rate of five pounds per centum per annum, from the time or respective times of such payment; or, in case the said Augustus Mongredien, his executors or administrators, shall satisfy the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors or administrators, that such accepted bills, or the renewals or substitutes thereof, are discharged or cancelled, then, and in either of such cases, the said Samuel James

50 Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, or assigns, shall and will, at the request and costs of the said Augustus Mongredien, his executors, administrators, or assigns, duly and effectually re-assign or re-transfer to him or them, or as he or they shall direct or appoint, the said sixty-two sixty-fourth parts and shares of the said ship or vessel called the "Osmanli," and policies and premises hereby intended to be transferred, free from all charges and incumbrances whatsoever to be made, done, or suffered by the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, or assigns, in the meantime: provided also that, if default shall be made by the said Augustus Mongredien, his heirs, executors, administrators, or assigns, in the payment of all and every or any of the sum or sums so expressed and intended to be hereby secured at the time or respective times appointed for payment thereof respectively, in and by the proviso for redemption hereinbefore contained, then it shall and may

60 be lawful to and for the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, or assigns, of their own proper authority, without any further consent or concurrence of the said Augustus Mongredien, his executors, administrators, or assigns, to sell and dispose of the said sixty-two sixty-fourth shares hereby transferred of and in the said ship or vessel called the "Osmanli," and her appurtenances, either together, in one lot, or in several lots, and either at one or at several times, and by public auction or private contract, to any person or persons whomsoever, with full power to buy in the same or any part thereof at any auction or auctions, and to resell the same, without being liable for any loss to be occasioned by such resale; and at their own discretion to vary the terms of, and wholly rescind any contract for sale which may have been entered into, and to assign, transfer, and assure the same when sold to the purchaser or purchasers thereof, or as he, she, or they shall direct: and it is hereby declared, that the said Samuel James Arnold, William Griffith Leete, William

70 James Powell and Henry Roscoe, their executors, administrators or assigns, shall stand possessed of the moneys to be received from or by virtue of such sale; and of all policies and other moneys to be received under or by virtue of these presents, upon trust in the first place, to pay and discharge the costs and expenses attending the executions of the powers herein contained, or otherwise in relation to these presents; and in the next place, to retain, and pay, and satisfy themselves, the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators or assigns, all such sums or sum of money as may be then due or owing to them from

RECORD OF  
PROCEEDINGS.

In the Royal  
Commercial Court.

No. 38.

Indenture, dated  
12th August, 1848,  
made between Mon-  
gredien, of 1st part;  
Cunliffe and Brooks,  
of 2nd part; Arnold  
and others, of 3rd  
part—(continued).

RECORD OF PROCEEDINGS.  
In the Royal Commercial Court.

Indenture, dated 12th August, 1848, made between Mongredien, of 1st part; Cunliffe and Brooks, of 2nd part; Arnold and others, of 3rd part—(continued).

the said Augustus Mongredien, and secured by these presents, and upon trust to pay the surplus or residue of the said moneys, if any, unto the said Augustus Mongredien, his executors, administrators, or assigns. And it is hereby further declared, that the receipt or receipts of the said Samuel James Arnold, William Griffith Leete, William James Powell and Henry Roscoe, their executors, administrators, or assigns, or their agent, for any sum or sums of money to be received by them in pursuance of these presents or the powers herein contained, shall effectually discharge the person or persons paying the same from all liability in respect of the application thereof; nor shall such person or persons be obliged or concerned to take notice or enquire whether any sale or sales is or are necessary for the purposes aforesaid, nor whether any such demand or default has been made as aforesaid, nor into the regularity or propriety of any such sale. And the said James Cunliffe and Samuel Brooks do hereby, 10 for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, covenant and declare to and with the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators and assigns; that they, the said James Cunliffe and Samuel Brooks, have not, nor hath either of them, made, done, committed or executed, or willingly suffered any act, deed, matter or thing whatsoever, whereby, or by reason or means whereof, the said sixty-two sixty-fourth parts or shares of the said ship or vessel called the "Osmanli," and policies and premises hereby intended to be transferred, or any of them, or any part thereof, are, is, can, shall or may be in any manner prejudicially affected or incumbered. And the said Augustus Mongredien, for himself, his heirs, executors and administrators, doth hereby covenant 20 and declare with and to the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators and assigns, in manner following—that is to say, that he, the said Augustus Mongredien, his heirs, executors or administrators, shall and will upon demand, well and truly pay, or cause to be paid, unto the said Samuel James Arnold, William Griffith Leete, William James Powell and Henry Roscoe, their executors, administrators, or assigns, all and every the sum and sums of money expressed and intended to be hereby secured without deduction; and that at the time of the sealing and delivery of these presents, the said Augustus Mongredien, James Cunliffe and Samuel Brooks, some or one of them, have or hath in themselves or himself, good right, full power, and lawful and absolute authority, to assign the premises hereby expressed or intended to be assigned, and every of them, and every part thereof, unto the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, and assigns, 30 and that the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, and assigns, shall and may henceforth peaceably and quietly have, hold, possess, and enjoy the same premises without any manner of hindrance or molestation, of, from, or by any person or persons whomsoever; and that free and clear of, and from all former and other bargains, sales, gifts, titles, charges, and incumbrances whatsoever. And moreover, that the said Augustus Mongredien, his executors and administrators, and all person and persons whomsoever, having or lawfully claiming any right or interest in or to the said sixty-two sixty-fourth shares of the said ship or vessel called the "Osmanli," policies and premises hereby intended to be assigned, or any part thereof, shall and will, from time to time, and at all times hereafter, upon every request of the said Samuel James Arnold, William 40 Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, or assigns, but at the costs of the said Augustus Mongredien, his executors or administrators, until a sale shall be made under the power hereinbefore contained, and afterwards at the costs of the purchaser or purchasers, his, her, or their executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further acts, deeds, and assurances whatsoever, for the more effectually assigning and assuring the same sixty-two sixty-fourth shares, policies, and premises, unto the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, and assigns, as by them or their Counsel shall be devised or required. Provided also, and it is hereby lastly agreed, that it shall be lawful for the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their 50 executors, administrators, or assigns, if they shall so choose (but without obligation on them so to do), to insure from time to time the said sixty-two sixty-fourth shares of and in the said vessel and her machinery and freights, or either ship and machinery or freights, in such manner and to such an amount as they shall think proper, during the continuance of this security; and the premiums of such insurance shall be a charge upon the said premises, and every policy of insurance shall be held by the said Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, their executors, administrators, and assigns, for their own security, in like manner as the said vessel hereby assigned; and in case of loss, they shall have further power, if the underwriters dispute their liability, either wholly or in part of putting such policy in suit, or of compounding and settling the claim without or by abandonment of suit, as they in their absolute discretion shall see fit. In witness whereof, the said 60 parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered by the within-named  
A. Mongredien and James Cunliffe, in the presence of  
J. Surr, 80, Lombard Street, London. } (Signed) A. MONGREDIEN, (L. S.)  
JAMES CUNLIFFE, (L. S.)

Signed, sealed, and delivered by the said Samuel Brooks, in the presence of George Illingworth, Clerk, Messrs. Cunliffe, Brooks & Co., Bankers, King Street, Manchester; Custom House, Liverpool.—30th October, 1848. } \* JAMES BROOKS, (L. S.)

\* Sic.

70

Folio 110.

EXTRACTED FROM THE REGISTRY OF HER MAJESTY'S HIGH COURT OF ADMIRALTY OF ENGLAND.

I, John Fletcher, Notary Public by Royal authority, duly admitted, sworn, and enrolled, residing and practising in Liverpool, in the County Palatine of Lancaster, and United Kingdom of Great Britain and Ireland, do hereby certify, that I have carefully collated and examined the copy mortgage, hereunto annexed, with the original indenture of mortgage, of which it purports to be a copy; and that the same is a true and correct copy of such original indenture, which appears to have been duly executed by Augustus Mongredien, James Cunliffe, and Samuel Brooks, three of the parties therein named.

In faith and testimony whereof, I, the said Notary, have hereunto set my hand and seal, this thirty-first day of May, one thousand eight hundred and forty-nine.

(L. S.) JOHN FLETCHER, *Notary Public, Liverpool.*

H. B. SWABEY, *Registrar.*

RECORD OF PROCEEDINGS.  
In the Royal Commercial Court.  
No. 39.  
Certificate of J. Fletcher, Notary, dated 1st May, 1849.

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Folio 111. Document E.

EXTRACTED FROM THE REGISTRY OF HER MAJESTY'S HIGH COURT OF ADMIRALTY OF ENGLAND.

No. 47.

*Certificate of British Registry.*

No. 40.  
DOCUMENT E.  
Certificate of British Registry of the steamer "Osmanli."

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This is to certify that, in pursuance of an Act passed in the 8th and 9th years of the reign of Queen Victoria, intituled, "An Act for the Registering of British Vessels," Augustus Mongredien, of Liverpool, in the County of Lancaster, Merchant, having made and subscribed the Declaration required by the said Act, and having declared that he, together with Peter Borrie, of the City of London, Engineer, and Anthony Easterby, of Liverpool, aforesaid, Master Mariner, are sole owners (in the proportions specified on the back hereof) of the ship or vessel called the "Osmanli," of Liverpool, which is of the burthen of 210  $\frac{2}{10}$  tons, and whereof Thomas Paul is Master; and that the said ship or vessel was built at Dumbarton, in the County of Dumbarton, and launched 22nd October, 1846, as appears by a certificate under the hand of Denny Brothers, the builders, dated 28th December, 1846; and Alexander Macintyre, Acting Tide-Surveyor at the port of Dumbarton, having certified to us that the said ship or vessel has one deck and three masts; her length from the inner part of the main stem to the fore part of the stem-post aloft is 127 feet  $\frac{1}{10}$ th; her breadth in midships is 23 feet  $\frac{3}{10}$ ths; her depth in hold at midships is 13 feet  $\frac{3}{8}$ ths; that she is propelled by steam with an engine-room 41 feet in length, and 94  $\frac{2}{10}$ . That she is schooner-rigged, with a standing bowsprit, is round-sterned, clinker-built, has no galleries, and a man-bust figure-head; and the said subscribing owner having consented and agreed to the above description, and having caused sufficient security to be given as is required by the said Act, the said ship or vessel called the "Osmanli" has been duly registered at the port of Liverpool, certified under our hands at the Custom House in the said port of Liverpool, this 8th day February, in the year 1847.

(Signed) E. ARNAUD, *Collector.*  
J. POWELL, *Comptroller.*

50

Names of the several Owners within mentioned.	Number of Sixty-fourth Shares held by each Owner.
Augustus Mongredien . . . . .	Fifty-nine . . . . . 59
Peter Borrie . . . . .	Three . . . . . 3
Anthony Easterby . . . . .	Two . . . . . 2
	64

(Signed) E. ARNAUD, *Collector.*  
J. POWELL, *Comptroller.*

60

Endorsement since Registry.

Entered 1st April, 1848.

It appears, by a Bill of Sale, dated 31st March, 1848, that Peter Borrie, of the City of London, Engineer, has transferred three sixty-fourth shares to Augustus Mongredien, of Liverpool aforesaid, Merchant.

Entered 15th April, 1848. It appears, by a Bill of Sale, by way of mortgage, dated 11th April, 1848, that Augustus Mongredien, of Liverpool aforesaid, Merchant, has transferred sixty-two sixty-fourth shares to James Cunliffe, and Samuel Brooks, both of Lombard-street, in the City of London, Bankers, and co-partners, carrying on business under the style or firm of "Cunliffe, Brooks, & Co.," upon trust for securing all such advances and payments as now are, or hereafter may be made, or which in any manner may become due, and owing with interest, and in default of payment to sell.

70

Endorsed 30th October, 1848. Augustus Mongredien, of Liverpool, aforesaid, Merchant (owner), and James Cunliffe, and Samuel Brooks, both of Lombard Street, in the City of London aforesaid, Bankers (mortgagees), have transferred by Bill of Sale, by way of mortgage, dated 12th of August, 1848,  $\frac{62}{64}$ th shares to Samuel James Arnold, William Griffith Leete, William James Powell, and Henry Roscoe, all of Liverpool, Bankers, and co-partners, carrying on business together, under the firm of Arnold Leete, Roscoe, & Company, upon trust for securing all or any sum and

Indorsed on the Certificate of Registry, 20th May, 1848.

RECORD OF  
PROCEEDINGS.  
*In the Royal  
Commercial Court.*

No. 40.  
Certificate of British  
Registry of the  
steamer "Osmanli"  
—(continued).

sums of money that may in any manner howsoever become due, or to which they may become liable in respect of certain Bills of Exchange therein mentioned, not exceeding in the whole the sum of £5,000, and in default of payment to sell.

Changes of Masters since Registry:—1847, June 17th, at Liverpool, Edward Mara;  
1849, January 12th, ditto, George Henry Corbett.

I certify the above and within to be a true copy of the Certificate of Registry of the "Osmanli" with the Records and Endorsements thereon since Registry, granted to the Bill of Entry office, this 30th May, 1849.

JOHN CHARLES BEZER,  
Ship's Registry Office, Custom House, Liverpool, 10  
30th May, 1849,  
H. B. SWABEY, Registrar.

No. 41.  
DOCUMENT F.  
Extract from the  
Registry of Arrivals  
of the Club "St.  
George," for the  
steamer "Osmanli."

### Folio 113. Document F.

EXTRACT FROM THE REGISTRY OF ARRIVALS OF THE CLUB "ST. GEORGE," CORROBORATED ALSO BY THE ANNEXED NOS. OF THE MALTESE LLOYD, FOR THE ENGLISH STEAMER "OSMANLI."

1847.	March 17	.	From Liverpool	.	Consignee, R. Duckworth and Co.	20
"	May 4	.	" Constantinople	.	" ditto.	
"	July 11	.	" Liverpool	.	" ditto.	
"	August 24	.	" Constantinople	.	" ditto.	
1848.	January 4	.	" Liverpool	.	" ditto.	
"	" 30	.	" Constantinople	.	" ditto.	
"	April 4	.	" Liverpool	.	" ditto.	
"	" 24	.	" Constantinople	.	" ditto.	
"	July 8	.	" Liverpool	.	" ditto.	
"	September 12.	.	" Constantinople	.	" ditto.	
"	November 17.	.	" Liverpool	.	" ditto.	30
"	December 15	.	" Constantinople	.	" ditto.	
1849.	February 2	.	" Liverpool	.	" ditto.	
"	March 7	.	" Smyrna	.	" ditto.	

No. 42.  
Another Extract  
from the same  
Registry, for the  
steamers "Levan-  
tine" and "Aram."

### Folio 114.

EXTRACT FROM THE REGISTRY OF ARRIVALS OF THE CLUB "ST. GEORGE," CORROBORATED ALSO BY THE ANNEXED NOS. OF THE MALTESE LLOYD, FOR THE ENGLISH STEAMER "LEVANTINE." 40

1846.	October 8	.	From Liverpool	.	Consignee, R. Duckworth and Co.	
"	November 16	.	" Constantinople and Smyrna.	.	" ditto.	
1847.	May 5	.	" Liverpool	.	" ditto.	
"	June 22	.	" Constantinople	.	" ditto.	
"	September 24.	.	" Liverpool	.	" ditto.	
1848.	December 29	.	" Ditto	.	" ditto.	
1849.	January 30	.	" Constantinople	.	" ditto.	
"	September 2	.	" Liverpool	.	P. Stuart and Co.	50
"	October 25	.	" Constantinople	.	" ditto.	

DITTO, FOR THE ENGLISH STEAMER "ARAM."

1847.	April 17	.	From Liverpool	.	Consignee, R. Duckworth and Co.	
"	May 15	.	" Constantinople	.	" ditto.	
"	August 7	.	" Liverpool	.	" ditto.	
"	September 18.	.	" Constantinople	.	" ditto.	

No. 43.  
Order of the Royal  
Commercial Court,  
dated 5th December,  
1850.

### Folio 147. Duplicate.

EXTRACT FROM THE VOLUME OF JUDGMENTS ENTERED ON THE REGISTRY OF THE ROYAL COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.

*Royal Commercial Court of the Island of Malta and its Dependencies. Victoria Term.*

Judge—Dr. G. P. Bruno.

Consuls—F. Aquilina, F. Busietta.

XXXII. Sitting. Thursday, 5th December, 1850. 1st Case. 70

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name and as partner in and representing the firm, R. Duckworth and Co.

The Plaintiff makes instance as under, No. 18, Sitting IX.

The Advocate Griffith stated to the Court that, on Leonard's behalf, he had to make two motions or demands before the hearing of the Cause, which were:—1st. That John Grant and

G. L. Schembri, Merchants, should sit as Consuls in lieu of the now sitting Consuls, F. Busietta and F. Aquilina, Merchants, not out of any personal consideration, but because the former ones are by law the competent Consuls, for the Cause had first been heard before them, and they had emitted several Decrees, especially that of the 9th July, 1850.

2nd. That the Cause should be heard before four and not two Consuls only, as all the elements required by the law to that effect concurred in the Cause.

Doctors Sciortino and Dingli objected, on Messina's behalf, to the first demand, stating, that they did not oppose it out of any personal consideration, but because it was not supported by law, for the Cause was never brought to a hearing before the Consuls, J. Grant and G. L. Schembri, Merchants; it was only entered on the Registry with another Cause, on the part of Leonard, by which he demanded prorogation and restitution *in integrum*, both of which he obtained whilst the said Consuls were sitting; whereupon it is clear that the present Cause was never heard before those Consuls, and the Decrees they emitted in another Cause do not render them competent to judge of the present Cause, for it is a daily practice that some Consuls emit Decrees of Restitution *in integrum* and prorogation, and others afterwards decide the Cause to which the Decrees emitted referred. Finally, they stated they had no objection to the second demand.

The Court adjourns the present Cause to the sitting of Tuesday next, 10th instant, when the two preliminary questions shall be disposed of. Costs reserved.

G. G. MICALLEF, Registrar.

20 True copy.

G. G. MICALLEF, Registrar.

RECORD OF PROCEEDINGS.

*In the Royal Commercial Court.*

No. 43.

Order of the Royal Commercial Court, dated 5th December, 1850—

(continued).

### Folio 148. Duplicate.

EXTRACT FROM THE REGISTRY OF JUDGMENTS ENTERED ON THE ROLLS OF THE ROYAL COMMERCIAL COURT OF MALTA.

*Royal Commercial Court of the Island of Malta and its Dependencies. Victoria Term.*

30

Judge—Dr. Giacomo P. Bruno.

Consuls—F. Aquilina, F. Busietta.

Sitting XXXIV., Tuesday, 10th December, 1850. 1st Case.—Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co.

The Court—Seen Sec. 4th of the Constitution of the Royal Commercial Court. Seen the Proclamations of December 30th, 1814; March 26th, 1827; and the Ordinance, No. 4, 1846. Seen the Decrees of June 1st and July 13th, 1850—considering that, by the terms of the Constitution of the Royal Commercial Court, Sec. 13, a Cause is brought to an issue by the production of a Reply; and if there has been a previous issue, in consequence of a Protest of Contumacy, by the following restitution *in integrum*, according to the constant practice of the Royal Courts, the issue is re-opened and the Cause is again placed on the Rolls for a hearing: considering that no favourable construction of Sec. 4 will give it a meaning, that the mere entry of the Cause on the Rolls for a hearing, in consequence of a Protest of Contumacy, is equivalent to a hearing, such as will entitle to demand the same Consuls that sat on that occasion; for a Cause is really and actually brought to a hearing, when, after the final issues, the merit is entered upon, which in the subject-case the Decrees of the 1st of June and 13th of July, though containing provisions regarding merely the proceedings, do not touch at all; especially as by the said restitution *in integrum* the Cause was long afterwards brought to an issue and prepared for its final hearing, according to Sec. 13 of the said Constitution: considering, finally, that according to the said organic laws, the present Cause offers all the requisites, in order that it should be heard before four Consuls,

Decrees: that the hearing of the present Cause be continued on Thursday, 19th instant, before the sitting Consuls and two other Consuls, to be appointed *servatis servandis*, as by law; and therefore directs the Registrar to take the necessary steps to obtain such an appointment. Costs reserved.

G. G. MICALLEF, Registrar.

True copy.

G. G. MICALLEF, Registrar.

60

### Folio 150.

No. 962. Scudi 10,200.

Valletta, 9th March, 1849.

Pay to G. E. Corbett, or bearer, ten thousand two hundred scudi, and debit with them

R. MESSINA.

To the Cashier of the Malta Bank.

70

Entered folio 241.

On the back.

George Henry Corbett, R. Duckworth and Co.

Credit R. Duckworth and Co., from G. M. Canchi.

True copy.

E. GINGELL, Cashier.

No. 45.  
Cheque of R. Messina, dated 9th March, 1849, for 10,200 scudi.

RECORD OF  
PROCEEDINGS.In the Royal  
Commercial Court.No. 46.  
Memorandum of  
arrival of steam  
vessels.

1849.

Feb. 25.	French Govt. Pkt.	"Nil,"	from	Marseilles,	with	London	of	7th	and	17th	
" 26.	Do.	"Osiris,"	from	do.	do.	do.	of	19th			
March 2.	British Pkt.	"Merlin,"	from	do.	do.	do.	of	24th	at	6 p.m.	

February.

## Folio 156.

No. 47.

Certificate of the  
Superintendent of  
the Quarantine and  
Police at Malta, of  
the receipt of a  
Letter directed to  
Leonard, dated  
21st October, 1850.

## Folio 157. (L.A.)

10

I do hereby certify to all to whom it may concern, that from the Letter Registry kept in this department, it appears that on the 7th March, 1849, a letter, directed "Mr. Leonard," came to the Smoking Office from the English steamer "Osmanli," arrived from Constantinople; which letter, after undergoing the smoking process, was consigned to Signor Guiseppe Mauno, the Agent of the said Mr. Leonard.

In faith whereof I have given these presents and hereunto set my hand and the seal of this Department of the Quarantine and Police of the Port.

Malta, 21st October, 1850.

20

(Signed) E. BONAVIDA, *Superintendent of the Quarantine and  
Police of the Port.*

No. 48.

Order of the Royal  
Commercial Court,  
dated 19th Decem-  
ber, 1850.

## Folio 192.

EXTRACT FROM THE VOLUME OF JUDGMENTS ENTERED ON THE REGISTRY OF THE ROYAL  
COMMERCIAL COURT OF MALTA AND ITS DEPENDENCIES.

30

*Royal Commercial Court of the Island of Malta and its Dependencies. Victoria Term.*

Judge—Dr. G. P. Bruno.

Consuls—F. Aquilina, F. Busietta, John Grant, Girolamo Tessi.

Sitting XXXVII., Thursday, 19th December, 1850. 4th Case.—Rosario Messina,  
Merchant, *versus* William Leonard, Merchant, in his own name and as partner in  
and representing the firm, R. Duckworth and Co.

40

The Plaintiff made instance as under, No. 17, Sitting 9th. Drs. Sciortino and Dingli, on behalf of the Plaintiff, declared that he did not intend to carry on the Appeal interposed from the Judgment of the Admiralty Court in England.

Advocate Griffiths, on behalf of the Defendant, objected to Emanuele Seicluna, Merchant, being brought as a Witness, on the ground that the latter was present at the hearing of the Cause, and demanded a Decree thereupon.

Drs. Sciortino and Dingli remarked that the presence alone was not sufficient to exclude Emanuele Seicluna, Merchant, from deposing.

The Court—considering that the presence at Court of the Witness Emanuele Seicluna, Merchant, does not render by law his evidence inadmissible, but might, at most, influence the faith to be placed thereon—

Decrees: that the said Witness Seicluna, Merchant, be sworn, and his evidence afterwards taken. Costs reserved.

G. G. MICALLEF, *Reg.*

Witnesses produced by Rosario Messina, Merchant, and sworn and examined:—Emanuele Seicluna, Merchant, Dr. Ignacio Schembri, Dr. Emanuele Caruana, Captain Guiseppe Mauno. The Court adjourns the continuation of the present Cause to the sitting of Thursday, 9th January, 1851, when it must be the only one heard.

G. G. MICALLEF, *Registrar.*

True copy.

G. G. MICALLEF, *Registrar.*

60

No. 49.

Note of Documents  
produced on behalf  
of W. Leonard, on  
14th January,  
1851.

## Folio 215.

January 14th, 1851.

Two English Documents, produced by the Notary William John Stevens, Legal Procurator of  
William Leonard, Merchant.

70

Two other Documents, produced by the same, for Leonard.

Another Document, produced by the same, for Leonard.

Another English Document, produced for Leonard.

## No. 4. Folio 216.

Liverpool, 28th August, 1846.

Messrs. R. DUCKWORTH &amp; Co., Malta.

GENTLEMEN,

Availing myself of the recommendation of your Mr. Duckworth of this town, who will, no doubt, have written to you, I have the pleasure to inform you that the steamer "Levantine," Captain Easterby, will touch, on her voyage to Constantinople and Trebisond, at your Port; and I have instructed him to apply to you for any assistance or supplies he may require, trusting that you will be kind enough to do the needful and protect the interest of the *proprietors* of the "Levantine" in all possible ways. There may perhaps be room in her for goods and passengers for her ports of destination, in which case, your efforts to procure them will much oblige me. She will also touch at Malta on her return to London and Liverpool.

Thanking you in anticipation for what services you may be able to render,

I am, Gentlemen,

Your obedient servant,

Addressed, Collo Bollo Port,

20 Messrs. R. DUCKWORTH &amp; Co., Malta.

A. MONGREDIEN.

RECORD OF  
PROCEEDINGS.In the Royal  
Commercial Court.

No. 50.

Letter from A.  
Mongredien to R.  
Duckworth & Co.,  
dated 28th August,  
1846.

## Folio 219.

Fenwick Chambers, Liverpool, December 24th, 1846.

SIR,

I beg to inform you that the fine new iron steam ship "Osmanli," Thomas Paul, Commander, will leave Liverpool on the 18th February next, for Malta, Constantinople, and Trebisond, touching, if need be, at Gibraltar. Freight for Constantinople 70s., and 10 per cent. primage per ton, cubic measurement, payable in Liverpool on the departure of the vessel. I am empowered by the *proprietors* of the "Osmanli" to guarantee, on this her first voyage, that she will (accidents excepted) arrive at Constantinople on or before the 25th day after her departure from Liverpool; or that, in default thereof, half the amount of freight paid by the shippers shall be returned to them. She is expected to carry about 300 tons of goods. Should you wish any room to be reserved for you in this vessel, I shall feel obliged by your informing me, by letter, on or before the 2nd February, the quantity you wish to ship.

I also beg to apprise you, that the new iron steam ship "Aram," Capt. A. Easterby, will leave Liverpool, for the same destination, on the 18th March; and the "Levantine," Capt. J. B. Booth, on the 18th April; after which period, one of these vessels will be despatched on the 18th of every month.

It had been intended that the "Osmanli" should leave this Port for the Levant on the 18th of January; but, lest the promises of the Engineer to deliver the vessel in due time should not be fulfilled, in order to prevent the possibility of any disappointment to the shippers, the *proprietors* have determined not to despatch her till the 18th of February.

Yours respectfully,

A. MONGREDIEN.

No. 51.  
Circular Letter of  
A. Mongredien,  
dated 24th Decem-  
ber, 1846.

## Folio 222.

Liverpool, 11th January, 1849.

Messrs. R. DUCKWORTH &amp; Co., Malta.

DEAR SIR,

The "Osmanli" will leave this for the Levant to-night. She has been detained by very adverse and rough weather. She will have spare room for 40 or 50 tons, probably; and you will therefore oblige me by securing what goods you can for her. She brings out five passengers in cabin, four for Malta (with option for two to stay at Gibraltar), and one for Gibraltar; there will be room therefore for passengers also, in all probability.

Without your favours, per the "Euxine," which arrived at Southampton on the 9th, I remain uninformed as to the "Levantine's" arrival at Malta. I hope soon to have advices from you respecting her, and that she has paid you her visit in good order, and proceeded onward with more goods and favourable weather.

Messrs. Berger and Co. send you by the "Osmanli" four bales of hides, to be forwarded from Malta to different ports of Italy, according to instructions you will receive from Messrs. Berger and Co., my friends here; I shall feel obliged by your paying particular attention to their instructions, as this may lead to further business worth attending to.

There are two "South-Downs" (sheep) and six pheasants on board the "Osmanli," for Malta, sent by the Earl of Derby, as per B/L; as these are live stock, it is desirable that no delay should occur in

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No. 52.  
Letter from A.  
Mongredien to R.  
Duckworth & Co.,  
dated 11th January,  
1849.

RECORD OF  
PROCEEDINGS.

*In the Royal  
Commercial Court.*

No. 52.  
Letter from A.  
Mongredien to R.  
Duckworth & Co.,  
dated 11th January,  
1849—  
(continued).

their discharge from our care, any facility you can render in informing the party to whom they are consigned (as per manifest), in case he should not be on the alert, will of course be very useful.

I am, dear Sir, yours very truly,  
A. MONGREDIEN.

I observe that the "Levantine" was off Gozo on the 29th December, so that she had weathered the hurricane with which you had been visited the day before.

I enclose manifest.

Since writing the above, I regret to inform you that Captain Mane fell overboard and was drowned in the river while the vessel was going out, and that Captain Corbett has been appointed as his successor. 10

Addressed,  
Messrs. R. DUCKWORTH & Co., Malta.

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Folio 224.

No. 53.  
Letter of Advice  
and Protest for non-  
payment of Mon-  
gredien's Bill, dated  
15th February,  
1849.

Messrs. R. DUCKWORTH and Co., Malta.

London, 15th February, 1849.

GENTLEMEN,

By direction of our friends, Messrs. Moss and Co., of Liverpool, we beg leave to enclose a 20  
Protest for non-payment of bill on Mongredien, £406. 3s. 9d., due the 14th instant.

We are, Gentlemen,  
Your very obedient servants,

Addressed,  
Per French Packet *via* Marseilles.  
Messrs. R. DUCKWORTH & Co., Malta.  
BARCLAY, BEVAN, TRITTON & Co.

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Folio 226. No. 3.

No. 54.  
Discharge of W.  
Leonard to Capt.  
Corbett, dated 9th  
March, 1849.

Captain George Henry Corbett, Commanding the English steamer "Osmanli," belonging to the Company for steam navigation established at Liverpool, having this day received from me, the undersigned, in my capacity of partner in and representing the firm of Robinson Duckworth and Co., established in this Island, my accounts with the said Company, and paid me the balance thereof, as per separate memorandum, given by me under this day's date;—I do hereby declare, that if any errors shall be conceived to exist in the said accounts, provided such errors be pointed out in this Island of Malta and not elsewhere, I will either establish the correctness of the items objected to or restore the amount of such errors as may be found to exist. 40

(Signed) W. LEONARD.

Malta, 9th March, 1849.

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Folio 227.

No. 55.  
Counter-Protest of  
Capt. Corbett to  
Protest of R.  
Messina, dated 8th  
August, 1849.

January 14th, 1851. Produced by Stevens for William Leonard.

EXTRACT FROM THE VOLUME OF PROTESTS ENTERED ON THE REGISTRY OF THE ROYAL  
COMMERCIAL COURT. 50

*In the Royal Commercial Court of Malta.*

Rosario Messina, Merchant, *versus* Captain George Henry Corbett, of the English steamer "Osmanli," and William Leonard, Merchant, partner in and representing the firm, Robinson Duckworth and Co.

Counter Protest of the said Captain Corbett.

He respectfully sheweth, That he has been served with a Protest presented by the said Messina, on the 6th August, instant, which Protest however, as far as regards him, is capricious, irregular, and vexatious; for the transactions between him and the said Messina were most sincere and genuine, as are also those between himself and Leonard, for he did only what is allowed by law and what the best interest of the then owners of the steamer "Osmanli" absolutely demanded; wherefore his conduct can give Messina no ground for an action of damages; and as to the Affidavit required from Leonard, it is not his, Corbett's, business, and he has already made such an Affidavit in England, the truth being, that his transaction was sincere, just, and in conformity with the real interest of the owners of the vessel, who therefore could not refuse the execution thereof. He however, whilst for the sake of regularity, gives formal notice thereof to Messina, has counter-protested and does counter-protest 60  
against the same for all damages, expenses, and interests he might incur in consequence of any proceedings of the said Messina, and to that effect pronounces him to be in fraud, delay, and *culpa late levis et etiam levissima*, by this and by any other better way allowed by law.

EMANUELE CARUANA, *Notary.*  
W. STEVENS, *Legal Procurator.* 70

August 8th, 1849. Presented by the said Legal Procurator.

I do hereby certify to have served Rosario Messina, Merchant, with an official copy of the present Counter Protest, this 10th August, 1849. G. B. ATTARD, *Marshal.*

True Copy. G. G. MICALLEF, *Registrar.*

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## Folio 229.

IN THE HIGH COURT OF ADMIRALTY.

The "Osmanli," Corbett, Master.

RECORD OF  
PROCEEDINGS.In the Royal  
Commercial Court.

No. 56.

Affidavit of R.  
Messina, dated 11th  
September, 1849.

Appared personally, Rosario Messina, of the City of Valletta, in the Island of Malta, Merchant, and a Director of the Bank of Malta, and made oath—that on the eighth day of the month of March, in the present year one thousand eight hundred and forty-nine, he was applied to by Guiseppe Mauno, of the said City of Valletta, on behalf of George Henry Corbett, the Master of the screw steamer  
10 "Osmanli," to advance to the latter, on bottomry of the said vessel, a sum of money requisite for the necessities of the said vessel. That having agreed to advance the same on the following day, to wit, the ninth day of March, when the contract was entered into before the Notary, William John Stevens, of the said City of Valletta, he was informed by the said Notary that one part of the money required was to be applied to release the said steam vessel from a Warrant of Arrest issued from Her Majesty's Commercial Court against the said vessel, at the suit of the firm of Messrs. Robinson Duckworth and Co., of the said City of Valletta, by which she was detained at Malta; another part thereof was to procure the necessary fuel and other provisions; and another part to obtain the final clearances from Malta, in order to enable the said vessel to continue her voyage to Liverpool. And he further made oath, that after having agreed with the said Guiseppe Mauno, on behalf of the said  
20 George Henry Corbett, as to the rate of maritime interest, and the said bond having been duly executed, and explained to this Deponent in the Italian language, word by word, by the said William John Stevens, in the presence of the said George Henry Corbett, he this Deponent advanced to the said George Henry Corbett the sum of eight hundred and fifty pounds, on bottomry of the said vessel and her freight, by a cheque on the Bank of Malta, and which cheque was duly paid.

And he further made oath, that the said money so advanced was advanced by this Deponent out of his own proper money, and at his own sole risk, on the security of the said ship and freight. And he further made oath, that he so advanced the said sum of money through the mediation or agency of the said Guiseppe Mauno, on behalf of the said George Henry Corbett, and without any request or solicitation from or procurement of, and without any indemnity from or understanding with, the said  
30 Messrs. Robinson Duckworth and Co., or William Leonard, one of the partners of the said firm, or of any or other of them; and that the same was advanced by this Deponent, *bonâ fide*, as a matter of business, at his own proper risk. And he further made oath, that at the time of his advancing the said sum of money, on bottomry of the said vessel and her freight, he was not informed by the said George Henry Corbett, or by any other person whomsoever, of the existence of any debt whatsoever on the said steam vessel, whether secured by mortgage thereof or otherwise, and he was totally ignorant of there being any such, save and except the aforesaid debt of the said Messrs. Robinson Duckworth and Co., for which debt she was then under arrest, and to release her from which part of the said money so advanced was required. And he further saith, that not being able to speak the English language he had no direct communication with the said George Henry Corbett, and that the  
40 negotiation for the aforesaid loan was altogether carried on with this Deponent by the said Guiseppe Mauno, on the part and behalf of the said George Henry Corbett.

On the eleventh day of September, 1849, the said Rosario Messina was duly sworn to the truth of this Affidavit, at the City of Valletta.

Before me,

G. B. SATARIANO, *Judge Surrogate of the Vice-Admiralty Court of Malta.*

R. MESSINA,

By interpretation, in the Italian tongue, of W. J. Stevens, Notary Public, Sworn Interpreter.

And on the same day the said William John Stevens, Notary Public, was duly sworn  
50 to have interpreted faithfully to Mr. Rosario Messina the whole of the contents of said Affidavit.

Also, before me,

G. B. SATARIANO, *Judge Surrogate of the Vice-Admiralty Court of Malta.*

L. S.

## Folio 236.

60 EXTRACT FROM THE VOLUME OF DECISIONS ENTERED ON THE REGISTRY OF THE ROYAL COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.

*Royal Commercial Court of the Island of Malta and its Dependencies.—Epiphany Term.*

Judge.—Dr. G. P. Bruno.

Consuls.—F. Aquilina, F. Busietta, John Grant, G. Tessi.

Sitting V., Tuesday, January 14th, 1851. 1st Case.

Rosario Messina, Merchant, *versus* William Leonard, Merchant, both in his own name and as partner in and representing the firm, R. Duckworth & Co.

70

The Plaintiff made instance as under No. 17, Sitting IX., Whitsuntide Term, 1850.

Drs. Sciortino and Dingli observed that they had already stated that the Plaintiff does not intend to carry on the Appeal from the Judgment of the Admiralty Court in England, and that, moreover, the said Appeal is barred by the lapse of time.

Advocate Griffiths observed that the Plaintiff had given no proof that the Appeal was given up or barred, and demanded a Decree thereupon.

No. 57.

Order of the Royal  
Commercial Court,  
dated 14th January,  
1851.

RECORD OF  
PROCEEDINGS.  
*In the Royal  
Commercial Court.*

No. 57.  
Order of the Royal  
Commercial Court,  
dated 14th January,  
1851—  
(continued).

The Court, without prejudice to the alleged exceptions which shall be taken into consideration when the merits are disposed of, decrees, that it should be proceeded to the hearing of the Case. Costs reserved.

G. G. MICALLEF, Registrar.

Witness produced by William Leonard, Merchant, sworn and examined.

CAPTAIN GUISEPPE MAUNO.

The Court adjourns the present Case to the sitting of Thursday next, 16th instant, to hear the reply.

G. G. MICALLEF, Registrar.

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True Copy. G. G. MICALLEF, Registrar.

No. 58.  
Note of English  
Document produced  
for Messina, on 16th  
January, 1851.

### Folio 237.

January 16th, 1851.

ENGLISH DOCUMENT, PRODUCED BY THE HON. ADRIAN DINGLI, LL.D., FOR ROSARIO MESSINA, MERCHANT. 20

No. 59.  
Copy of a Letter  
from Mr. M. Orme,  
Notary, to A. P.  
Petrocchino, Esq.,  
dated 15th June,  
1849.

### Folio 238.

Doctors' Commons, June 15th, 1849.

Copy.

DEAR SIR,

I enclose you a copy of the Statement given in by the Mortgagee in possession of the above vessel, in opposition to the validity of the Bottomry Bond given by Captain Corbett to Mr. Messina; you had better send it to Malta, in order to show the parties the grounds of the opposition, and to enable them to send over evidence to answer the objections raised. I have marked in the margin the points that require explanation or contradiction. It appears to me that the validity of the bond will mainly depend on the question whether the law of Malta authorizes the seizure of a vessel for debts contracted on simple contracts as well by the vessel itself on former voyages as by other vessels belonging to the same owners, and whether the Courts at Malta will enforce payment of such debts out of the proceeds of a vessel so seized. It will be also necessary to show an absence of all collusion between Mr. Messina and Messrs. Duckworth & Co., and that the money was *bonâ fide* advanced by Mr. Messina on the security of the ship and freight alone. In order to prove these points the following Affidavits should be obtained. The Affidavit must be *sworn to* before some authority in the Island properly authorized to administer oaths. 30 40

1st.—Affidavit of Mr. Leonard, as to the whole circumstances of the transaction of the arrears of the vessel, and as to the loan on bottomry, and as to what passed with the Captain on the subject; and if the Captain acted under legal advice, it should be so stated, and the name of his adviser.

Also, if Mr. Leonard was ignorant of the existence of the mortgage, and was not informed thereof by the Captain, he should state so, and also that the Captain authorized Mr. Mauno to endeavour to get the money from some Merchant on Bottomry. If, by the law of Malta, the firm of Duckworth & Co. had a lien on the vessel for the debts contracted on her behalf on former voyages, and also by the debts contracted on behalf of the other vessels belonging to the same owners, and he could have detained the vessel until the claim was settled, or have obtained payments out of the proceeds of her, he should state so; if the cargo was perishable, the nature of it and the probable loss and expense of detention should also be stated. 50

2nd.—Affidavit of Mr. Mauno, as to his being employed by Captain Corbett, as mediator, to get the money required to release the vessel from arrest advanced on bottomry, and of his having applied to several merchants without effect, and of his application to Mr. Messina, and as to his having explained to him the circumstances of the case and his agreeing to advance the money, and that he so advanced the same in consequence of his application, and not from any request of or understanding with Messrs. Duckworth and Co., and that he did not inform Mr. Messina of the existence of a mortgage on the vessel, and that he was ignorant thereof himself, if such is the fact. 60

3rd.—Affidavit of Mr. Gingell, cashier of the Bank of Malta, as to payment of cheque of Mr. Messina to Messrs. Duckworth & Co., the same having been endorsed by Captain Corbett.

4th.—Separate Affidavits of three or four of the leading Advocates of the Courts at Malta, stating that they are Advocates practising in the \_\_\_\_\_ Court (state the style of the Court), at Malta, and have been so practising for the last \_\_\_\_\_ years; that they are thereby become conversant with the law of Malta, and that they are enabled to dispose that by the law of Malta a vessel is liable for debts or simple contract, contracted on her behalf on former voyages, and also for debts on simple contract contracted on behalf of other vessels belonging to the same owners; that a creditor at Malta has a lien on such vessel for such debts, and that the Court can legally arrest, and will detain, a vessel until such debts are paid. If they can state any cases in which payment has been enforced, of debts 70

contracted under similar circumstances to the "Osmanli," it will be as well that they should do so.

5th.—An office copy of the Affidavit made by Mr. Leonard (if any such was made), in order to get the warrant to arrest the ship.

6th.—An Affidavit of Mr. Messina, that he advanced the money on the application, and from the representations of Mr. Mauno, as to the circumstances of the case; and that he so advanced same in ignorance of the existence of any mortgage on the ship, and solely on the security of the ship and freight.

7th.—Affidavit of Mr. Eynaud, and Mr. Micallef, similar in substance to the certificates sent by them as to the mode of procuring money on bottomry, and rate of interest.

These Affidavits must be properly *sworn to* by the several parties making them, as our Court will not receive as evidence any deposition or certificates unless it is upon the oath of the party deposing to the fact. I have to beg your early attention to the matter, and that you will impress upon your correspondents at Malta the necessity of their forwarding the above documents without delay, as the Court here will not allow more time to produce the necessary evidence than the distance of Malta absolutely requires. Your correspondents should send over to you an account of the expense incurred in getting the above Affidavits, as, in case we succeed in establishing the validity of the bond, we shall be able to recover some part of the expense from the adverse party.

Believe me, yours truly,

(Signed)

MALCOLM ORME.

A. P. Petrococchino, Esq.

RECORD OF PROCEEDINGS.  
In the Royal Commercial Court.

No. 59.  
Copy of a Letter from Mr. M. Orme, Notary, to A. P. Petrococchino, Esq., dated 15th June, 1849—  
(continued).

### Folio 240.

IN THE ROYAL COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth & Co.

Note of Documents produced in the said Cause by the said Defendant, William Leonard, Merchant, *nomine, &c.*

He has personally appeared and produced—

An original receipt, by Captain Corbett, of the steamer "Osmanli," for £59. 14s. 8½d., balance of account received from Duckworth & Co.

Protest of a bill for £406. 3s. 9d., accepted by Mongredien, and not paid; and of a second and third bill for £36. 16s. 10d., drawn on the same Mongredien by Captain A. Pitcairn, of the steamer "Levantine"; and the translation of the said receipt. Notary, William J. Stevens, Legal Procurator.

January 21st, 1851. Produced by the said Legal Procurator, with the Document marked letter A.

I do hereby certify to have served Rosario Messina, Merchant, with an official copy of these presents. This 21st January, 1851.

G. B. ATTARD, MARSHAL.

No. 60.  
Note of Documents produced by Wm. Leonard, on 21st January, 1851.

### Folio 241. Document A.

Received from Messrs. R. Duckworth and Co., fifty-nine pounds fourteen shillings and eight pence half-penny, being the balance remaining in their hands, as per separate memorandum, after reimbursing themselves for all claims against the owners of the screw steamers "Levantine" and "Osmanli."

Further, the Protest of a draft for £406. 3s. 9d., accepted by Mr. A. Mongredien, for value of coals purchased for the above steamers; and 2nd and 3rd, of an Affidavit of Captain A. Pitcairn, dated 1st February last, for £36. 16s. 10d. on A. Mongredien, for disbursements made by them per the steamer "Levantine," on her last voyage.

Malta, 9th March, 1849.

GEORGE H. CORBETT.

No. 61.  
DOCUMENT A.  
Receipt of Captain G. H. Corbett, dated 9th March, 1849.

### Folio 243.

EXTRACT FROM THE VOLUME OF JUDGMENTS ENTERED ON THE REGISTRY OF THE ROYAL COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.

*Royal Commercial Court of the Island of Malta and its Dependencies. Epiphany Term.*

Judge—Dr. G. P. Bruno.

Consuls—F. Aquilina, F. Busietta, John Grant, and G. Tessi.

Sitting XX. Tuesday, 25th February, 1851. 1st Case.

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth & Co., Defendant.

The Plaintiff makes instance as under No. 17, Sitting IX.

The Court—on the demands made with the libel of March 30th, 1850. Seen the Bottomry Bond between the Plaintiff and Captain Corbett, of the screw steamer "Osmanli," of the 8th March, 1849, by Notary William John Stevens, junior. Seen the Judgment pronounced on the 15th

No. 62.  
Judgment of the Royal Commercial Court, dated 25th February, 1851.

RECORD OF  
PROCEEDINGS.*In the Royal  
Commercial Court.*

No. 62.

Judgment of the  
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Court, dated 25th  
February, 1851—  
(continued).

January, 1850, by the High Court of Admiralty of England. Seen the respective Protest, and Counter Protest by the contending parties, entered in this Court, on the 6th and 9th August, 1850. Seen the Affidavit on oath made by Rosario Messina, Merchant, the 11th September, 1849, in the High Court of Admiralty. Seen its Decree of January 14th, 1851. Seen all the other documents produced by both parties; having heard the Witnesses produced by both parties and their Advocates, on the merits, as well as on the preliminary exceptions,—has considered that the preliminary exceptions pleaded by the Defendant and by the Court, joined to the merits with its aforesaid Decree, are two:—The first refers to the alleged want of jurisdiction in this Court to hear and decide the present case; the second refers to the alleged inconclusiveness of the libel.

With respect to the alleged want of jurisdiction on the ground of the pendency, before another 10 Court, of a Lawsuit, wherewith the present one is connected and subordinate, it must be observed that such pendency does not exist. It is true, that formerly there was pending a Suit in the High Court of Admiralty in England about the same Bottomry Bond between the contracting parties, but that Suit was decided, and as the term for appealing to a superior Court is elapsed, is no longer pending at present. Nor can the present Suit be held to be dependent upon and subordinate to the said other Suit; for, although the High Court's Judgment may be alleged and produced in the present Suit in support of the instance, and may thus possibly be considered as necessary, yet no dependence or subordination of one Suit to the other would follow therefrom. The action libelled in that Suit is the direct action arising out of the Bottomry Bond introduced by the creditor against the Captain; whilst the action introduced by the present libel is the subsidiary one, *in factum*, which is given against a 20 third person, who, without being a party in the transaction, has caused damage by his fact. The alleged exception has therefore no foundation.

In proceeding to examine the second preliminary exception derived from the alleged inconclusiveness of the libel, and from the alleged dependence of the Suit, it must be observed, that in law a libel is styled inconclusive when the demand therewith made is not a natural consequence of the engagements and facts therein stated, in which case there is that discharge from the Suit which the Defendant demands; but in the subject-case, the action originally brought by the Plaintiff with his libel, is the *actio in factum*, though afterwards in his reply he explained it as an *actio doli*. The *actio doli* and the *actio in factum* are by law granted to him, who, in an agreement or any other *bonâ fide* transaction was damaged, not by the contracting party, but by a third person, who, by his conduct 30 caused him damage; and as the latter was not actionable with the direct action arising from the agreement, and yet it was necessary that the law should give a subsidiary remedy, the Roman laws granted the *actio de dolo*, which afterwards, carrying with it by law no mark of infamy, was by the practice of the bar identified with the *actio in factum*, the end and object of both actions being the same—to wit, the restoration of what was lost through fraud or an indemnification for that loss, and for the damages occasioned, *quod interest*. And these two actions coalesce better, and are never barred against an adversary who gained by his own fact, "*locupletior est redditus*;" and as fraud being in the intention cannot be directly proved, it is in such proceedings necessary to accept such elements of fact and such conjectures as the facts of the case afford. Nor can the libel be said to be inconclusive, because it does not state the obligation of the Defendant towards the Plaintiff, from which should, as a 40 consequence, a direct action arise; for the aforesaid subsidiary actions are granted precisely to those who have otherwise no action arising from an agreement or expressed obligation; and as it is not substantiated that the present cause is dependent upon and connected with the cause once pending before the Admiralty Court in England (as it has already been said), which is the second reason alleged by the Defendant in support of his second exception, it follows that, even in this respect, the demanded discharge from suit cannot be attended to.

Having rejected the preliminary exceptions, and established the nature of the action libelled, it is as well, before entering on the merits of the case, to glance at the evidence, and ascertain what facts have been proved in the subject-case, and then proceed to the application of the law.

It has been established in fact, either by documents or by evidence, that Augustus Mongredien, 50 Merchant, as the owner of 62 out of 64 shares, was the partner mostly interested in the Company of screw steamers plying between Liverpool and Malta, Constantinople and Trebisond, and as such the only director thereof. On the 28th August, 1846, he chose to appoint his agent and director at Malta, William Leonard, Merchant, as partner in and representing the firm, Robinson Duckworth and Co., who willingly accepted the agency, which he carried on till the last voyage of the Company's steamers. That the three steamers, "Aram," "Levantine," and "Osmanli," belonged to the said Company, and were for several voyages consigned to and administered by Leonard. That agency gave origin to an account current between Leonard and Mongredien for coals, provisions, and expenses, supplied to the said steamers, the balance whereof on the 9th March, 1849, was of several thousand scudi in favour of Leonard. Leonard drew on Mongredien a bill for £406. 3s. 9d. for price of coals, 60 which bill, though accepted when due, was protested for want of payment. In the meantime, precisely on the 7th March, 1849, the "Osmanli" touched at Malta on her way to Liverpool, and as soon as she arrived, Captain Mauno, a witness produced in this identical Case, immediately approached the "Osmanli" to receive the Master's orders according to the directions given him by Leonard, who told him to go to Captain Corbett and enquire what he wanted, whilst he himself would go to Court to arrest the "Osmanli," for Mongredien had become bankrupt; and if Captain Corbett should ask for coals, he (Mauno) was to answer that it would soon be sent to him, which Mauno did accordingly. The Master meanwhile showed a wish to see Leonard, to whom, on his first arrival, he had written a note. He actually saw him on that day, and after some conversation with him, Corbett requested Mauno to ask Leonard to send him an Advocate. Mauno delivered the message, but Leonard sent 70 word to Corbett, that as it was he who had arrested the vessel he could not select an Advocate for him. On the recommendation of Captain Mauno, however, Corbett selected Dr. Caruana for his Advocate, and after an interview with him, Mauno was desired to find money on a Bottomry Bond.

Mauno asked several persons for it, but none would agree to it.—Messina himself gave no answer; and it was only after getting the necessary information from Notary Stevens, to whom Mauno referred him, that Messina agreed to advance the money. Mauno states that he referred Messina to

Stevens, for he knew that Leonard had spoken to the latter on the subject, and that the said Stevens passed all his notarial business. Mauno also states, that before the execution of the Bottomry Bond Leonard spoke with Messina, but does not know the subject of their conversation.

In the meantime, on the 8th March, 1849, the Bottomry Bond was signed in the office of Notary Stevens, in whose hands was the Minute already prepared, in the presence of Leonard, who received Messina's identical cheque endorsed in his favour by Corbett, and cashed the amount thereof. Besides, the papers before the Court show that the Warrant of Arrest was really asked for and obtained, on a simple sworn Affidavit, by Leonard; who, as soon as he received the money, withdrew it, and released the "Osmanli" from it.

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10 The Merchant Seicluna, a Witness produced by the Plaintiff, states, in evidence, that he also was applied to for the loan, and encouraged by Stevens to advance it; that he does not recollect well whether Leonard had also encouraged him by telling that would be a profitable transaction, but recollects well that Leonard was present and spoke to him; that on his asking why had not an authorisation for a Bottomry Bond been obtained from the competent Court, Stevens answered that there was no time for it; he states also that he knew of Mongredien's bankruptcy, and on that account, and on account of the want of authorisation, he, following the advice on the subject of his counsel, Dr. Schembri, declined to enter into the Bottomry Bond.

Dr. Schembri, produced by the Plaintiff, nearly agrees with Seicluna. He asserts that they tried to induce him to advise the loan to Seicluna; that Stevens, in Leonard's presence, spoke to him 20 on the said Bottomry Bond; that Leonard was present at Court, and, according to the Witness's impression, was there to facilitate the loan.

Dr. Caruana, produced also by the Plaintiff, deposed that he had advised Captain Corbett; and, as the Captain knew of Mongredien's bankruptcy, he advised him also to get a bond from Leonard, to return him the money he had received, and indemnify him in case of error in the items. The bond was accordingly given, though it was not a usual thing.

After the "Osmanli" arrived at Liverpool, Messina not only did not get the money he had advanced, but had to sustain an expensive Suit in the High Court of Admiralty, which was determined on the 15th January, 1850, by a Judgment which held the Bottomry Bond not valid for the largest amount, and valid only for about £150—to wit, for all the expenses incurred after the 7th 30 March, 1849, which were actually required by her voyage from Malta to Liverpool.

Several protests took place in the pendency of the Suit in England, and after it; but as they refer to collateral facts, and not to the principal question, are not of great consequence in the present Suit.

From all the abovestated facts, established either by documents or by the produced evidence, the following consequences and presumptions arise:—

1st. That in all the transactions which preceded and accompanied the execution of the Bottomry Bond, William Leonard, Merchant, acted with full knowledge of Mongredien's bankruptcy, which had taken place on the 10th of February, 1849.

2nd. That Captain Corbett, in giving the Bottomry Bond of the 8th of March, 1849, acted 40 either directly or indirectly under the influence of the Agent and Consignee of the steamer merely on behalf of the latter, and on his advice and the advice of his agents and subordinate, who prevailed on the lender to advance money on a Bottomry Bond.

3rd. That the amount advanced was not all required to enable the steamer to clear, for it included partly debts against the other steamers of the Company and partly disbursements brought over from previous voyages, which the said Bottomry loan was intended to cover.

4th. That the Warrant of Arrest must be considered as having been asked and obtained to colour the Bottomry Bond; for if it had been otherwise, Leonard, who was preventing the voyage, would not at the same time have continued without interruption in the agency of the said steamer, by procuring the money and by supplying provisions, coals, and other necessaries for her departure; and he would not, by an inexplicable inconsistency, at the same time that he was getting the Warrant of 50 Arrest ready, have offered and promised Captain Corbett, by his agent Captain Mauno, whatever was necessary for the prosecution of the voyage.

5th. That the request of the merchant Seicluna, who, to advance the money on Bottomry, wanted an authorisation from the Court, was not complied with; for it was reasonably supposed that the Court would not have authorised a Bottomry Bond beyond what was required for the continuation of the voyage, and would not have allowed that, in opposition to the law, a contract should be passed merely for the object of covering debts against other steamers or for previous voyages.

6th. That at the very time that the Bottomry Bond was agreed, both the Defendant and Captain Corbett had a doubt of its legality and justice, and consequently of its success; for had they thought differently, the Defendant would not, against every commercial usage, have consented to give Captain 60 Corbett a personal bond to indemnify him in case of any error in the payment or in the items of the account, as it is better seen from the bond itself.

7th. That the identical cheque consigned by Messina to Corbett was handed over to the Defendant, and was immediately entered to his credit on the books of the Bank; so that it is clearly perceived that Corbett in this case acted by the direction of the merchant Leonard, as the Agent of the Company—an agency which he never left off, not even at the last voyage of the "Osmanli"—and in such capacity he is found everywhere, even at the various interviews between his agents and the capitalists from whom he hoped to obtain the loan, by encouraging them to it, either personally or through his subordinates, and by even being present when the Bottomry Bond was executed.

8th. In short, from the context of all the facts, it remains, by cogent conjectures established, 70 that Captain Corbett, in the Bottomry Bond of the 8th of March, 1849, acted under the influence of the Company's agent, the merchant Leonard, who, whilst with one hand was compelling him, by judicial steps, to pay or discontinue the voyage, with the other hand was enabling him to continue it, by pointing out to him the way for paying, by advising him, and by directly or indirectly co-operating with him in every way in order to obtain a loan, onerous for the steamer "Osmanli," profitable and advantageous only to the Malta agency, and in any way detrimental to the lender Messina, who, whilst he thought he was entering, *bonâ fide*, into a commercial transaction advantageous to him, was

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dragged into a costly suit, and I should almost say induced to act the part of an accomplice in an irregular transaction calculated to obtain a preference of creditors over creditors in the Mongredien bankruptcy, of which he, as it seems, was not the least aware; for, if he had known that bankruptcy, he would not certainly have injured his own pocket by paying with his money the debts of others.

These conclusions more than sufficiently establish the elements essential to substantiate the demands advanced by the libel; so that the Court, complying with the prescriptions of the law, cannot but relieve Messina from the damage incurred, especially as the Bottomry Bond, without any fault of the lender, was, for the largest amount, rescinded and invalidated by the High Court of Admiralty in England.

It does not avail to allege against the aforesaid conclusions that Mongredien alone was bankrupt 10 and not the Steam Company, from which Messina might obtain his indemnification, for it is established that Mongredien was everything; and instead of the Defendant having proved that after his fall the Company subsisted any longer, the contrary is to be inferred, from the solicitude of the Defendant to cover and ensure the debt owed to him: moreover, the agent at Malta trusted Mongredien, for on Mongredien he drew his bill for his disbursements, which bill, if the Steam Company had not ceased with Mongredien, would have been paid, the agency continued, and the debts legally and commercially met. Nor the Affidavit made by Messina at Malta, and produced in the Suit in England, is of any obstacle; for there is no circumstance, he stated on oath, by that document, that is contrary to, or in any way clashes with, the circumstances stated in the present Suit, and arising from the course followed at the time of the Bottomry Bond, or become known afterwards. If the aforesaid Affidavit could 20 prove anything, we would say that it proves, more than anything else, the good faith and sincerity of the transaction, and removes any fraud on the part of the said Messina.

Finally, it must be considered that the Court of Admiralty having held the Bottomry Bond valid for £150, that sum must follow the fate of the original transaction, and its reimbursement remain incumbent on Messina; for the demands advanced by him in the present Suit cannot exceed the *quantum interest*, besides the damages and interests which the third party occasioned by his fact, and which he is bound to indemnify.

For these and for other reasons which concur in the Case, the Court adjudges according to the demands advanced by the libel, deducting, however, from the sum demanded, the £150 for which the High Court of Admiralty in England held the Bottomry Bond to be valid, which are to remain, with 30 their rate of interest, to Messina's account; and discharges the contending parties for any other such preliminary demands. Reserves to the merchant Leonard his claims against Mongredien's estate, against the Steam Company, and against any other persons that may be held and bound, &c. Costs in proportion to the amount obtained.

G. G. MICALLEF, *Registrar*.

True copy. G. G. MICALLEF, *Registrar*.

### Folio 257.

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No. 63.  
Note of Appeal of  
Wm. Leonard, dated  
28th February,  
1851.

IN THE ROYAL COMMERCIAL COURT OF THE ISLAND OF MALTA AND ITS DEPENDENCIES.

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co.

*Note of Appeal by the said William Leonard, Merchant, in his own name, and in the name of his Firm.*

The said William Leonard, Merchant, in his own name, and in the name of his firm, appears personally, and respectfully protests that it seems to him to have been aggrieved by the Judgment of 50 this Royal Court in the Cause between him, in his own name and in the name of his firm, and the said Rosario Messina, Merchant, which Judgment is also null and void; and it seems to him also to have been aggrieved by the previous Decree by this Royal Court, pronounced in the same Cause on the 10th December, 1850, which is also null and void: wherefore, this day being still within the term granted by law to interpose an Appeal, he, in his own name and in the name of his firm, by virtue of the present note, humbly appeals from the aforesaid Judgment and Decree to the First Division of the Royal Court of Appeal.

W. LEONARD.  
J. GRIFFITHS, *Advocate*.

This 28th February, 1851. Presented by the said Merchant, Leonard, in his own name, and in 60 the name of his said firm, Appellant.

G. G. MICALLEF, *Registrar*.

These proceedings have been forwarded from the Royal Commercial Court to this Royal Court of Appeal at the instance of the Appellant William Leonard, Merchant, on the 3rd March, 1851.

V. MONTANARO, *Registrar*.

I, here undersigned, William Lamb Arrowsmith, of Valletta, living at San Guiseppe, constitute myself bail and surety jointly with the Appellant William Leonard, Merchant, for the costs of the present Suit in this second instance, in behalf of whomsoever they may be due, and to this effect bind my person and property, renouncing, &c. 70

(Signed) WILLIAM LAMB ARROWSMITH, Bail.

Signed in my presence, this 3rd March, 1851.

VIN. MONTANARO, *Registrar*.

## IN THE ROYAL COURT OF APPEAL.

RECORD OF  
PROCEEDINGS.*In the Royal Court  
of Appeal.*

No. 64.

Petition of R. Messina to the Court of Appeal, on 28th May, 1851.

## Folio 260.

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IN THE FIRST DIVISION OF THE ROYAL COURT OF APPEAL IN MALTA.

Rosario Messina, Merchant, Appellato, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co., Appellante.

Petition of the said Messina,—

He humbly sheweth: that on the 25th of February last he obtained a Judgment from the Royal Commercial Court, which condemns the Defendant to pay him the sum of £944. 8s. 9¼d., part of the sum demanded by the Petitioner with his original libel, in consequence of a loan on a Bottomry Bond, which the said Defendant, for his own profit, had illegally induced the Petitioner to advance to Captain Corbett, of the steamer "Osmanli": that the Defendant appealed against that Judgment, and now omits to carry on the Suit. The Petitioner, therefore, humbly prays that, after any necessary declaration, the said Judgment may be affirmed by this Royal Court, with costs; and thus he prays that justice may be imparted to him in this and any other better way by the laws allowed.

SCIORTINO, *Advocate.*A. DINGLI, *Advocate.*DR. COTUGNO, *Legal Procurator.*

May 28th, 1851.—Presented by the said Legal Procurator, Dr. Cotugno, without any documents.

I do hereby certify to have served William Leonard, Merchant, with an official copy of the present Petition. This 31st May, 1851.

SMERALDO ATTARD, *Marshal.*

## Folio 262.

IN THE FIRST DIVISION OF THE ROYAL COURT OF APPEAL OF MALTA.

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co.

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Protest of contumacy by the said Messina,—

Messina appears, and as the said William Leonard, *proprio et nomine*, though served with an official copy of his Petition, entered on the Registry of this Royal Court the 28th May last, has not cared to answer the contents thereof, either within the term originally given him, or within the term prorogued by a Decree of this Royal Court of the 2nd June last, he, Messina, according to the Constitution, protests against such a conduct of his opponent, and demands that this Royal Court should decide the said Suit in his default, and according to the demands by the Petitioner in his said original Petition advanced.

A. DINGLI, *Advocate.*DR. COTUGNO, *Legal Procurator.*

This 9th July, 1851.

Presented by the said Legal Procurator, Dr. Cotugno.

No. 65.

Protest of Contumacy by R. Messina to the Court of Appeal, dated 9th July, 1851.

## Folio 267.

EXTRACT FROM THE REGISTRY OF JUDGMENTS OF THE ROYAL COURT OF APPEAL IN THE ISLAND OF MALTA AND ITS DEPENDENCIES.

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*Royal Court of Appeal in the Island of Malta and its Dependencies. Commercial Division. Victoria Term.*

Judges—Dr. P. Dingli; Dr. A. Micallef, Companion of the Most Distinguished Order of St. Michael and St. George.

Consuls—The Merchants E. Zammit, R. Ferro, L. P. Vella, W. Jameson Smith, G. Semini.

Sitting XVII. Monday, 20th November, 1854. Case I.

Rosario Messina, Merchant, Plaintiff, Appellato, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co., Defendant, Appellante.

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The Merchant, William Leonard, alleged that his Counsel was not present; but he demanded the restitution *in integrum*, in order to present his defence.

The Court admitted the Appellant, William Leonard, to present his defence within the legal term. Refused the costs in default, with costs.

VINCENZO MONTANARO, *Registrar.*

No. 66.

Order of the Court of Appeal, dated 20th November, 1854.

Rosario Messina, Merchant, Plaintiff, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co., Defendant.

Answer of the said William Leonard, Merchant, in his own name, and in his aforesaid capacity,—

He humbly sheweth: That the so-called Judgment, said to be pronounced by the Royal Court on the 25th of February, 1851, and against which he appealed, even on the ground of its being null, is really null, and incapable of producing any legal effect, and such should be declared by this Royal Court; for, not only the Consuls who delivered it were not the persons who by law and the terms of the Constitution of the said Royal Court were entitled to deliver it, but there is also wanting the legal and certain evidence that is required of its authenticity, as it will be shown hereafter. And in the meantime, with regard to the said Consuls, it is worth stating here, that the present Cause, in the first instance, had been heard before other Consuls, by whom six Decrees had been given. In the first place, it had been heard before the Consuls, John Grant and Giuseppe L. Schembri, Merchants, on the

(blank in the original), on which day they had heard a collateral summons by the Defendant for restitution against the Judgment in default he had incurred on account of his omission to answer 20 within the legal term the original Petition of the Plaintiff, who had served him with the said Judgment in default; and for the granting of a beyond sea term to answer the said Petition; in the hearing of which summons the Court, composed of the said Consuls and the Judge, entered into much of the merits, in order to be able to judge of the legality and reasonableness of the said demand for a beyond sea term, which, on the said 1st June, 1850, was granted by the said Court for a month, after the restitution *in integrum* also as aforesaid demanded.

After the Court, thus composed of, had in this way entered into the merits, another collateral summons of the Defendant for the prorogation of the term as above granted came to be heard, and its hearing was brought before Consuls different from the former ones. But, on the exception of the Defendant, the Court, on the 9th July, 1850, pronounced a Decree, by which the said hearing was 30 adjourned to the 13th of that month, in order that the said former Consuls, Grant and Schembri, should be present; on which day they were actually present, and the Court, thus composed of, prorogued the term till the 31st of the next August.

Now, by the express and literal prescription of the Constitution of the Royal Commercial Court, those identical two Consuls were also to decide on the merits of the Cause; for the 4th Article of the said Constitution sanctions and establishes that it must be observed "as a constant rule, that every cause brought to a hearing be decided by the same Consuls." Now the present Suit, which, on the said 1st June, 1850, was brought to an issue by the contumacy protested by the Plaintiff, and was ready for its hearing, not only was then brought up to be argued—as it may be seen by the Decree of

(blank in original), at fol. 16 of the Proceedings, and by the serving of the same at fol. 17—but, 40 moreover, those Consuls, as it has been shown, twice entered into the merits, in order to give the two said Decrees on collateral questions and instances; and they did so the second time, by virtue and in execution of a Decree of the said Court, which excluded other Consuls in lieu of them.

Consequently, the Royal Commercial Court had no power to order, as it did by its subsequent Decree of December 10th, 1850, folio 148 of Proceedings, in contrariety to its previous Decree, to the law, and to the Defendant's right, that other Consuls shall sit and decide the Cause in lieu of the said Merchants, Grant and Schembri; and therefore the said subsequent Decree of December 10th, 1850, as well as the said so-called Judgment of February 25th, 1851, are null, and not productive of any legal effect.

And the aforesaid latter Judgment would also be null, on the ground that, as it will hereafter be 50 shown, it was not voted, agreed to, and pronounced in the way required by the law, by the Consuls who actually sat in it. So that, even assuming, for a moment, that the Court was regularly and legally constituted by the presence of other Consuls in lieu of the said Grant and Schembri, always would the said Judgment of the 25th of February, 1851, be quite null; for the Judge erroneously represented to the said Consuls that the fraud on the merits, imputed to the Defendant, was a question of law, and not a question of fact; and two of the Consuls believing it, voted, not according to their own opinion, but according to the opinion of the Judge who thus had led them into error.

Wherefore, the Defendant, in his own name and his said capacity, in view of what has been alleged, and in the way, form, and order in which it is alleged, humbly prays that the said Judgment of the 25th of February, 1851, in any event arising from what has previously alleged—to wit, even 60 in case this Royal Court should be of opinion that the Commercial Court was legally composed when the Cause was heard and decided, as well as the said previous Decree of the 10th of December, 1850, in so far as it ordered that the Consuls then actually sitting should sit for the hearing and decision of the Cause, in lieu of the said Consuls, John Grant and Giuseppe Luigi Schembri, and thus excluded the two latter ones—be declared by this Royal Court null and void *ipso jure*, and not able to produce any legal effect whatever; or, at least, if the Court should not deem them null *ipso jure* in this unexpected Case, that the said Judgment and Decree be declared null and void, by virtue of the exception of nullity and the Appeal on this head interposed by the Defendant, with costs, including the costs charged on the Defendant in the first instance, and after any previous expedient or necessary declaration, and any expedient provision to be given, even *officio judicis*, by the Court. 70

Without prejudice to the above preliminary interlocutory and peremptory exceptions and instances, the Defendant, in his aforesaid capacity, passing to state his further preliminary exceptions, observes that the opposite party, having instituted a Suit in England, as he himself has proved and admitted, for obtaining Judgment against persons therein residing to pay him the amount in question, or for the recovery of that amount against the steamer "Osmanli"—which Suit was still pending in Appeal when the said appealed Judgment was pronounced, and as yet there is no proof of its cessation or end—never



could nor can institute the present Suit, which is subordinate and consequent on the former Suit, against the Defendant whilst the said previous Suit was pending. Nor could such a double Suit, for the same object, and the one dependent upon the other, but against different persons and with different names, be supported by the Protest presented by the Opponent in the Royal Commercial Court, on the (blank in the original), and by which he stated that he did not intend to carry on the said other Suit, and called on the Defendant to state whether he wished that it should be carried on in his behalf; for the said Protest and interpellation could not lay any obligation on the Defendant, nor establish any fact or claim in favour of the Opponent. The Suit in England, in which the Defendant had taken no part, concerned him only so far—that the two Proceedings could not both co-exist at the same time.

RECORD OF  
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*In the Royal Court  
of Appeal.*

No. 67.  
Answer of Wm.  
Leonard to the  
Court of Appeal,  
dated 8th December,  
1854—

(continued).

10 In all other respects it regarded only the Opponent, who alone had instituted it, carried on and defended it, without the Defendant taking any part in it, either in his own name or in the name of his commercial firm. It was question, therefore, of a single fact—to wit, whether there really was still pending another Suit in England with which the Suit at Malta could not co-exist. Messina alleged that it was no longer pending: he ought to have proved it; and such a proof could not be made either with a Protest or an interpellation.

Moreover, the Court of First Instance ought not to have heard and decided the Cause; for the original Plaintiff's libel was inconclusive, as it may be seen by its perusal, and as, if necessary, will be further demonstrated when the Cause is heard; and in consideration of the aforesaid two other preliminary exceptions, the Court of First Instance ought to have discharged the Defendant from the  
20 Suit, with costs.

The Defendant therefore, in his own name, and in the name of his said firm, without prejudice to the exceptions which precede the two latter ones, in a worse case—to wit, in case, which he does not in the least expect, this Royal Court should not be of opinion of deciding in compliance with the instances above alleged,—he in his said capacities, humbly prays, that in view of his said two further and distinct exceptions, he should be discharged from the Suit; and, consequently, the said Appealed Judgment pronounced by the Royal Commercial Court on the 25th of February, 1851, be reversed and annulled, with costs; and with previous declaration that the two Suits, one in England, and the other at Malta, cannot co-exist, and that the opposite libel is inconclusive.

Without any prejudice of all the preceding exceptions and instances, in the order, form, and way  
30 in which they are alleged and produced, and for all the legal effects for which they are alleged and produced, the Defendant, in his own name, and in the name of his said firm, enters to discuss the merits of the case. And in this part he alleges, that the said Appealed Judgment, pronounced by the Royal Commercial Court on the aforesaid 25th of February, 1851, is unjust, illegal, and of the greatest grievance to the Defendant, and deserves therefore to be reversed and annulled by this Royal Court, with costs; it being an undoubted and positive fact, that the Defendant had never any dealing, either in his own name or in the name of his firm, with the appellate merchant, Rosario Messina; and never, by any act or fact of his, which might in any way have legally produced any obligation or responsibility whatsoever, has he rendered himself liable and bound towards the said Messina, so that the latter had no shadow of claim or legal action against the Defendant whereupon to obtain that he  
40 should be condemned for any amount, as it will clearly appear from the simple and genuine narrative of the facts which took place about that transaction, on which is the Suit pending.

In the year 1846, on the 28th of August, the English steamer "Levantine," commanded by Captain Easterby, was consigned from Liverpool, to the said commercial firm of the Defendant by a certain Augustus Mongredien, who wrote to that effect to the said firm a mercantile letter of the same date, in which he clearly stated that the said steamer belonged to some owners of whom he spoke in the letter, but without naming them. Afterwards, on the 24th December of the same year, the said Mongredien addressed a printed circular to the mercantile class in general, and in particular to the firm of the Defendant, by which, notice was given that three steamers, viz., the "Osmanli," the "Aram," and the one above-mentioned, were to ply periodically between Liverpool and the Levant, and  
50 even this circular spoke of "proprietors"; so that the firm of the Defendant held, as an undoubted fact, that the said line of steamers belonged to a Company, as usual in such cases, of many individuals, of whom Mongredien, whether he had or had not any interest in the Company, was the agent to carry on the business, as the whole may be seen from the said letter and printed circular, which are at fol. (blank) of the papers.

The said three steamers, viz., first the "Levantine" and afterwards the two others, in their voyages out and back, were consigned at Malta to the said firm of the Defendant, who recovered the sums due to the said steamers in this island, and supplied them with coals and other necessaries for their navigation; always in the firm conviction of having to do with a Company of which Mongredien was the Agent, and most likely, as it almost always happens, a shareholder too; and, indeed, the Plaintiff  
60 admits, and it is a well-known fact, that the owners of those steamers were designated by the denomination of "Levant Steam Company."

In the course of this kind of agency at Malta, the Defendant's firm not only had, for the sake thereof, become creditors in account current, but had also drawn a bill for £406. 3s. 9d. on Mongredien for price of coals bought for the service of the said steamers, on the 3rd of February, 1849, when one of the said steamers, the "Osmanli," commanded by Captain George Henry Corbett, had started for the Levant from this island of Malta, where, as usual, she had touched on her voyage from Liverpool to her said destination.

After the said departure, viz., on the (blank in original), the Defendant received a letter from the firm, Barclay, Bevan, Tritton, and Co., dated November 15th, 1849, which enclosed a Protest for  
70 want of payment of the said bill drawn by the Defendant's firm for £406. 3s. 9d. on Mongredien for price of the said coals, and fallen due on the 14th of the said month, which circumstance made it known to the Defendant that Mongredien had stopped payments; whereupon the Defendant, who knew nothing, of course, of the state of the affairs of the Company, being ignorant even of the names of its shareholders, and who could not know what effect Mongredien's suspension might have on the said Company's affairs, when the said steamer, "Osmanli," on her return from the Levant, entered again this port, determined to detain her by law and proceed before the tribunals here for the payment of

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his claims; instead of risking, by letting her depart, that she should fall into other hands, become liable to new debts, or meet some accident or damage in her course, and thus fail to pay what was due to him.

The Defendant acted accordingly; for on the 7th March, 1849, he obtained, on his oath and on behalf of his firm, a Warrant of Arrest from the Royal Commercial Court against the said steamer "Osmanli," for the said debts due to his firm. And the Defendant, in the name of the said firm, was on the point of instituting a Suit before the said Royal Court in order to have his claim established, the arrest declared valid, and the steamer sold, when Captain Corbett, to prevent the seizure, release the steamer, and enable her to continue her voyage and take her cargo to its destination, resolved to borrow money on a Bottomry Bond. He did so; and borrowed on a Bottomry Bond, with the security of the said steamer, her machinery, rigging, furniture, freight, &c., from the Merchant, Rosario Messina, at the heavy interest of 7%, the sum of £850 in a cheque on the Anglo-Maltese Bank, for Scudi (blank in original), which cheque he gave in payment to the Defendant in his said capacity, who took out of it the sum of Scudi (blank in original), the amount of the aforesaid debts due to him, including the supplies for that voyage, and returned the balance in cash to Captain Corbett.

The Defendant, in his said name, although he continued in every other respect his agency for the steamer on that voyage, and supplied her with coals and what else was necessary for the continuation of her voyage, would not however have any part in finding the said loan, and much less was he disposed to take in lieu of his debt a Bottomry Bond in favour of himself; and this, not from want of belief, on his part, in the perfect validity and intrinsic regularity of such a transaction, for such an idea never entered the mind either of the Defendant, who, even after what has happened is not at all convinced or persuaded of such a thing; or of Messina, when he advanced the money at Malta, or when he went to law to recover it in England; or of Captain Corbett, when he mortgaged the steamer; or of any one else,—it being a thing contrary to the opinion of all the legal advisers in the country. The Defendant did not choose to convert the debt owing to him into a Bottomry Bond, for the extrinsic reason, that he did not think fit for an agent to obtain a bond in his own behalf to the charge of the vessel consigned to him, and in acknowledgment of his own accounts from a new master lately surrogated to the master of former voyages, who, having unfortunately fallen overboard, was drowned in the last voyage out from England. The Defendant preferred, as he had a right to do, the payment in cash of what was owed to him against a bond on his part, to refund any error that might eventually be found in his accounts. On that occasion, therefore, Captain Corbett, after having first taken advice from an Advocate of his own choice, contracted the said loan with the Merchant Messina by a Bottomry Bond, entered among the acts of William John Stevens, Notary Public, bearing date (blank in the original), without the Defendant taking any part whatever in that transaction, either in his own name or as partner in and representing his firm. And after the Defendant was paid, as above, of his debt, he consigned to Captain Corbett his accounts, duly receipted, and also the aforesaid protested bill with its protest, and the said bond, to the effect, that if ever any errors should be found in the said accounts his firm should return the amount thereof; a fair obligation for those accounts were approved of and settled by a new Captain ignorant of their contents.

This transaction over, the "Osmanli," under the command of Captain Corbett, left Malta for the port of her destination in England, and the Defendant thought no more of that affair till July of the same year, 1849, when the said Merchant, Rosario Messina, applied to him, told him that the said Bottomry Bond had become the subject of a Suit at Liverpool, where the payment of the sum advanced here had been refused, on the plea by the Opponents that the said Bottomry Bond had been collusively devised by him and the Defendant to feign an interest in him as a third person, whilst, in reality, that interest was of the firm of the Defendant; and thereupon Messina asked from the Defendant an Affidavit on oath that there had been no understanding and no collusion between them with regard to the said transaction; which Affidavit, by establishing that the said Messina had had nothing to do with the Defendant about the said transaction, would refute the alleged collusion.

Such a demand might not at first have seemed unreasonable to the Defendant; though a spontaneous statement by him who committed the fraud is not usually reckoned of much weight to disprove it by him who suffered thereby. But after taking advice on the subject, on the grounds that always he who alleges collusion must prove it, that as there had been no understanding between the Defendant and Messina, the latter must have been sure that such a proof was impossible, that the negative proof which Messina wished to offer by the Defendant's affidavit was therefore evidently useless; and that, consequently, there was ground to doubt that Messina devised the means of dragging the Defendant into an affair which did not concern him, in order to build thereupon some claim against him in case he, Messina, did not recover his debt; the Defendant declined to meddle at all with that Suit, in which he had no part or interest whatever. The Defendant's doubt was soon strengthened; for after a few days, Captain Corbett having arrived at Malta with the same steamer "Osmanli," Messina presented in the Royal Commercial Court the Protest which is at folio (blank in the original) of the papers, and which was directed both against the Defendant, in his capacity of partner as above, and against the said Captain Corbett, that Protest made evident that Messina was endeavouring to build some claim against the Defendant, but it made equally evident that he did not know how to go about it.

Yet at that time, as it has come afterwards to the Defendant's knowledge, four months had already elapsed since Messina had instituted his Suit in England, which began on the 4th of April, 1849; already had both parties presented all their papers in that Suit; and already, since two months but five days, had Captain Corbett made his Affidavit in the said Suit, in which the latter told, in his own way, all the circumstances which he pretended to have taken place at the time that the Bottomry Bond was made in this island—so that Messina, when he presented his said Protest, was well acquainted with all that was alleged and maintained by all those who had taken a part in that Suit—yet Messina, in the first part of his said Protest, undertook to narrate what had taken place at the time of his advancing the money to Captain Corbett on the Bottomry Bond, which did not

concern in the least the Defendant, who even, according to the statement of Messina himself in the said Protest, had taken no part in the payment or transaction. In this part, Messina, in express terms, admitted that he had been told that part of the sum he anticipated was to release the steamer "Osmanli" from a Warrant of Arrest, and that the Bottomry Bond, though drawn up in English, had been faithfully translated to him into Italian by the Notary, Stevens, who had executed it.

In the second part of the said Protest, Messina is stated to have known afterwards that that part of the sum he had advanced, which was to release the steamer from detention, had been paid to the Defendant as the person who had detained her. From which circumstance, viz. from the payment—a circumstance, by law, by sound reason, and by common sense, quite irrelevant—Messina chose to draw the following hypothetical inference, as a measure in abstract of all his claims against the Defendant and against Captain Corbett,—to wit, that "if anything had passed between the Captain and Leonard, in consequence of which the repayment of the sum advanced by the Defendant" (*i. e.* Messina) should be refused or delayed, they would be answerable towards him"—a proposition which, even by itself, was most strange; for, in the same way as the Defendant had nothing to do with the affair, and with the transactions and dealing of Messina, so the latter had nothing to do with the transactions and dealings of the Defendant, who was at full liberty to act in his own affairs as he liked, without binding himself towards third parties, or cause them to be bound towards him, according to the rule *inter alios acta*. But further, the said proposition in the present case was without any foundation, and in the manner in which it was advanced it was decided in favour of the Defendant; 10 for, and Messina knew it well, all the allegations in the Suit in England having already been stated and produced—neither had there existed, nor had it been alleged in the Suit, any transaction between the Defendant and Captain Corbett, in consequence of which the payment of the sum advanced by Messina to the latter was refused or delayed; so that the Judgment, in the first instance, of the said Suit was pronounced on no other ground except the want of powers, in the opinion of the Court, of Captain Corbett to mortgage the "Osmanli," as will be seen hereafter. So that, according to the terms themselves of the said vague and hypothetical proposition, Messina implicitly admitted that he had no claim against the Defendant.

And it is a thing specially to be noticed, that Messina, who was acquainted with the rules of the English Court, and applied to the Defendant and to others for Affidavits to refute the pleas therein 30 alleged, did not come forward by his said Protest to give notice of the said Suit to the Defendant, and call on him to assume the defence thereof; but, on the contrary, he did not mention in the said Protest the said Suit, which he had of his own accord instituted, and only stated that he had received notice that the Bottomry Bond in question had not been paid.

In the third part of his Protest, Messina protested against the Defendant, not on the ground that the latter had had any part in the transaction between Messina himself and Captain Corbett—not on the ground that the denial of paying the Bottomry Bond was in any way imputable to the Defendant in his said capacities—but only on the ground of his having refused to give Messina the Affidavit applied for.

The Defendant answered Messina's Protest by a Counter Protest of the 8th of August, 1849, 40 by which he openly stated that the said Protest was not only unreasonable, but fraudulent also; for it was intended, if possible, to circumvent him. He added, that he neither had had nor had anything to do with Messina, towards whom he never had in any way become bound or liable; and also that what had passed between Messina and Captain Corbett regarded him no more than what had passed between him and other persons could regard Messina in the least. And he added also, that the vague and hypothetical proposition in the said Protest inserted with the clause "if anything" was absurd; and, finally, that he had nothing to do with any payment of any debt that Messina might or might not have obtained in England or elsewhere. He then counter-protested against Messina, as it will be better seen by the said Counter Protest, the copy of which is among the papers at folio (blank in the original), to which the Defendant, in his said capacities, fully refers.

Messina acquiesced in the said Counter Protest; and, as he had instituted the Suit in England 50 without the knowledge or consent of the Defendant, and had carried it on without ever giving him notice of it, so also, after the said Counter Protest, he, without the Defendant's knowledge, brought it, as he chose, to a conclusion; nor could he do otherwise, as those proceedings did not regard but him only. Meanwhile, the Defendant felt sure that he should never hear anything more of the Bottomry Bond in question.

But after several months—viz., after the English Court had given its Judgment adverse to Messina—the said Messina came forward against the Defendant, in both his said capacities, with a new Protest of the 30th of January, 1850, and advanced new claims against him, as may be seen from the copy of the said Protest at folio (blank in the original) of the papers to which the Defendant refers.

By this new Protest, Messina, in general, ambiguous, and obscure terms, asserted a right against 60 the Defendant, not only in the name of his firm, but also in his own name, to recover from him the sum which he (Messina) had advanced to Captain Corbett, and the indemnification of every other damage, expense, and loss, which he said he had incurred in consequence of the Judgment given against him by the English Court in the Suit he had therein instituted; of which Suit he then, for the first time—viz., after having instituted it, carried on at his pleasure, and finally lost it—gave notice to the Defendant, and said, against the true facts, that the said tribunal had pronounced against the validity of the Bottomry Bond—an event, however, which in no way regarded the fact or the interest of the Defendant, either in his own name or in the name of his firm, "on the ground" (such are the words of the Protest) "of its being entered in for the payment of simple debts, to the pre- 70 judice of privileged or mortgaged debts." And he stated that he was entitled to call on the Defendant, "for several reasons, for what took place here when that Bottomry Bond was executed, and especially "for the way in which he (Messina) had been induced to enter into it, whilst the said Leonard, who "had suggested it, knew even the bankruptcy of the owner"—which expressions have justly been called vague, obscure, general, and inconclusive against any one; for the propositions thus imagined and framed by Messina to disguise the change he was then meditating in his attack, even in their generality, were refuted by all that had taken place.

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Those propositions were resisted, not only by the evidence produced by Messina in the Suit in London—not only by Messina's first Protest of the 6th of August, 1849, an extract whereof has been given above—not only by the silence of Messina for nearly six months after the Defendant's Counter Protest of the 8th of August, 1849, at which two latter periods he (Messina) knew every circumstance of the Suit in London—not only by the Answer on the same 8th of August, 1849, given in the Royal Commercial Court by Captain Corbett, who was then again at Malta, to Messina's first Protest of the said 6th of that month, by which Answer or Counter Protest the said Captain Corbett stated that (his precise words are) "the transactions between him and Messina are most sincere and genuine, as are also those between him and Leonard; for he (*viz.*, Captain Corbett) only did what is "allowed by law and what the best interest of the then owners of the 'Osmanli' absolutely demanded,"<sup>10</sup> thus showing that any contrary statement or construction given in London was without foundation, as well as Messina's Protest of the 6th of August, 1849, which he called irregular, capricious, and vexatious—not only by Messina letting Captain Corbett depart with the "Osmanli" from Malta, after such Counter Protest, without any further demand or molestation against him, and without even answering the said Counter Protest—but were also resisted by the Affidavit on oath made by Messina himself in the said Suit in London, a most conclusive fact in favour of the Defendant and against Messina.

The said new Protest of Messina ended by calling on the Defendant, in his said capacities, to state whether he chose that the Appeal which Messina asserted he had interposed from the Judgment adverse to him should be carried on in his interest, as if that Suit had ever been the Defendant's, a call no less futile than the rest of the Protest; so that the Defendant for some days<sup>20</sup> hesitated whether, refuted as it was by all the circumstances and facts, and even by the fact of Messina himself, it was worth his answering it; but, at length, to avoid that his silence might be construed in its favour, on the 8th of February, 1850, he gave it a laconic but suitable answer.

After the aforesaid second Protest, which was served by Messina, as it has been stated, to cover and disguise his change of plan, and to enable him to get out of his said first Protest of the 6th of August, 1849; and as, by that Protest, he had confined all his claims against the Defendant, partner as above, to the only case in which the payment of the sum he had advanced to Captain Corbett should be refused or delayed on account of anything passed between the said Captain and the Defendant; and as the said payment had been denied, whether justly or unjustly (the Defendant thinks unjustly), by the English Court, not on the ground of anything that had passed between the said<sup>30</sup> Captain and Leonard, but because the said Court chose to pronounce that the said Captain had no power to mortgage his vessel, it followed, as a necessary and logic consequence, that he, Messina, had no claim against the Defendant. Messina remained silent for two months, and then presented in the Royal Court his Libel against the Defendant in his said capacities, which Libel was framed on a new plan, to wit, not on a claim preferred against the Defendant as having been, according to Messina's first Protest, the cause of the non-payment of the sum in England, but partly on the assumption of such a claim, according to Messina's second Protest, on the ground that the Defendant had procured and given cause to the contract at Malta, and partly on new grounds not consistent with his second Protest; the whole, however, so badly put together, as to render it impossible to discover the grounds of the demands thereby preferred, and thus to support the plea of inconclusiveness pre-<sup>40</sup>liminary alleged by the Defendant.

In the said Libel, Messina, in the first place, alleged the sum advanced by him on a Bottomry Bond to Captain Corbett, for the wants and voyages of the "Osmanli,"—a fact that no one called into doubt.

In the second place, he stated that as soon as he had agreed to advance the money, he called on the Notary, Stevens, where he found a form of a Bond already prepared, but with names in blank. This is a fact which, whether entirely or partly true or not true, does not in the least regard the fact or the interest of the Defendant; so that this allegation seems also irrelevant.

In the third place, he admitted to have known then that most of the sum he was about to advance was to release the "Osmanli" from a Warrant of Arrest issued against her at the instance of<sup>50</sup> the firm of the Defendant. This admission, whilst it is contrary to his first Protest of the 6th of August, 1849, in which he stated that he did not know that fact till afterwards, also shows that the circumstance which rendered the loan necessary was made known to him.

In the fourth place, although he alleges that not knowing English he was not able to have any conversation with Captain Corbett; yet, as he expressly admitted, in his said Protest of the 6th of August, that the Bottomry Bond was translated into Italian to him by the Notary, so he tacitly made the same admission in his said Petition, for he went on to say, that the ordinary nature of the transaction, and the frequency of similar cases of detention, prevented his having any suspicion. And this was quite natural; for when a person enters, as Messina, with his eyes wide open, into a transaction of frequent occurrence, and of which he knows the nature and character, what can there be to<sup>60</sup> give any suspicion? But it is easily seen that all these allegations, in as far as the Defendant and his firm are concerned, were utterly irrelevant.

In the fifth place, Messina went on to say, that he was encouraged to enter into the transaction, because the vessel used to be consigned to the Defendant, and the loan in question was managed by the agents and friends of the Defendant. And, in the sixth place, he also stated, that on the same day of the contract, the Defendant himself, of his own accord, had told him of the wants of the vessel, and had induced him to advance the money.

But these allegations, even assuming them for a moment hypothetically true, could not substantiate a claim against the Defendant; a claim which could not stand even if the Defendant, instead of Captain Corbett, had managed the whole transactions; since the Defendant could not<sup>70</sup> entertain any doubt about his right to detain the vessel, nor about the Captain's right to mortgage her; nor, in consequence, about the right that Messina acquired by advancing the money. It was a truth unexceptionably evident, that no one could entertain any doubt whatever about those facts. It was evident by the fact of the Captain, who mortgaged the vessel without any difficulty. It was evident by the fact of the Advocate who was consulted by the Captain, and who advised him to mortgage her. It was evident by the fact of the Defendant, who would not have begun legal proceedings

against the vessel if he had entertained any doubt of the right, not only to mortgage, but even to sell her for his payment. It was evident by the fact of Messina, who, without hesitation, advanced the money to the Captain, and who maintained the validity of the bond by a Suit in London, and sought evidence in this island of the Maltese laws on the subject. It was evident by the sworn Affidavits of the senior Maltese lawyers, stating their opinion that such bonds were valid by the laws of Malta. It was evident by the long discussion which took place on the question in England. It was evident by the Declaration of that Judge, who, after fully investigating the facts, and notwithstanding the incorrect statement of Captain Corbett, pronounced that there was no fraud any where, but that it was a new case; that no satisfactory evidence had been produced of the law of Malta, and that the Bottomry Bond was not valid, for Captain Corbett had no power to mortgage the vessel for anything beyond what was necessary for the actual voyage.

But the contrary statement of Messina, alleged in the fifth place, was neither proved nor true. The Defendant had neither taken any part in finding the money, nor commissioned any one to find it, nor much less induced Messina to advance it; wherefore the allegation that the transaction had been arranged by the agents and friends of the Defendant, even if it had been true, would have been irrelevant. But, moreover, Messina's fifth allegation was refuted by his own Affidavit in the London Court.

The other allegations in Messina's Petition were equally irrelevant, and inconclusive of any obligation on the part of the Defendant. Not the seventh—that Messina had no curiosity to enquire about the nature of the debt owed to Leonard, which is irrelevant to the Defendant. Not the eighth—the payment of the money, and the release of the vessel, things done to Corbett, with Corbett, for Corbett, and not to, with, or for the Defendant. Not the ninth—about the nature of the exceptions pleaded in the Suit in London, which exceptions did not regard the Defendant. Not the tenth—about Messina's asserted refutation in that Suit of the collusion between him and the Defendant, which though irrelevant, yet destroyed the last part of his Protest of the 6th of August, by which he asserted a claim against the Defendant, on the ground that the latter had not given him an Affidavit in refutation of the said collusion.

To these allegations Messina added,—That the Defendant had been in correspondence with the owners of the vessel; a fact utterly irrelevant. That on the 2nd February he had let the vessel depart, and afterwards had detained her, because he had been informed of the bankruptcy of his debtor; a fact equally irrelevant, and the last part thereof not true, for he knew of no bankruptcy; he knew only of Mongredien's suspension, whom he did not consider his debtor, as he was convinced that the said Mongredien represented a Company. That at that moment, Messina came to know that the Defendant had advised Captain Corbett to borrow money on a Bottomry Bond—an untrue, and if it had been true, an irrelevant allegation, which was purposely contrived, and with the addition that it had recently come to Messina's knowledge. That the Defendant sent round an agent of his to find the money,—a fact equally untrue, and if it had been true, irrelevant. That the Defendant induced Messina to advance the money, and concealed the object for which it was wanted—statements equally untrue; the first of which, as it has already been shown, is refuted even by the Affidavit of Messina himself; and the second is refuted by his said Protest of the 6th of August, and also by the second paragraph of his said identical Petition; and even if those statements had been true, they would have been irrelevant.

And, finally, he repeats the pretended fact of Mongredien's bankruptcy (an allegation already answered), adding, that it had rendered irrecoverable the debt owed to the Defendant; an event which, in the existence of a Company, could not have been supposed, nor could have happened, if the Defendant, on receiving the payment from Captain Corbett, had not consigned to him all his vouchers receipted; for there was, as it became known, another proprietor of the vessel, whose share was more than sufficient to pay him; so that it was Messina himself, who, by trusting Captain Corbett, caused the termination of the legal proceedings at Malta, by which, notwithstanding Mongredien's bankruptcy, the Defendant would have been paid, and thus rendered the debt irrecoverable. Whilst, again, the nature of the debt and the state of the debtor, whoever he was, of the Defendant, did not enter at all into the question; for the Defendant, either in his own name or in the name of his firm, had no dealing with Messina, and much less assigned to him his debt, and moreover with a stipulation that it was recoverable. But that debt was discharged by Captain Corbett's payment. So that Messina did not rely on the Defendant, or on his debtor, or on the debt owed to him, but on the vessel and the Bottomry Bond thereof, for his security.

From all these allegations Messina drew a conclusion which could not be inferred therefrom, viz., that all the Defendant's doings had been extremely irregular, illegal, and directed to circumvent Messina, to whom the Defendant was therefore liable for the money received in payment, as Messina alleged, of an irrecoverable debt through the intervention of Captain Corbett; which conclusion was a proof that Messina admitted he had no civil action against the Defendant, and intended to institute the *actio de dolo*, which is not open when there is a civil action, and that he was doubtful, even with regard to the latter action, for he concluded with vague claims and not with results and effects.

The Defendant having answered the said Petition with the arguments aforesaid, which powerfully refuted Messina's claims, and with other arguments also, which will be hereafter unfolded, Messina, in reply, began a thousand times to proclaim fraud, artifice, machination, plot, and even *stellionato*, and maintained that the law granted for it two actions, the one *in factum* or civil, and the other *de dolo*,—two actions which, as aforesaid, cannot co-exist; and, thereupon, the Commercial Court pronounced (this is said under reserve of the exception against its authenticity and of the nullity thereon alleged above) the Appealed Judgment in his favour.

The said Court, by that Judgment, after diffuse considerations, without any foundation of law or of fact, rejected all the Defendant's exceptions, and condemned the Defendant, in his said capacity, to pay the sum demanded by Messina,—except £150, which the Court, in London, had granted as a part of the loan required for that voyage of the "Osmanli,"—with costs rateable on the sum obtained.

From what has been stated above, it is, by itself, evident that the said Judgment, independently

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(continued).

of its being null and void, has aggrieved the Defendant in his said capacities. For, as no transaction or binding fact had taken place between the Defendant and Messina, the latter had no action, either civil or *in factum*, or of any other kind; much less had he, notwithstanding all that has been concocted by the Appealed Judgment, any *actio doli* against the Defendant for a transaction in which the latter merely made use of his right to recover a debt, without meddling with what took place between Captain Corbett and Messina.

His having no part in it, and Messina's deficiency of any right or legal claim against him, were shown by Messina's Protest of the 6th of August, 1849, a Protest presented four months after the institution of the Suit in London on the 4th of April, 1849, and two months but five days after the production of Captain Corbett's Affidavit of the 11th of June, 1849, who, finding his operation disproved of, chose to attribute to the Defendant an indirect meddling with that loan. By that Protest of the 6th of August, Messina did not state that he was, directly or indirectly, induced to advance the money by the Defendant, against whom, if the money were not returned, he should, therefore, have a claim; but he only stated, as it has been seen, "that, if anything had taken place between the Captain and Leonard, in consequence of which the repayment of the money were refused or delayed, they "should be answerable for it," words stated at a virgin time, when Messina knew all except the issue of the Suit. The said want of meddling was proved, as it has been seen, by the Counter Protest by Captain Corbett himself, served at Malta on the 8th of August, 1849. It was proved by Messina's silence for six months after the said Counter Protest and the Defendant's Counter Protest of the same date; and by his having let both the Captain and the "Osmanli" leave Malta without instituting any proceedings against either of them. It was proved by all Messina's allegations before the Court in London. It was proved by the evidence of all those who had assisted the Captain in obtaining the loan. It was proved by the evidence of the Witnesses examined by the Royal Commercial Court. It was proved by the declaration of the London Judge that there was no fraud by anyone. And, what is more, it was proved in the most clear, positive, and certain manner by the Affidavit of Messina himself in the English Court, an Affidavit which he is not allowed to impugn, and which he does not even try to impugn, except indirectly and implicitly.

The Defendant, therefore—subordinately to his previously alleged exceptions, and in case the afore-alleged exception of nullity be not attended to, with reserve also of further and oral demonstration of the want of foundation, in fact and in law, of the appealed Judgment of the Royal Court, and with a reserve also of alleging whatever may be necessary, and offering any other necessary or required proof—humbly prays, both in his own name, and as partner in and representing his said commercial firm, that the said Appealed Judgment pronounced by the Royal Commercial Court on the 25th of February, 1851, be, as unjust and illegal, reversed and annulled by this Royal Court, except that part thereof which ordered a deduction of £150 from the sum demanded by Messina; but even that part be reversed and annulled, in so far as, by ordering the said deduction, implicitly established an interest whatever of the Defendant in the said Suit in London or in its issue, or a responsibility, liability, and obligation whatsoever towards Messina with regard to the said transaction passed between the latter and Captain Corbett, or in the effect thereof or in any other way whatsoever; and except also, in so far as it lay part of the costs on Messina, and that the original and actual demands of the latter be consequently rejected, and that the said Judgment in the said terms be consequently maintained, merely with regard to the fact of the said ordered deduction, and not in its said implied consequence; and also with regard to the portion of costs charged on Messina, with a preliminary declaration that it was wrongly pronounced by the said Judgment in the said terms, and justly appealed therefrom by the Defendant in his said capacities, with full costs: and that he prays, without prejudice of any other right,—even of the rights arising from the execution of the said Judgment at the instance of Messina,—that justice be imparted to him in this and in any other better way by the law allowed.

J. GRIFFITHS, *Advocate.*

December 8th, 1854. Presented by the Defendant William Leonard, Merchant, without documents.

I do hereby certify to have served Rosario Messina, Merchant, with an official copy of the present reply. This 15th December, 1854.

SMERALDO ATTARD, *Marshal.*

No. 68.  
Summons of  
Leonard for ap-  
pointment of a Su-  
pernumery Judge  
to examine Captain  
Corbett, dated 16th  
November, 1855.

## Folio 297.

SUMMONS PRESENTED WITH A DOCUMENT BY WILLIAM LEONARD, MERCHANT, ON THE 16TH NOVEMBER, 1855. (L. A.)

VICTORIA, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c. &c., to Smeraldo Attard, Marshal of our Court of Appeal in the Island of Malta and its Dependencies.

By our Order, and at the instance of William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co., you shall summon Rosario Messina, Merchant, residing at Valletta, to appear before our said Court at 9 o'clock, at the sitting that will be held on Monday the 19th November, 1855, and there show cause why in the Suit pending before our said Court between the said summoned Plaintiff and the summoner, Defendant, in his said capacities, should not our said Court delegate a supernumery Judge to take the evidence of Captain G. H. Corbett, formerly commanding the merchant steamer "Osmanli," an important Witness, who will soon arrive at Malta from Smyrna to get a supply of coals, and soon leave Malta for England, as it is proved by the annexed number of the Malta Lloyd, 3rd page, 2nd column; and that evidence be taken as soon as the said Captain G. H. Corbett arrives here, with exemption from the legal term of the summons for his appearance to that effect, with costs.

You shall also monish the said summoned Messina, that even if he should not appear on the said day, place, and time, our said Court shall proceed in his absence to give its Judgment, according to justice, on the said summoner's demands, the same day or any other day following, as the Court may appoint.

And you shall soon report to this Court the execution and the serving of the said summoned party, or any one in lieu of him, as by law, with a copy of these presents, or any obstacle met in the execution thereof.

Given at our said Court of Appeal, witness our trusty and well-beloved Paolo Dingli, Doctor of Laws, President of our said Court, this 16th November, 1855.

PAOLO DINGLI, *President.*

I do hereby certify to have served Rosario Messina, Merchant, personally, with an official copy of the foregoing summons, this 16th November, 1855.

SMERALDO ATTARD, *Marshal.*

RECORD OF PROCEEDINGS.

*In the Royal Court of Appeal.*

No. 68.

Summons of Leonard for appointment of a Supernumerary Judge to examine Captain Corbett, dated 16th November, 1855—  
(continued).

### Folio 300.

I do hereby certify, that from the Registry kept in this office, it appears that the English screw steamer "Arcadia," Captain George H. Corbett, arrived in this port from Smyrna, the 19th November, 1855. In faith whereof the present is given out. Ports' Department, Malta, 19th November, 1855.

(Signed) A. FENECH, *Assistant-Superintendent of the Ports.*

No. 69.

Certificate of arrival of the steamer "Arcadia," Captain Corbett, dated 19th November, 1855.

### Folio 301.

EXTRACT FROM THE REGISTRY OF JUDGMENTS OF HER MAJESTY'S COURT OF APPEAL IN THE ISLAND OF MALTA AND ITS DEPENDENCIES.

*Her Majesty's Court of Appeal in the Island of Malta and its Dependencies. Commercial Division. Victoria Term.*

Judges—Dr. Paolo Dingli, *President*; Dr. F. Chapelle; Hon. Dr. A. Micallef, Companion of the most distinguished Order of St. Michael and St. George.

Sitting—Monday, 19th November, 1855. Summons No. 7.

William Leonard, Merchant, in his own name, and as partner in and representing the firm, Robinson Duckworth and Co., Summoner, *versus* Rosario Messina, Merchant, Summoned.

The Court, complying with the demand, decreed that Dr. Guiseppe Randon, Supernumerary Judge, should take the evidence of Captain G. H. Corbett, after being duly sworn in the hands of the Registrar, and to that effect appoints the evidence to be taken to-day at three o'clock P.M.

Costs reserved.

NOTARY VINCENZO RAPINET, *Registrar.*

True Copy.

NOTARY V. RAPINET, *Registrar.*

No. 70.

Order of the Court of Appeal, appointing Supernumerary Judge, dated 19th November, 1855.

### Folio 309.

A LETTER PRODUCED BY THE MERCHANT, LEONARD, ON THE 14TH MAY, 1856.

Liverpool, 5th February, 1849.

Messrs. R. DUCKWORTH and Co., Malta.

DEAR SIR,

It pains me exceedingly to have to inform you that I have been compelled, through the pressure of circumstances, to suspend my payments, heavy and repeated losses having left me no alternative. It is impossible for me, by this post, to write to you at any length on the subject, and I beg to refer to my communications per next post.

At present, it is not likely that I shall have any vessel for the Levant during the present month; what arrangements may be made for the future I cannot at present say, but shall give you more positive information in my next.

I am, dear Sir,

Yours truly,

A. MONGREDIEN.

(Addressed,) Per steamer *viâ* Marsilles.

Messrs. R. DUCKWORTH and Co., Malta.

No. 71.

Letter from Mongredien to R. Duckworth & Co., dated 5th February, 1849, produced by Leonard on 14th May, 1856.

RECORD OF  
PROCEEDINGS.In the Royal Court  
of Appeal.

No. 72.

Deposition of Capt.  
Corbett, taken by  
the Supernumerary  
Judge, on 19th  
November, 1855.

## Folio 311.

DEPOSITION OF CAPTAIN GEORGE HENRY CORBETT, TAKEN BY DR. GUISEPPE RANDON,  
SUPERNUMERARY JUDGE.*In Her Majesty's Court of Appeal in the Island of Malta and its Dependencies.*William Leonard, Merchant, in his own name, and as partner in and representing the firm,  
Robinson Duckworth and Co., *versus* Rosario Messina, Merchant. 10George Henry Corbett, Witness, produced by the Summoner, sworn by the Registrar, and  
examined by the Summoner's Counsel.

Question.—If he commanded any steamer in 1849, and what was her name?

Answer.—I commanded the "Osmanli" steamer.

Q.—Whether the "Osmanli" came to Malta in 1849, and at what time?

A.—I came to Malta in 1849, but I do not know at what time.

Q.—Whether he had made any Affidavit on what happened then on his arrival?

A.—Yes, I did.

Q.—If, on seeing the Affidavit, he might fix the time of his arrival of Malta?

A.—Affirmatively. 20

Q.—Whether he would like to see the Affidavit?

A.—Yes, I recognize the document that has been presented to me; I signed it in February, 1855.

Q.—Whether, now that he had seen the document, he could fix the time?

A.—On referring to the document I signed, I came on the 7th of March, 1849. I believe it to  
be the truth.

Q.—Whether he recollected the facts when he signed that document?

A.—Certainly I did not, I made the document as well as I could.

Q.—If to-day he remembers the facts which took place when he came to Malta in 1849?

A.—I cannot remember them all.

Q.—When, in 1855, you attested on oath the truth of the facts detailed in the document to which  
you have referred, did you fully believe those facts to be true? 30

A.—As well as I know, I believe them to be true.

Q.—Whether, when he arrived at Malta, in March, 1849, any legal proceedings took place about  
his vessel, what happened of them, and how did they end?A.—The vessel was arrested, a Bottomry Bond on her was given, and the debt was paid and  
liquidated.

Q.—By whose advice did he give the Bottomry Bond?

A.—By the advice of Dr. Caruana, my Advocate.

Q.—Whether any other person had advised him to borrow money on bottomry?

A.—No. 40

Q.—If, on that occasion, he thought that it was a *bonâ fide* transaction, in order to let the  
vessel depart?

A.—I cannot answer the question. I cannot answer it.

Q.—Whether, when he gave the Bottomry Bond, he believed he was acting in perfect *bonâ fide*  
on his part?

A.—I gave the Bottomry Bond to release my vessel, and I say no more.

*Cross-questioned by Dr. Schembri.*

Q.—To whom did the vessel referred to belong?

A.—Her apparent proprietors were Messrs. Mongredien? 50

Q.—What was the state of Messrs. Mongredien?

A.—They were bankrupt.

Q.—Whether he had informed Mr. Leonard of the bankruptcy of the Mongredien firm?

[The Advocate Griffiths objected to this demand, on the ground that it was not legal.]

A.—Yes.

Q.—When had he given that information to Mr. Leonard?

A.—When I anchored in the port of Marsamuscetto.

Q.—Whether, besides speaking with Dr. Caruana, he had spoken with anyone else about the  
Bottomry Bond?A.—Dr. Caruana was sent to me by Captain Mauno. I spoke also with Mr. Leonard, but with  
no one else.Q.—Whether there were other Advocates present besides Mr. Caruana, when he spoke with  
Mr. Leonard?

A.—No.

Q.—Who drew up the Bottomry Bond, and by whose order?

A.—Mr Stevens, by my order, sent to him by Captain Mauno.

Q.—Whether, before the Bottomry Bond was executed, Mr. Leonard had given him an account  
for its amount?

A.—No. 70

Q.—Whether he gave it to him afterwards?

A.—Yes.

Q.—Whether, after the Bottomry Bond was signed, Mr. Leonard had given him some money  
with the account?

A.—Yes, he gave me money, but I do not recollect how much.



Q.—Whether that money came from the Bottomry Bond?

A.—Yes, it was the balance of the sum after paying the debt.

Q.—Whether, in his conversation with Mr. Leonard before the execution of the contract, he asked the latter if the debt was upon the “Osmanli,” and what did Leonard answer?

A.—The debt was against the Company.

*Re-examined by Mr. Griffiths, with Dr. Schembri's consent.*

Q.—Whether Mr. Leonard took any part in the Bottomry Bond?

A.—I cannot answer this question.

Q.—Was Mr. Leonard ever present when you conferred with the Advocate Caruana?

A.—No.

Q.—Whether Mr. Leonard ever told the Witness to borrow money on bottomry?

A.—No.

Q.—Whether, as far as the Witness knew, Mr. Leonard had had any part in borrowing the money on bottomry from Mr. Rosario Messina?

A.—No.

Q.—Who gave commission to Captain Mauno to find money on bottomry?

A.—I do not know.

Q.—Whether he gave that commission to Captain Mauno?

A.—No.

(Signed) GEORGE HENRY CORBETT.

November 19th, 1855.

(Signed) G. RANDON.

May 26th, 1856.—Opened in the Court.

RECORD OF  
PROCEEDINGS.

*In the Royal Court  
of Appeal.*

No. 72.

Deposition of Capt.  
Corbett, taken by  
the Supernumerary  
Judge, on 19th  
November, 1855—  
(continued).

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Folio 314.

A DOCUMENT PRODUCED BY THE ADVOCATE GRIFFITHS. NOVEMBER 19TH 1855. G. R.

Borough of Liverpool (to wit).

I, George Henry Corbett, of the County of Lancaster, and Kingdom of Great Britain, Commander of the steam ship called the “Rattler,” of the Port of Liverpool, make oath and say:— That in the month of March, one thousand eight hundred and forty-nine, I was Commander of the British screw steamer or vessel called the “Osmanli,” belonging to the Port of Liverpool, which, on the seventh day of that month, put into Malta on her voyage from Constantinople and Smyrna, bound to Liverpool, to fill up with what goods might offer at Malta, and replenish fuel, water, and small stores; and, on the same day, the said screw steamer “Osmanli” was arrested at Malta, by virtue of a Warrant under the hand of the Judge of the Commercial Court there, at the instance of Messieurs Robinson Duckworth and Company, creditors not only of the said screw steamer “Osmanli,” but of other vessels belonging to, or chartered by, the same Company to whom the “Osmanli” belonged. And, I further say, that on the occasion of the said arrest I enquired of Mr. William Leonard, a partner in the said firm of Robinson Duckworth and Company, on what account the said screw steamer “Osmanli” was so arrested; and he replied, she was arrested not only for the supplies then being furnished to her, but for debts contracted by her with Robinson Duckworth and Company on previous voyages, and for the debts of other steamers belonging to the same Line or Company by whom she was owned, and that the “Osmanli” would not be allowed to leave Malta until all the debts for which she had been arrested were liquidated. I therefore consulted Doctor Emmanuele Caruana, who advised me that there were no means of getting the “Osmanli” released from the said arrest without bail; and that, as no person at Malta would give bail for her, I had better obtain money on bottomry in order to procure her release; and as I was most anxious that the “Osmanli” should leave Malta immediately, I accordingly communicated to the said Mr. Leonard, that in order to avoid the detention of the ship at Malta I was prepared to give a Bottomry Bond to obtain the release of the ship, and I made the same communication to Joseph Mauno, of La Valletta. And I further say, that Mr. Rosario Messina, of La Valletta, having agreed to advance the amount required for the release of the “Osmanli” from her said arrest, as well as for the fuel and stores which were then being shipped on board her, a Bottomry Bond was drawn up by Mr. Stevens, a Notary, in favour of the said Mr. Rosario Messina, and a meeting was appointed for the afternoon of the ninth of March for the completion of the said bond. And such meeting took place at the office of the said Mr. Stevens, and I attended it and signed the said bond, and received from the said Mr. Rosario Messina his check for eight hundred and fifty pounds sterling, for which amount as well as for maritime interest, at seven pounds per cent., the said bond was given. And I further say that the said bond, before I signed it, was read over aloud in the presence of the said Mr. Rosario Messina, by the said Mr. Stevens, and the said Mr. Rosario Messina could not fail to hear every word of it. And I further say, that the said Mr. Leonard did not give or offer me any advice whatever in reference to my raising money by means of a Bottomry Bond, nor did I ask his advice in reference to so doing, because I considered the step he had taken in arresting the “Osmanli” a thoroughly hostile step towards the “Osmanli” and her owners. The person upon whose advice I acted in giving a Bottomry Bond on the “Osmanli” was the said Doctor Caruana. I deemed the immediate release of the “Osmanli” from the said arrest, and her immediate prosecution of her then voyage, most important for the interests of her owners. And, as I was advised by the said Doctor Caruana, and believed, that there were no means available to me of procuring the ship's release from the said arrest

No. 73.

Affidavit of Capt.  
Corbett, made on  
22nd February,  
1855, produced by  
Leonard on 19th  
November, 1855,  
on the examination  
before the Supernu-  
merary Judge.

RECORD OF  
PROCEEDINGS.

In the Royal Court  
of Appeal.

No. 73.  
Affidavit of Capt.  
Corbett, made on  
22nd February,  
1855, produced by  
Leonard on 19th  
November, 1855,  
on the examination  
before the Super-  
numerary Judge—  
(continued).

except by bottomry, I regarded my signing the said Bottomry Bond, under such circumstances, in the light of an act done under compulsion.

The said George Henry Corbett was duly sworn to the truth of the foregoing Affidavit, at Liverpool aforesaid, on the twenty-second day of February, one thousand eight hundred and fifty-five.

GEORGE HENRY CORBETT.

Before me, JAMES ASPINAL TOBIN, Esquire,  
Mayor of the Borough and Town of Liverpool aforesaid.

In faith and testimony whereof, I have caused the Seal of Mayoralty of the said Borough and Town to be hereunto affixed.

(Signed) J. A. TOBIN, Mayor of Liverpool.

L. S.

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## Folio 316.

May 2nd, 1856.

No. 74.  
Examination of  
Witnesses before  
the Court of Appeal,  
on 2nd May, 1856.

I do hereby certify the following to be a true copy of the Notes of the Recorder of the Depositions of the Witnesses, produced and examined on oath, in the Suit of Rosario Messina *versus* 20  
William Leonard, Merchant. Depositions read to them, according to the law.

Captain Guiseppe Mauno, of Valletta, produced by the plaintiff Messina:—I am in Leonard's employment, as his assistant, in the affairs of the "Lloyd." Sometimes he gives me charge of the Masters consigned to him. The steamer, "Osmanli," came consigned to him, I believe, in 1849, and, according to a note I have, on the 7th March. When she arrived, Leonard charged me to go near her, and see if she wanted anything, and if she wanted coals, water, or anything else, to say that all was ready; and as her director, to wit, the firm in England, had stopped payments, whilst I went near the steamer, he, as her creditor, would go to Court to detain her. I went near her, and was asked for coals, water, and other objects; and I said that all was ready, and came to town to buy what was wanted. I did not tell Captain Corbett that Leonard was going to arrest her, for it was not part 30  
of my commission. I had seen Leonard before business hours. In the evening, or next morning, I took a note from Leonard to the Master, whom I had not seen before. The Master that day told me "What has Mr. Leonard done to me?" I answered, "I know nothing"; and Leonard had not communicated to me the contents of the note, which was sealed. I believe Leonard went to speak to Captain Corbett in Marsamuscetto the day of the note, but I do not know upon what. Before Leonard went to speak to the Captain, the latter told me, "What has Leonard done to me? tell him to send me an Advocate." Having reported this to Leonard, he answered, "I am his adversary; I must not provide him with an Advocate; but as he is in quarantine, go and name to him the "Advocates who you think speak English, that he may choose one of them; but do not name Advocate "Griffiths, for he is my Advocate." I did accordingly; and he chose Dr. Caruana, and charged me 40  
to send him to him; and about two o'clock p.m., we met in the Strada Reale, and I introduced him to the Captain. They had a long private conversation in my absence. When they parted, Dr. Caruana asked me whether it was possible to find money (I believe 6,500 scudi) on a Bottomry Bond; I answered in the affirmative. As far as I know, Leonard had not yet gone to speak to Corbett. I do not know what they spoke about afterwards. After Dr. Caruana's question on the possibility of finding the money, the Captain wished to know what interest he should have to pay; and I told him that it was first necessary to find the lender. I reported that conversation to Leonard, who said that that was not his business. That evening, I looked for a lender, at the request of Captain Corbett and of Dr. Caruana; and Captain Corbett and Dr. Caruana told me nothing else except the aforesaid. Those to whom I applied did not entertain the demand; only one, Sciatura, asked why advertisements 50  
were not published; and I answered, "Not to detain the steamer." On the following day I found Captain Corbett in Leonard's house: he inquired what I had done about the loan, and I answered that I had not found any who would advance it; but added, that I would make further applications. Leonard was present. I did not then name Messina; and Leonard did not know that I intended to speak even with the said Messina. Leonard did not suggest any lender. I called on Messina, but he was not in. I met him afterwards, whilst he was entering the Exchange. I proposed the Bottomry loan, and he postponed to speak of it after a meeting he then had. We afterwards met. I made the proposal to him, mentioned the steamer "Osmanli," and referred him for information to the Notary, Stevens. He went to Stevens's, and, on leaving him, he told me, "I cannot do it for less than 6 or 7 %." I reported it to the Captain, who told me it was too high. Two or three hours before the execution 60  
of the bond, Leonard and Messina conferred together in the Exchange, but I did not hear their conversation. I informed Leonard, after the contract was agreed upon, and not before. Messina had sent me to Leonard to know the amount of the sum required. Leonard made out an account with his accountant, and said to me, "Tell the Captain that this is the sum he owes." The account was not ready, but was made then. I communicated the amount to Messina, who said to me, "Well, tell Notary Stevens to prepare the bond." After it was agreed upon, I told Leonard that Messina was the lender, and the interest 7 %. For this transaction I was not paid by Leonard, but by Messina.

Questioned by Dr. Schembri. Answered.—I directed Messina to Notary Stevens, for the latter was informed by the Captain.

Cross-examined.—Stevens always draws up the Captain's testimonials.

Emmanuele Seicluna, a merchant of Valletta, produced by the Plaintiff:—Towards 1849 I was applied to for a loan by Captain Mauno in behalf of the merchant, Leonard, on a steamer consigned to him for about £800 on Liverpool or London. I said, "We shall see." On coming to Court I met with Leonard, who told me "Do this affair; you will have your money returned within ten days." I reserved, to consult my Advocate, who advised me not to do it without observing the proper legal proceedings; but Leonard told me there was no time, as the steamer was to leave directly. In the 70

Court I again conferred with my Advocate on the subject, about half an hour after Leonard had spoken to me; Leonard and Stevens were at a short distance. The loan was made by the merchant, Rosario Messina.

*Cross-examination.*—I was examined in the first instance. I do not remember what I then said. Mauno came to me about eight or half-past eight in the morning. About ten I met with Leonard, and there was also Stevens. I asked an advice from the latter, but I saw him hesitate; and to avoid meddling with, he would not give it, and referred me to an Advocate. I believe Leonard was then walking in the corridor. Thus it is.

NOTARY V. RAPINETT, *Registrar.*

RECORD OF  
PROCEEDINGS.

*In the Royal Court  
of Appeal.*

No. 74.  
Examination of  
Witnesses before  
the Court of Appeal  
on 2nd May, 1856,  
—(continued).

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### Folio 320.

AN EXTRACT FROM THE REGISTRY OF JUDGMENTS OF HER MAJESTY'S COURT OF APPEAL.

*Her Majesty's Court of Appeal in the Island of Malta and its Dependencies. Commercial Division.  
Whitsunday Term.*

Judges—Dr. Paolo Dingli, *President*; Dr. Francesco Chapelle; Hon. Dr. Antonio Micallef,  
Companion of the Most Distinguished Order of St. Michael and St. George.

Consuls—Antonio Schembri, Merchant; Leopoldo Gambin, Merchant.

Sitting, Friday, May 2nd, 1856. Case No. I.

Rosario Messina, Merchant, Plaintiff, Appellate, *versus* William Leonard, Merchant, in his  
own name, and as partner in and representing the firm, R. Duckworth and Co.,  
Defendant, Appellant.

Witnesses of the Plaintiff—Captain Guiseppa Mauno, of Valletta; Emmanuele Scicluna,  
Merchant, of Valletta.

Adjourned to Wednesday, 14th instant, for the Reply of the Advocate Griffiths.

Sitting V., Wednesday, May 14th, 1856.—Adjourned to Monday, 26th inst.

Sitting X., Monday, May 26th, 1856.—Dr. Schembri admitted that Captain G. H. Corbett  
30 was absent from the Island, whereupon it was observed that the seals on his Deposition, taken by a  
Supernumerary Judge, might be broken. That Deposition was opened. Dr. Schembri demanded  
an adjournment for his Counter-reply. Adjourned to Wednesday, the 4th of next June.

Sitting XIV., Wednesday, June 4th, 1856.—Adjourned to Friday, 13th instant.

Sitting XVIII., Friday, June 13th, 1856.—Adjourned to Monday, 30th instant.

Sitting, Monday, June 30, 1856.—It will be decided on Wednesday, 9th July next.

Sitting XXVIII., Wednesday, July 9th, 1856.—The Court, adopting the reasons of the  
Decree pronounced on the 10th December, 1850, found and decided that the said Decree was valid.

Moreover, the Court of First Instance having been legally composed, according to the foregoing  
finding, when it gave the Judgment of the 25th February, 1851, and the proof offered by the  
40 Appellant, that the Consuls sitting in the said Court at the time of the said Judgment did not give  
their vote in the way prescribed by the law, not being admissible, dismissed the said Appellant from  
his alleged exception, that the said Judgment of the 25th February, 1851, be null and void.

Moreover, adopting the reasons of the Judgment appealed against, with regard to the dilatory  
exceptions of pendency and of inconclusiveness of the libel alleged in the answers not renounced, at  
least expressly, decided by dismissing the said Appellant from the said exceptions.

Moreover, considering that although there is no evidence of any bad faith or personal fraud, by  
means of which the Appellant, either he himself, or through others, advised or induced the Appellate  
to advance money on the Bottomry Bond stated in the Petition, to Captain George Henry Corbett,  
commanding the steamer "Osmani," in payment of a debt owed to the Appellant, for which the  
50 latter considered Augustus Mongredien liable—yet there is satisfactory evidence that the said  
Appellant, when he received the money advanced by the said Appellate to the said Captain, in payment  
of the said debt of Augustus Mongredien, knew that the latter, at the time of the said payment,  
was in a state of bankruptcy.

That, however, although by law the payment of a debt of a bankrupt made when the creditor  
who received the payment knew, as in the Case, of the bankruptcy, can have no legal effect, and he  
who paid in ignorance of the bankruptcy, as the Appellate was, has a right to recover the money he  
paid for the bankrupt, even in the case of a true, real, and *bonâ fide* creditor, and notwithstanding the  
use made of the money paid into his hands; yet the said right of recovery can only reach the sum  
actually gone to the profit of the bankrupt's creditor who knew of the bankruptcy, but cannot reach  
60 any other sums that may have been paid for the bankrupt, and the damages and interest incurred by  
the creditor in consequence of the said payments, when, as in the Case, there is no proof of any  
special fault, bad faith, or personal fraud of the bankrupt's creditor in inducing or advising him who  
advanced the money for the bankrupt in payment of a debt of the same.

That, consequently, the Appellant having received, to his own advantage, in payment of the said  
Mongredien's debt, only £700—viz., £150 mentioned in the Judgment appealed against, with a  
deduction of £59. 14s. 8½d., returned to Captain Corbett as from Document folio 242 of the papers—  
he (the said Appellant) can be held liable only for the sum of £640. 5s. 4½d., with legal interest, and  
for no other sum stated in the amount at folio 13 of the papers.

Decided—in conformity with the demands of the Plaintiff, Appellate, and according to the pre-  
70 mised grounds—for the sum only of £640. 5s. 4½d., without any prejudice to any claims he may have  
for interest on the said sum, which claims he may bring in a separate Suit, if and as by law. Dismissed  
the said Plaintiff from all his other demands; and thus altered the Judgment pronounced by the Royal  
Commercial Court on the 25th February, 1851, with costs, both in first and second instance, to the  
Appellate, in proportion of the sum obtained.

NOTARY V. RAPINETT, *Registrar.*

True Copy.

NOTARY V. RAPINETT, *Registrar.*

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## Folio 324.

IN HER MAJESTY'S COURT OF APPEAL.

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth & Co.*Petition of the said William Leonard, Merchant, in his own name, and as partner in and representing the said firm.*

RECORD OF PROCEEDINGS.

*In the Royal Court of Appeal.*

No. 76.

Petition of Wm. Leonard for leave to Appeal to Her Majesty in Council, dated 15th July, 1856.

It humbly sheweth : That, on a Petition presented by the said merchant, Rosario Messina, to Her Majesty's Commercial Court, praying that the Defendant, in his said capacities, should be condemned to pay him £1,095, the said Commercial Court, by a Judgment delivered on the 25th February, 1851, and preceded by the Decrees of June 1st, July 13th, and December 10th, 1850, decided in compliance with the said Petition, deducting, however, from the said sum demanded, £150, granted to the Plaintiff as lawful Bottomry Bond by the High Court of Admiralty in England, which sum, with the rates of interest, was to remain on Messina's account, with costs in proportion of the sum obtained.

That the Defendant, in his said capacities, having appealed against the said Judgment and Decrees to this Court of Her Majesty, by a Judgment of the 9th July instant, this Court, adopting the grounds of the said Decree of the 10th December, 1850, found and decided the said Decree to be valid and legal, and dismissed the Defendant and Appellant from his exceptions that the said Judgment of February 25, 1851, was null and void; adopting the grounds of the Judgment appealed against with regard to the dilatory exceptions of pendency, and of inconclusiveness of the libel alleged in the Answer, to which exceptions it had not been expressly renounced, pronounced by dismissing the Appellant from the said exceptions, and finally decided in conformity with the demands of the said Plaintiff, Appellate, and on the grounds premised in the said decision, for the sum only of £640. 5s. 4½d., without prejudice to the interest on the said sum to be claimed by a separate Suit; and thus it altered the said Judgment delivered by the Commercial Court on the 25th February, 1851. Costs both in first and second instance to be ascertained in favour of the Appellate in proportion of the sum obtained.

That the Defendant, in his said capacities, considers himself aggrieved by the said Judgment of 30 this Court, as he had also been by the Judgment of the Commercial Court, and by the Decrees that preceded it.

The Defendant, therefore, being still within the term granted by Her Majesty's Order in Council of the 18th December, 1824, and the amount in question exceeding £1,000, humbly prays that he may be granted leave to appeal from the said Judgment of this Court of the 9th July instant, and to that effect also, from the Judgment of the Commercial Court of February 25th, and from the said Decrees that preceded it, to Her Majesty in Privy Council, according to the said Order in Council, in order to obtain a Judgment in compliance with the exceptions and demands he alleged before this Royal Court by his Answer of December 8th, 1854, similar to those he had alleged before the Commercial Court.

J. GRIFFITHS, *Advocate.*FRANCESCO NAUDI, *Procurator Legal.*

W. LEONARD, in the said name.

July 15th, 1856.—The foregoing Petition was presented to the Registry of Her Majesty's Court of Appeal by the said Legal Procurator, Francesco Naudi, on behalf of William Leonard, Merchant.

## Folio 326.

HER MAJESTY'S COURT OF APPEAL IN THE ISLAND OF MALTA AND ITS DEPENDENCIES. 50

Cause—Rosario Messina, Merchant, Plaintiff, Appellate, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth & Co., Defendant, Appellant.

Saturday, 9th August, 1856.—In the Registry of Her Majesty's said Court of Appeal, has personally appeared Michele Portelli, Merchant, of the late Sir Agostino, living in this City of Valletta, who, of his own spontaneous and free will, has bound and binds himself, and his heirs and successors, for the sum of £200 sterling of Great Britain, to and in behalf of Rosario Messina, Merchant: that the said William Leonard, Merchant, shall prosecute the Appeal which is to be interposed to Her Majesty the Queen in Council, from the Judgment given by the said Court of Appeal of Her Majesty in the aforesaid Suit, on the 9th July, 1856, after due leave of the said Court of Appeal, for which the required Petition has already been presented since July 15th, 1856; and, also, that the said merchant, Leonard, shall pay to the said merchant, Messina, any sum that, according to the future Judgment by Her Majesty in Privy Council, may be given for costs in behalf of the said merchant, Rosario Messina. And otherwise he, viz., the said merchant, Michele Portelli, by virtue of these presents, gives his consent and adhesion, that a warrant of execution might be issued upon his person, and of his heirs, and upon his goods and chattels wheresoever, for the amount above specified of £200 sterling of Great Britain, and for those costs which may be adjudged to the said Merchant, Rosario Messina. Which things, &c. (Signed) M. PORTELLI.

MICHELANGELO NUZZO, Witness. 70  
GIACOMO PIZZUTO, Witness.

The present bond was signed by the merchant Michele Portelli, the said day, month, and year, to wit, on Saturday, 9th of August, 1856, in my presence and in the presence of the above-signed Witnesses, Michelangelo Nuzzo, of Notary Guiseppi; and Giacomo Pizzuto, of the late Salvatore; both of the City of Valletta.

NOTARY V. RAPINETT, *Registrar.*

No. 77.  
Bond entered into by M. Portelli, for the prosecution of the Appeal, dated 9th August, 1856.

## Folio 328.

HER MAJESTY'S COURT OF APPEAL IN THE ISLAND OF MALTA AND ITS DEPENDENCIES.

Cause—Rosario Messina, Merchant, Plaintiff, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth & Co., Defendant.

September 2nd, 1856.—Read a Petition of William Leonard, Merchant, in the said name, presented to the Registry Office of this Court on the 15th July, 1856, praying for leave to appeal from the Judgment pronounced by this Court in the said Cause, the 9th July, 1856, to Her Majesty in Privy Council, according to Her Majesty's Order in Privy Council of the 18th November, 1824.

Seen the surety given by the Merchant, Michele Portelli, on the 9th August, 1856.

The said Court of Appeal ordered.—That the said merchant, Rosario Messina, be served with a Summons to appear before this Court of Appeal on Friday, the 12th September, 1856, at the usual hours of sitting, and show cause why the leave applied for should not be given to the said merchant, Leonard, in the said name.

NOTARY V. RAPINETT, *Registrar*.

RECORD OF PROCEEDINGS.

*In the Royal Court of Appeal.*

No. 78.  
Order of Court of Appeal for Summons for Messina to show cause, dated 2nd September, 1856.

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## Folio 329. (L.A.)

VICTORIA, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., &c., to Vincenzo Suberras, Marshal of our Court of Appeal in the Island of Malta and its Dependencies.

As in a Suit pending between Rosario Messina, Merchant, Plaintiff, and William Leonard, Merchant, in his own name, and as partner in and representing the firm, Robinson Duckworth and Co., Defendant, before the said Court, and by the same Court decided on the 9th July, 1856, the said Defendant, on the 15th July, 1856, presented a Petition in the following words, to wit:—

*In Her Majesty's Court of Appeal.*—Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth & Co.

Petition of the said William Leonard, Merchant, in his own name, and as partner in and representing the said firm.

It humbly sheweth:—That, on a Petition presented by the said merchant, Rosario Messina, to Her Majesty's Commercial Court, praying that the Defendant, in his said capacities, should be condemned to pay him £1,095, the said Commercial Court, by a Judgment delivered on the 25th February, 1851, and preceded by the Decrees of June 1st, July 13th, and December 10th, 1850, decided in compliance with the said Petition, deducting, however, from the said sum demanded £150, for which the Bottomry Bond had been held valid by the High Court of Admiralty in England, which sum, with the rate of interest, was to remain on Messina's account, with costs in proportion of the sum obtained.

That the Defendant, in his said capacities, having appealed from the said Judgment and Decrees to this Court of Her Majesty, this Court, by a Judgment of the 9th July instant, adopting the grounds of the said Decree of the 10th December, 1850, found and decided the said Decree to be valid and legal, and dismissed the Defendant and Appellant from his exceptions, that the said Judgment of February 25th, 1851, was null and void; adopting the grounds of the Judgment appealed from, with regard to the dilatory exceptions of pendency and of inconclusiveness of the libel alleged in the answer, to which exceptions it had not been expressly renounced, pronounced by dismissing the Appellant from the said exceptions; and finally decided, in conformity with the demands of the said Plaintiff, Appellate, and on the grounds premised in the said decision, for the sum only of £640. 5s. 4½d., without prejudice to the interest on the said sum, to be claimed by a separate Suit; and thus it altered the said Judgment delivered by the Commercial Court on the 25th February, 1851. Costs, both in first and second instance, to be ascertained in favour of the Appellate in proportion of the sum obtained.

That the Defendant, in his said capacities, considers himself aggrieved by the aforesaid Judgment of this Court, as he had also been by the Judgment of the Commercial Court, and by the Decrees that preceded it.

The Defendant, therefore, being still within the term granted by Her Majesty's Order in Council of the 18th December, 1824, and the amount in question exceeding £1,000, humbly prays that he may be granted leave to appeal from the said Judgment of this Court of the 9th July instant, and to that effect also from the Judgment of the Commercial Court of February 25th, and from the said Decrees that preceded it, to Her Majesty in Privy Council, according to the said Order in Council, in order to obtain a Judgment in compliance with the exceptions and demands he alleged before this Royal Court, by his Answer of December 8th, 1854, similar to those he had alleged before the Commercial Court.

J. GRIFFITHS, *Advocate*.

FRANCESCO NAUDI, *Legal Procurator*.

July 15th, 1856.—The foregoing Petition was presented to the Registry of Her Majesty's Court of Appeal by the said Legal Procurator, Francesco Naudi, on behalf of William Leonard, Merchant.

NOTARY V. RAPINETT, *Registrar*.

And as our said Court of Appeal, by a Decree of the 2nd September, 1856, on the said Petition, ordered a Summons to be issued for the day hereinafter mentioned, and for the instance contained in the said Petition:

We, therefore, by these presents, order and direct you to summon the said Rosario Messina, Merchant, to appear before the said Court of Appeal of Her Majesty at the Sitting that will be held

No. 79.  
Summons for hearing of said Petition, dated 2nd September, 1856.

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## RECORD OF PROCEEDINGS.

In the Royal Court of Appeal.

No. 79.  
Summons for hearing of said Petition, dated 2nd September, 1856—  
(continued).

on Friday, 12th September, 1856, at the usual hour, in order to show cause why due leave should not be granted to the said William Leonard, Merchant, to interpose the said Appeal to Her Majesty in Privy Council.

You shall also monish the said Rosario Messina, Merchant, that, even in case of his default and non-appearance before the said Court of Appeal on the aforesaid day and hour, our said Court of Appeal shall proceed, in his absence, to deliver Judgment, according to justice, on the said Petition of the said merchant, Leonard, even with regard to costs:

And you shall report to this Court of Appeal the execution of these presents, by serving the said merchant, Messina, or any for him, with a copy thereof, or any obstacle met in the execution.

Given at our Court of Appeal, in the Island of Malta and its Dependencies. Witness, our trusty and well-beloved Paolo Dingli, K.C. of the Most Distinguished Order of St. Michael and St. George, LL.D., President of our said Court, this 2nd September, 1856. 10

(Signed) PAOLO DINGLI, *President*.

I do hereby certify to have served Rosario Messina, Merchant, personally with an official copy of the foregoing Summons, this 3rd September, 1856.

V. SUBERRAS, *Marshal*.

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No. 80.  
Order of the Court of Appeal on said Petition, dated 12th September, 1856.

## Folio 332.

AN EXTRACT FROM THE REGISTRY OF JUDGMENTS OF HER MAJESTY'S COURT OF APPEAL.  
*Her Majesty's Court of Appeal in the Island of Malta and its Dependencies. Commercial Division. Victoria Term.*

Judges—Dr. Paolo Dingli, K.C. of the Most Distinguished Order of St. Michael and St. George, *President*; Dr. Francesco Chapelle; Honourable Dr. Antonio Micallef, Companion of the Most Distinguished Order of St. Michael and St. George. 30

Consuls—Francesco Saverio Ferruzia, *Surrogate*; Andrea G. Calvocovisi.

Sitting—Friday, September 12th, 1856, Summons No. 6.

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth & Co.

The merchant Leonard, in the said name, by a Petition presented on the 15th July last, stated that, on an Action against him for £1,095, the Commercial Court on the 25th February, 1851, after previous Decrees of June 1st, July 13th, and December 10th, 1850, granted the demands, deducting however from the sum demanded, £150, for which the High Court of Admiralty in England had held the Bottomry Bond valid, which sum, with the rate of interest, was to remain on Messina's account, with costs rateable in proportion of the sum obtained; and as he appealed from that Judgment, this Court, on the 9th July, 1856, affirmed the Decree of 10th December, 1850, dismissed the exceptions that the Judgment of February 25th, 1851, was null and void; adopted the grounds of the Judgment with regard to the dilatory exceptions, and granted the demand of the Plaintiff only for £640. 5s. 4½d., without prejudice to the interest on the said sum to be claimed by a separate Suit—costs of both instances to the Plaintiff, in proportion of the sum obtained. That he considers himself aggrieved by the Judgment of this Court, as he was also by the Judgment and previous Decrees of the Commercial Court. 40

Therefore, the term granted by Her Majesty's Order in Council of December 18th, 1824, not 50 having yet elapsed, and the amount in question exceeding £1,000, he prayed for leave to appeal from the said Judgment of this Court, and to the effect also from the Judgment of the Commercial Court of February 25, 1851, and the Decrees that preceded it, to Her Majesty in Privy Council, with a view to obtaining a Judgment conformably to the exceptions and demands he alleged before this Court by his Answer of December 8th, 1854, similar to those he had alleged before the Commercial Court. And as the merchant Leonard, on the 9th of August, 1856, gave bail Michele Portelli, Merchant, this Court, by a Decree of the 2nd September instant, ordered a summons for this day to be issued to the merchant Messina to show cause why leave should not be granted to the said merchant, Leonard, to interpose the said Appeal to Her Majesty in Privy Council.

Dr. Ignazio Schembri, on Messina's behalf, admitted the solvency of the bail given by Leonard. 60  
The Court granted the Application, not objected to by the party summoned, without costs.

NOTARY V. RAPINETT, *Registrar*.

No. 81.  
Petition of Messina for leave to Appeal to Her Majesty in Council, dated 22nd July, 1856.

## Folio 334.

IN THE FIRST DIVISION OF HER MAJESTY'S COURT OF APPEAL.

Rosario Messina, Merchant, Plaintiff, Appellate, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth & Co., Defendant, Appellant. 70

Petition of the said Rosario Messina, Merchant, Plaintiff, Appellate.

It humbly sheweth:—That he considers himself aggrieved by the Judgment by this Court, delivered in the said Cause on the 9th July, 1856, in so far as, in the grounds thereto premised, it

granted the Plaintiff's demands only for the sum of £540. 5s. 4½d., and dismissing him from his other demands, altered accordingly the Judgment pronounced by Her Majesty's Commercial Court on the 25th February, 1851, and in so far also as it pronounced that the costs, both of first and of second instance, should be taxed in favour of the said Appellate, in proportion of the sum obtained.

Whereupon the Petitioner, availing himself of the right of appealing, granted by Her Majesty's Order in Council of December 18th, 1824, promulgated by a Proclamation of February 22nd, 1825, within the term thereby fixed, humbly prays that leave may be imparted to him by this Court to appeal from the said unfavourable heads of the said Judgment, delivered by this said Court on the 9th July, 1856, to Her Majesty in Privy Council.

J. SCHEMBRI, *Advocate.*

DR. COTUGNO, *Legal Procurator.*

RECORD OF PROCEEDINGS.

In the Royal Court of Appeal.

No. 81.

Petition of Messina, for leave to Appeal to Her Majesty in Council, dated 22nd July, 1856—  
(continued).

July 22nd, 1856.—The foregoing Petition has been presented to the Registry of Her Majesty's Court of Appeal by the said Dr. Guiseppe Luigi Cotugno, Legal Procurator, on behalf of Rosario Messina, Merchant.

NOTARY V. RAPINETT, *Registrar.*

### Folio 335.

COURT OF APPEAL OF HER MAJESTY IN THE ISLAND OF MALTA AND ITS DEPENDENCIES.

Cause.—Rosario Messina, Merchant, Plaintiff, Appellate, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co., Defendant, Appellant.

Monday, August 18th, 1856.—In the Registry of Her Majesty's said Court of Appeal has personally appeared Guiseppe Buttigieg, Merchant, of the late Michaelangelo, of Valetta, who, of his own spontaneous and free will, has bound and hereby binds himself, and his heirs and successors, for the sum of £200 sterling of Great Britain, to and in behalf of William Leonard, Merchant, to the effect that the said Rosario Messina, Merchant, shall pursue the Appeal which is to be interposed to Her Majesty in Privy Council from the Judgment delivered by the said Court of Appeal of Her Majesty in the aforesaid Cause on the 9th July, 1856, after due leave of the said Court of Appeal, for which the analogous Petition has already been presented, since the 22nd July, 1856; and also to the effect that the said merchant, Messina, shall pay to the said merchant, Leonard, any sum which, by Her Majesty's future Judgment, may be granted for costs to the said merchant, Leonard. And, otherwise, he, the said Guiseppe Buttigieg, Merchant, by virtue of these presents, gives his consent and adhesion that a warrant of execution might be issued upon his person and of his heirs, and upon his goods and chattels wheresoever, for the above-specified amount of £200 sterling of Great Britain, and for those said costs which might be adjudged to the said merchant, Leonard. Which things, &c.

(Signed) GUISEPPE BUTTIGIEG,  
RUGGIERO CONTI, *Legal Procurator*, Witness.  
GIACOMO PIZZUTO, Witness.

The present Bond was signed by the Merchant, Guiseppe Buttigieg, the said day, month, and year, to wit, on Monday, August 18th, 1856, in my presence, and in the presence of the above-signed Witnesses; Ruggiero Conti, Legal Procurator; and Giacomo Pizzuto, of the late Salvatore; both of the City of Valetta.

NOTARY V. RAPINETT, *Registrar.*

### Folio 337.

COURT OF APPEAL OF HER MAJESTY IN THE ISLAND OF MALTA AND ITS DEPENDENCIES.

Rosario Messina, Merchant, Plaintiff, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co., Defendant.

September 2nd, 1856.—Read a Petition presented to the Registry of the said Court on the 22nd July, 1856, by Rosario Messina, Merchant, by which he prays for leave to appeal against some heads of the Judgment given by this Court in the said Cause on the 9th July, 1856, to Her Majesty in Privy Council, according to Her Majesty's Order in Council of December 18th, 1854.

Seen the surety given by the merchant, Guiseppe Buttigieg, on the 18th August, 1856; the said Court of Appeal ordered, that the said William Leonard, Merchant, be served with a summons to appear before this Court of Appeal on Friday, 12th September, 1856, at the usual hours of sitting, and show cause why the leave prayed for should not be granted to the said merchant, Messina.

NOTARY V. RAPINETT, *Registrar.*

No. 83.

Order of Court of Appeal for summons for Leonard to appear and show cause, dated 2nd September, 1856.

## Folio 338. (L. A.)

RECORD OF  
PROCEEDINGS.*In the Royal Court  
of Appeal.*

No. 84.

Summons for hear-  
ing of the said Peti-  
tion, dated 2nd  
September, 1856.

VICTORIA, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c. &c. &c., to Vincenzo Suberras, Marshal of our Court of Appeal in the Island of Malta and its Dependencies.

As in a Suit pending before the said Court between Rosario Messina, Merchant, Plaintiff, and William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co., Defendant, and by the same Court decided on the 9th July, 1856, the said Plaintiff on the 22nd July, 1856, presented a Petition in the following words, to wit:—

*In the First Division of Her Majesty's Court of Appeal*—Rosario Messina, Merchant, Plaintiff, Appellate, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co., Defendant, Appellant.

Petition of the said Rosario Messina, Merchant, Plaintiff, Appellate,—

It humbly sheweth, That he considers himself aggrieved by the Judgment by this Court delivered in the said cause on the 9th July instant, 1856, in so far as, on the grounds thereto premised, it granted the Plaintiff's demands only for the sum of £640. 5s. 4½*d.*, and dismissing him from his other demands, altered accordingly the Judgment pronounced by Her Majesty's Commercial Court on the 25th February, 1851; and in so far also as it pronounced that the costs, both of first and second instance, should be taxed in favour of the said Appellate in proportion of the sum obtained. Whereupon the Petitioner, availing himself of the right of appealing granted by Her Majesty's Order in Council of December 18th, 1824, promulgated by a Proclamation of February 22nd, 1825, within the term thereby fixed, humbly prays, that leave may be imparted to him by this Court to appeal from the said unfavourable heads of the said Judgment delivered by this said Court on the 9th July, 1856, to Her Majesty in Privy Council.

J. SCHEMBRI, *Advocate.*

DR. COTUGNO, *Legal Procurator.*

July 22nd, 1856.—The foregoing Petition has been presented to the Registry of Her Majesty's Court of Appeal by the said Dr. Guiseppa Luigi Cotugno, Legal Procurator, on behalf of Rosario Messina, Merchant.

NOTARY V. RAPINETT, *Registrar.*

And as our said Court of Appeal, by a Decree of the 2nd September, 1856, on the said Petition, ordered a corresponding Summons to be issued for the day hereinafter mentioned, and for the instance stated in the said Petition:

We, therefore, by these presents, order and direct you to Summon the said William Leonard, Merchant, or any one for him, to appear before Her Majesty's said Court of Appeal, at the Sitting that will be held on Friday, 12th September, 1856, at the sitting hours, in order to show cause why due leave should not be granted to the said Rosario Messina, Merchant, to interpose the said Appeal to Her Majesty in Privy Council.

You shall also monish the said William Leonard, Merchant, that even in case of his default and non-appearance before the said Court of Appeal, on the aforesaid day and hour, our said Court of Appeal shall proceed in his absence to deliver Judgment according to justice on the said Petition of the said merchant, Messina, even with regard to costs.

And you shall report to this Court of Appeal the serving the said merchant, Leonard, or whomsoever for him, with a true copy of these presents, or any obstacle met in the execution thereof.

Given at our Court of Appeal in the Island of Malta and its Dependencies. Witness, our trusty and well-beloved Paolo Dingli, Knight Commander of the Most Distinguished Order of St. Michael and St. George, L.L.D., President of our said Court, this 2nd September, 1856.

(Signed) P. DINGLI, *President.*

I do hereby certify to have served William Leonard, Merchant, personally with an official copy of the foregoing Summons, this 3rd September, 1856.

VINCENZO SUBERRAS.

No. 85.  
Order of Court on  
said Petition, dated  
12th September,  
1856.

## Folio 340.

AN EXTRACT FROM THE REGISTRY OF JUDGMENTS OF HER MAJESTY'S COURT OF APPEAL, VIZ.:—

*Her Majesty's Court of Appeal in the Island of Malta and its Dependencies. Commercial Division.  
Victoria Term.*

Judges—Dr. Paolo Dingli, K.C. of the Most Distinguished Order of St. Michael and St. George, *President*; Dr. Francesco Chapelle; Honourable Dr. Antonio Micallef, Companion of the Most Distinguished Order of St. Michael and St. George.

Consuls—Francesco Saverio Ferrugia, *Surrogate*; Andrea G. Calvocoresi.

Sitting II., Friday, September 12th, 1856; Cause No. 7.

Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name, and as partner in and representing the firm, R. Duckworth and Co.

The merchant Messina, by a Petition presented the 29th July, 1856, stated that he considered himself aggrieved by a Judgment of this Court of July 9th, 1856, in the said Suit, in so far as it



NUMBER IN RECORD.	FOLIO IN ORIGINAL.	NAME OF DOCUMENT.	PAGE IN RECORD.
57	236	Copy of the Order of the Royal Commercial Court, dated 14th January, 1851 . . . . .	43
58	237	Note of an English document produced on behalf of R. Messina on 16th January, 1851 . . . . .	44
59	238	Copy of a Letter from Mr. M. Orme, Notary, to A. P. Petrococchino, Esq., dated 15th June, 1849 . . . . .	44
60	240	Note of documents produced by Wm. Leonard on 21st January, 1851 . . . . .	45
61	241	Document A.—Receipt of Captain G. H. Corbett, dated 9th March, 1849 . . . . .	45
62	243	Judgment of the Royal Commercial Court, dated 25th February, 1851 . . . . .	45
63	257	Note of Appeal of Wm. Leonard, dated 28th February, 1851 . . . . .	48
64	260	Petition of Rosario Messina to the Court of Appeal, dated 28th May, 1851 . . . . .	49
65	262	Protest of Contumacy by R. Messina to the Court of Appeal . . . . .	49
66	267	Order of the Court of Appeal, dated 20th November, 1854 . . . . .	49
67	270	Answer of Wm. Leonard to the Court of Appeal, dated 8th December, 1854 . . . . .	50
68	297	Summons of Wm. Leonard for the appointment of a Supernumerary Judge to examine Captain Corbett, dated 16th November, 1855 . . . . .	56
69	300	Certificate of the arrival of the steamer "Arcadia," Captain Corbett, 19th November, 1855 . . . . .	57
70	301	Order of the Court of Appeal appointing Supernumerary Judge, dated 19th November, 1855 . . . . .	57
71	309	Letter from Mongredien to R. Duckworth and Co., dated 5th February, 1849, produced by Wm. Leonard on 14th May, 1856 . . . . .	57
72	311	Deposition of Captain G. H. Corbett, taken by the Supernumerary Judge on 19th November, 1855 . . . . .	58
73	314	Affidavit of Captain Corbett, produced on 19th November, 1855, by W. Leonard, on the examination before the Supernumerary Judge . . . . .	59
74	316	Examination of Witnesses before the Court of Appeal, dated May 2nd, 1856 . . . . .	60
75	320	Copy of the Judgment of the Court of Appeal, dated 9th July, 1856 . . . . .	61
76	324	Petition of Wm. Leonard for leave to Appeal to Her Majesty in Council, dated 15th July, 1856 . . . . .	62
77	326	Bond entered into by M. Portelli for the prosecution of the Appeal, dated 9th August, 1856 . . . . .	62
78	328	Order of Court of Appeal for summons for R. Messina to appear and show cause, dated 2nd September, 1856 . . . . .	63
79	329	Summons for hearing of the said Petition, dated 2nd September, 1856 . . . . .	63
80	332	Order of the Court on the said Petition, dated 12th September, 1856 . . . . .	64
81	334	Petition of Rosario Messina for leave to Appeal to Her Majesty in Privy Council, dated 22nd July, 1856 . . . . .	64
82	335	Bond entered into by G. Buttigieg for the prosecution of Messina's Appeal, dated 18th August, 1856 . . . . .	65
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LEONARD *v.* MESSINA.

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41  
In the Privy Council.

*In Appeal from Her Majesty's  
Royal Court of Appeal at  
Malta.*

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WILLIAM LEONARD, in his  
own Name, and as Partner in  
and representing the Firm of  
Robinson Duckworth & Co. . *Appellant* ;

*versus*

ROSARIO MESSINA . . . . *Respondent.*

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RECORD OF PROCEEDINGS.

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GREGORY, GREGORY, & CO.,  
*for Appellant.*

adjudged his demands only for £640. 5s. 4½d.; and, dismissing him from his other demands, altered accordingly the Judgment of the Commercial Court of February 25, 1851; and in so far as it adjudged costs in proportion of the sum obtained.

He, therefore, availing himself of the right of appealing granted by Her Majesty's Order in Council of December, 1824, being still within the term prescribed by that Order, prayed for leave to appeal to Her Majesty in Privy Council from the unfavourable heads of the said Judgment of July 9th, 1856, by this Court.

And as the said merchant, Messina, on the 18th August last, gave for bail the merchant Guiseppe Buttigieg, this Court, by a Decree of the 2nd September instant, ordered that a Summons for this day should be issued to the merchant Leonard, to show cause why leave should not be granted to the merchant Messina to interpose the said Appeal, &c., to Her Majesty in Privy Council.

Notary Francesco Naudi, Legal Procurator, admitted, on Leonard's behalf, the solvency of the bail given by Messina.

The Court decided according to the Petition, not opposed to by the party summoned, without costs.

NOTARY V. RAPINETT, *Registrar*.

True copy.

NOTARY V. RAPINETT, *Registrar*.

RECORD OF PROCEEDINGS.

In the Royal Court of Appeal.

No. 85.

Order of Court on said Petition, dated 12th September, 1856—  
(continued).

20

## REASONS OF THE JUDGMENT OF THIS COURT.

30

On the occasion of the Judgment delivered by the First Division of this Court of Appeal of Her Majesty, on the 9th July of last year, 1856, in the Cause, Rosario Messina, Merchant, *versus* William Leonard, Merchant, in his own name and as partner in and representing the firm, R. Duckworth and Co.; we, the undersigned, were dissentient with regard only to the exoneration of the defendant Leonard from the obligation of returning and paying to Messina even the £59. 14s. 8½d., which he handed over to Captain Corbett, as a balance in his hands of the Bottomry Loan advanced to Messina; and, with regard also to the exoneration of the said Defendant from fully indemnifying the said Plaintiff for the costs incurred in England and at Malta in consequence of the said transaction. Although it was not established that the defendant Leonard had directly induced the plaintiff Messina to advance the said loan, it is established, in our opinion, that he had recourse to every means to obtain the loan of £59. 14s. 8½d. to be the approximative amount of his claim.

No. 86.  
Reasons of Judgment.

After the said Defendant, the said master of the vessel, Captain Corbett, had informed him of the bankruptcy of her owner, obtained judicially the arrest of the vessel for his claims, and detained her till he had in his hands the whole amount advanced by the Plaintiff.

Captain Corbett was obliged to accommodate himself to the circumstance, in order to obviate greater damages to the vessel.

The defendant Leonard, however, being already aware of the bankruptcy of her owner, was in no way legally entitled to try for and actually obtain the arrest of the vessel, and by this serious means, and only in order to be paid *in toto* of his claims, compel the Master to raise money on a Bottomry Bond.

This reason seems, in our opinion, to have been adopted by the Court of Admiralty in limiting the demands then of the lender, Messina, only to the small expenses, which might have been necessary to Captain Corbett to continue the voyage.

We, the undersigned, have also held, as a special reason in support of our opinion for the restitution also of the said £59. 14s. 8½d., the other circumstance, that the defendant Leonard, when he handed over that sum as balance of the Bottomry Loan to Captain Corbett, on account of the owner of the vessel, knew that he was thus making a payment to a bankrupt, and that his illegal proceeding, in general, caused the Plaintiff unavoidably to incur many expenses, whom therefore he must indemnify *in toto*, as the Court of First Instance pronounced.

(Signed) P. DINGLI, *President*.

ANT. SCHEMBRI.