

SIR ANTONIO MICALLEF *

(By A. GANADO B.A., *with -reproductions from the local Press*)

L'ignoranza o l'indifferentza delle opere e dei monumenti degli avi e la maggior sventura d'un popolo, una macchia d'ingratitude e d'irriverenza verso coloro che ci lasciarono un'eredita santa di sapienti tradizioni e di glorie non periture—GIOBERTI

IT is very right and just—nay, it is a duty—to render praise to whom praise is due : to record and labours and virtues of those of our ancestors who have honoured their country, carrying its name and fame for beyond our native shores; and thus to afford the rising generation luminous examples of moral rectitude, of unwearying industry, of noble and manly sentiments. One of the noblest and worthiest sons of Malta is Sir Antonio Micallef ; his life is a model life of probity and learning, honour and modesty. During his seventy nine years of peregrination on this earth which he considered as a stepping-stone to the next, he became the object of universal admiration, esteem and affection. He was an eminent and talented jurist, a warmhearted patriot, a most loving father.

Of a tall, slender but stately figure, he had a severe and characteristic countenance, always brightened with a smile. His mild, sober way of talking, his eloquent and forcible style of exposition left vivid and lasting impressions upon people he met. Throughout a long and bright career he gave ample proof if proof were needed, of his vast intelligence, deep wisdom and consummate knowledge of the law. Still a child he was known to possess admirable qualities, almost incredible at his age ; his precocity presaged things to come. As a young barrister he made rapid progress by his devotion to his profession, by his affability of character and pre-eminent ability ; as a Crown Advocate he attained distinction both as Public Prosecutor and as Legal Adviser to the Government. After twenty-six years on the Bench, first as a Judge, then as President of the Court of Appeal, he left the velvet chair of the Forum to occupy one in the Palace ; shortly after, he retired into private life with the conviction of having always performed his duties honestly, conscientiously and with independence. During his last years of comparative repose, always willing and eager to serve his country, he continued to take a deep interest in public affairs; he kept up a constant correspondence with the Government, submitting projects for legal reforms and making other suggestions on various matters of national interest. In 1889, he died, leaving behind him to continue his work a worthy successor, no less a conspicuous personality than Sir Adrian Dingli. We will not take upon ourselves the invidious task of settling precedence between two such celebrities as Sir Adrian Dingli and Sir Antonio Micallef. Suffice it to say that in legal acumen they are both incomparable and that they have both devoted their whole

(* We wish to express our thanks to -the ('Honourable Mr. Justice'. Comm ; Robert F. Ganado, LL. D., for the great -help he. -tendered,. to the author- of this biography. We also feel indebted to Mr. L: Sammut Briffa , B.A., Mr. A. Cremona and Mr. J.M. Ganado, B.A., for their valuable help.-EDITOR).

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untiring energies to the welfare of their countrymen.

On the second of April, 1810, Antonio Micallef, the son of respectable parents, was born in Citta Vittoriosa. His father, Giuseppe Gaetano, was a notary by profession. He was brought up in an intensely religious atmosphere, and the education imparted to him by his parents developed to the full his mental faculties and produced a gentle, generous and noble heart. It is not for us to narrate his life during infancy; it is a life enveloped in a veil of secrecy; it is written in the mother's heart and no living man can tell that story. Still at a very tender age he gave himself up to the serious and assiduous study of Jurisprudence, of which he was destined to become one of the greatest luminaries. He showed great proficiency in his studies and completed very successfully his Course at the University, thus obtaining, in 1828, the degree of Doctor of Laws with honours—honours he had well merited by his fanatical love of study coupled with a singular talent and an extraordinary memory. He was, at the time, eighteen years of age. Shortly afterwards, he devoted himself to the exercise of his profession of which he became so brilliant an ornament. Within a few years he had acquired a substantial practice and his fame as a learned and hard-working advocate was already echoing far and wide; many prophesied that he would one day occupy with great honour to himself and to his country the highest positions of the legal hierarchy.

At the age of thirty-two he was appointed to succeed Dr. G. Bruno as 'Crown Advocate. The Governor, referring this fact to the Secretary of State for the Colonies stated that Dr. Micallef was one of the most eminent advocates at the Bar, and that in so far as his nomination was concerned he considered it to be "the best arrangement that could have been made both for the interest of the public and the Government" (1). A typical comment on his appointment is that of the "Malta Mail and United Services Journal" which declared; "This young man has become celebrated amongst us by several works on the law from his pen, as well as on account of his profound erudition, so that his nomination has given universal satisfaction, inasmuch as true merit has received the reward which was so justly due to it" (2). The office entrusted to Dr. Micallef was, at the time, after that of the Chief Secretary to Government, the most eminent in the Maltese administrative system.

His functions were many and various; his responsibilities, heavy. He assumed office at a time when practically the whole European Continent was fermenting with revolutionary ideas; Mazzini and others were stirring up the spirit of national unity in the nearby peninsula; whilst an incessant flow of refugees was making its way towards our Island. This state of affairs had serious repercussions in Malta, where political agitation showed no signs of abating. Matters of vital importance arose during this period causing many conflicts between Church and State. With the controversy as to the appointment of a Co-

(1) Lieutenant Governor's Office. Despatches: Governor to Secretary of State. 27th October, 1842; No. 70.

(2) Malta Mail etc.; 11th November, 1842.

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adjutor and Successor to the Archbishop, Mons. Caruana, still undecided, two questions of considerable interest troubled the waters⁽³⁾. The one referred to mixed marriages, the other to the administration of pious foundations. The former was destined to cause trouble until the last decade of the century ; the latter was practically vetoed by the Secretary of State (3a).

In 1850, the Criminal Draft Code on which work was begun as far back as in 1831, came up for discussion before the newly constituted Council of Government. At first all proceeded smoothly, but when the title dealing with "Offences against the Respect due to Religion" was on the tapis, there was a storm. In affairs such as these, Dr. Micallef, in virtue of his official capacity, was obviously in an anomalous position. He was the legal adviser of the Government in all matters, not only of internal, but also of external policy, so that his situation to a certain extent was also connected with political functions ; he was the framer of the laws proposed in the Legislative Council on the part of the Government ; then, on top of all, he was a Catholic. In a word, his situation was such as to require a man of the greatest learning and experience in order to fill it efficiently. Besides his duties in Council, he had to appear in Court to defend suits on behalf of the Government or prosecute (in his capacity as Public Prosecutor) before the Criminal Court or the Court of Special Commission sitting with a Jury. He invariably sustained the numerous responsibilities devolving upon him in a manner which did him the highest credit and for which he was later amply rewarded.

Before becoming Crown Advocate, Dr. Micallef had occupied many important posts. From 1829 to 1842, he was a Reporter (Estensore) in the Courts of Law (first in the First Hall of , the Civil Court, then in the Court of Appeal and in the Supreme Council of Justice) and a clever commentator of the judgements delivered by our Tribunals. In 1841, he was nominated a Member of the General Council of the University and of the Special Council of the Faculty of Laws. During the same year he became Legal Adviser to the Monte di Pieta.

Upon a statement of his services enclosed by the Governor in a despatch to the Secretary of State (4) he was created a Companion of the Most Distinguished Order of St. Michael and St. George. Five months later, important changes took place in the judicial field. On the retirement of Sir Ignatius Bonavita, Judge Paolo Dingli succeeded him as President of the Court of Appeal, and Dr. Micallef, whom the Governor, Sir William Reid, described as an able lawyer and a gentleman for whom he entertained a high respect was elevated to the Bench. In the Governor's opinion as well as in the public estimation, he was the fittest person to be made a judge (5).

(3) At the time, the Governor was Sir Patrick Stuart, (1843-1847).

(3a) A. Laferla: British Malta; page 189.

(4) L.G.O. ; Govt. to S. of S.: 18th March, 1853.

(5) L.G.O. ; Gov. to S. of S. ; 27th December, 1853, No. 253.

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The choice was, indeed, a happy one. The great amount of causes waiting for trial had been for a long time previously the subject of constant and just complaint. In May, 1854, Reid reported that since the appointment of Dr. A. Micallef a great change for the better had taken place and he enclosed a comparative statement to testify to that fact. He concluded : "I believe it to be only justice to Dr. Micallef to say that the change has been to a great extent brought about by his legal knowledge, assiduity and firm conduct combined" (6). Moreover, the excellent conduct of Judge Micallef had the beneficial effect of influencing others to exert themselves (7). By this time he had already become the leading personality in the Island, and was loved, revered and esteemed by the whole population.

During Sir Richard More O'Ferrall's Governorship, a new Legislative Council was constituted which was formed for the first time under British rule of both Official and Elected Members. As Crown Advocate, Dr. Micallef was *ex-officio* an Official Member of that Council, of which he was, after the Chief Secretary, the most influential member and the ablest speaker on the Government side. As a legislator and reformer, Dr. Micallef holds an honoured place in our annals. His enlightened views and his firmness in maintaining them made his services in the Council of Government most valuable whilst the new Codes were under discussion (8). During his term of office he compiled many important Ordinances, some of which are still in force today. Ordinance I of 1846, for instance, entitled "Per emendare le leggi in materia di fallimenti" , brought up to date and simplified our Bankruptcy Laws by substantially modifying and improving the Proclamation of 1815. It was based for the most part on the French Code of 1808 and is still applicable *in toto* today, only slight alterations having been made when it was promulgated as part of our Commercial Code in 1857.

He played a major part in the formation of the Criminal Code, the Code of Organisation and Civil Procedure and the Commercial Code. In 1844, the Government submitted to Dr. Micallef the Criminal Draft Code of 1842 and Mr. Andrew Jameson's Report thereon, directing him to give his opinion as to whether it was expedient to adopt in whole or in part the amendments and alterations proposed by Mr. Jameson and whether, according to his idea, the adoption of those alterations and amendments would change the spirit and the fundamental basis of the Draft Code. Dr. Micallef stated in reply that the greater part of Mr. Jameson's proposals were quite compatible with the spirit and the basis of the Draft and their adoption would be very useful and beneficial. He then proceeded to analyse and comment, in a lengthy memorandum, Mr. Jameson's amendments and alterations (9). His observations proved of great help in the discussion of the Draft Code of 1842 in the Council of Government in 1845. When the new Draft Code of 1848 came before the Council of Government in 1849, Dr. A. Micallef worked on it privately in conjunction and in concert with Dr. A. Dingli (then an Elected Member), besides taking a prominent part in the discussions in

(6) L.G.O.; Gov. to S. of S.; 25th May, 1854, No. 31.

(7) L.G.O.; Gov. to S. of S.; 26th January 1855, No. 14.

(8) L.G.O.; Gov. to S. of S.; 26th January, 1855, No. 14.

"Osservazioni dell'Avvocato della Corona (Dott. A. Micallef) Rapporto del Sig. Jameson intorno al progetto di Leggi Criminali".

(9) Composed of Sir Ignatius G. Bonavita, Dr. G.B. Mifsud, Dr. A.M. DeBono, Dr. G.B. Camilleri, Dr. G. Conti.

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the Council. The Code was finally promulgated in 1854, some months after Dr. Micallef's elevation to the Bench. To turn now to the Code of Organisation and Civil Procedure, the Commission (10) appointed in 1848 to draw up such a Code presented its Draft about two years later. During the drafting of this Code, Dr. Micallef kept up a constant exchange of views with Sir I.G. Bonavita who, however, could not agree on many points with Dr. Micallef's proposals. When the Draft Code was presented for discussion in the Council of Government, numerous amendments put forward by Dr. Micallef were adopted.

In the drafting of the Commercial Code, Dr. Micallef took a prominent and leading part. In 1848, he was appointed a Member of the Commission issued on the 18th September for the purpose of drawing up a Commercial Code for the Island of Malta and its Dependencies (10a). The Draft Code drawn up by this Commission was sent to the Government in 1853, and, during the same year, it was published for general information. It was then introduced in the Council of Government, where it formed the object of much deliberation, but did not give rise to ally important controversial discussion ; it was passed by Ordinance VII of 1854, and transmitted to the Secretary of State for Her Majesty's confirmation before promulgation. In England, this Draft received considerable and anxious attention. The guiding, principle on which Her Majesty's Government would wish to frame its decision—stated the Secretary of State—was maintain the commercial jurisprudence of Malta without reference to British precedent, whenever that jurisprudence regarded matters of exclusively Maltese interest and in which there was no probability of collision between this local jurisprudence and that of the rest of the Empire. But to endeavour to preserve uniformity in the regulation of those matters in which the Law of Malta must necessarily come into contact with the law of the rest of the Empire, and in which the absence of uniformity must lead to confusion or conflict of jurisprudence, to the detriment, principally, of Malta itself.

These matters were almost wholly confined to the branch of Maritime Law, which constituted the second book of the Code, and thus the first book of "Trade in General", the third of "Bankruptcy", and the fourth of "Jurisdiction, Prescription and grounds of inadmissibility in commercial matters" were not open to such objection as would induce Her Majesty's Government to advise the refusal of confirmation by the Crown. The Secretary of State, therefore, while disallowing the promulgation of the Code, recommended that these three books be brought into operation separately from the second ; with regard to the latter, he sent his directions to the Governor, pointing out the necessity of making the provisions of the Code correspond, as far as possible, to those of the Merchant Shipping Act, should the Maltese Legislature decide that the codification of Maritime Law was necessary at all. He finally stated : "It is not with out regret that I am obliged thus to point out the necessity of reconsideration on a subject which has been treated with so much care and so much ability by the legislature and by your legal assistants. I regard the Code before me, imperfect as I must consider it on this head of

(10a) The other Commissioners were: Judge F. Chapelle, Dr. G.B. Mifsud, Dr. A.M. DeBono, Dr. P. Sciotino.

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Maritime Law, as a remarkable indication of the skill and industry of the compilers. It is only the desire to render the work more complete, by placing it in harmony with the general legislation of the great commercial Empire of which Malta forms a part, which has induced Her Majesty's Government to take the course communicated to you by this present Despatch" (10b). The course suggested by the Secretary of State was adopted, and, whilst the first, third and fourth books were incorporated by the Crown Advocate (Dr. Dingli), with slight alterations, in Ordinance XIII of 1857, the second book was promulgated, substantial modifications having been introduced, in five separate Ordinances, in 1858.

Upon being made a Judge, Dr. Antonio Micallef had to give up his seat in Council to Dr. Adrian Dingli, who succeeded him as Crown Advocate. However, in view of his knowledge and experience of the work of that legislative body, and of the exceptional qualities he possessed, the Governor was yearning for an opportunity to recommend him to be replaced in the Council. The occasion came in 1855, when Rear-Admiral Houston Stewart resigned his seat as an Official Member of the Council, in consequence of his having been appointed Second in Command of the Fleet under Sir Edmund Lyons; in virtue of this appointment, he was about to leave Malta. The Governor immediately substituted him by Judge Micallef (11). This time, however, he adorned the Tapestry Chamber with his presence for a very short time. Dr. Bruno, another one of Her Majesty's Judges and an Elected Member of the Council of Government, took a determined stand against the Government and put himself in active opposition to many of its measures. This gravely perturbed the Governor, Sir William Reid, who consulted Dr. Dingli on the matter. The latter stated in a Memorandum that he considered it desirable and expedient that H.M.'s Judges, including the President of the Court of Appeal, should be made ineligible to the Council of Government, whether by popular election or in virtue of Domination by the Crown. He submitted various reasons in support of his opinion, in which Judge Micallef entirely concurred (12). Consequently, Supplementary Letters Patent were issued, in May, 1857, ordering that no Judge of any Superior Court of Justice in Malta should thereafter be capable of being a Member of the Council of Government. Thus Dr. Micallef and Dr. Bruno had to resign their seats (13).

As a Judge Dr. Micallef was just, humane and painstaking, and his kindness of heart and amiable disposition endeared him to everyone ; he was ever distinguished for his independent character, clear judgment and high principles. His judgements were admired for their perspicuity and deep penetration not only by Maltese lawyers, but also by celebrated Continental jurists. Some of them are masterly expositions of legal doctrine ; others, a detailed study on particular aspects of history of legislation : many are elaborate treatises on

(10b) V. Printed Despatch from Her Majesty's Principal Secretary of State for the Colonies to the Governor of Malta dated 10th February, 1857, together with the enclosed copies of a Report and a Memorandum from the Board of Trade dated respectively 21st November, 1856, relative to the proposed Commercial Code of Malta.

(11) L.G.O.; Gov. to S. of S.; 26th January, 1855, No. 14.

(12) L.G.O.; Gov. to S. of S.; 18th November, 1856, No. 116.

(13) L.G.O.; Gov. to S. of S.; 16th May, 1857. No. 70

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delicate points of interpretation of the law (14). His addresses to the Jury were usually short, but comprehensive, cogent and conclusive. His pre-eminence on the Bench received the due consideration of the Government, for, upon the retirement of Sir Paolo Dingli, he was chosen to succeed him as President of the Court of Appeal, and *ex officio*, as Judge of the Vice-Admiralty Court. The Governor, Sir Gaspard Le Marchant notifying his nomination to the Secretary of State, wrote that Dr. Micallef was considered one of the ablest lawyers of the island and he had already discharged with prominent ability, during the previous five years, the office of Judge (15). Le Marchant also recommended to the Secretary of State that his name be submitted to the Queen for Her Majesty's consideration to be graciously please to confer upon him the honour of a Knight Commander of the Most Distinguished Order of St. Michael and St. George. In fact, in 1860, he was promoted to such a high dignity : the investiture took place at the Palace, Valletta, on the 27th July of that year, together with the investiture of Sir Paolo Dingli, Dr. Adrian Dingli (his son) , and Mr. Victor Houlton (16).

Though Dr. Micallef was one of the junior judges on the Bench, his appointment to the Presidentship met with general approval and was chronicled in the Press with the greatest pleasure. He had long been pointed out as the probable successor to the aged President. Much was expected of him ; much was given. Sir Antonio Micallef was a magistrate (and here we borrow a few words of a well-known English writer) whose rare talents were used to vindicate justice, humanity and toleration, the principles of sound philosophy, the principles of free government. A friend once said of him : when he was presiding over H.M.'s High Court one felt something of an internal satisfaction in looking at him ; it was at least well understood why he was in that place, why he had gained his laurels, his distinctions, why he had become so conspicuous. It was his favorite and most pleasing occupation to delve deeply into the vast ocean of legal science (16a). He became the oracle of the Forum, and won for himself the affection and esteem of the Bar as well as the approbation of all concerned in the due administration of justice. During his twenty five years on the Judicial Bench not only did he discharge the functions of his high office with impartiality and fearless independence, but he proved himself to possess those other qualities—kindness, affability and generosity—without which a man, however great his intellect, and however commanding his talent, cannot be pronounced to be a good Judge. Sir Antonio sat in the Court of Appeal, in the First Hall of the Civil Court, and in the Criminal Court, besides occasional cases when he was surrogated to the Judge of the

(14) The most important of his judgment which are still quoted by the Judges and invoked by lawyers up to the present times refer to controversies on entails, *societa conjugale*, and other questions regulated by the *Cide De Rohan*. A very long and elaborate judgment on *fideicommissum* (entail) is worth of mention, viz: *Conte Gio. Francesco Sant vs. Barone Cav. Sceberras Trigona et*, (V Colezione di decisioni dei Tribunali di Malta: Vol. II, p. 421).

(15) L.G.O. ; Gov. to S. of S.: 28th June, 1859. No. 74.

(16) L.G.O.; Gov. to S. of S.; 28th July. 1860, No. 64. (Sir Paolo Dingli became G.C.M.G.; Sir Antonio Micallef, Sir Adrian Dingli, and Sir Victor Houlton, K C.M.G.).

(16a) He was particularly interested in the study of Criminal Law. In fact, in 1830, he left for Italy with Dr. Gius. Randon and Dr. Ferd. Caruana Dingli where he studied Criminal Law for two or three years at the University of Pisa under the direction and guidance of the famous Italian jurist Carmignani. (I am indebted for this information to Not. Rosario Frendo Randon, LL.D.).

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Commercial Court. The Criminal Court was the Court in which the pressure of work was most to be felt ; this notwithstanding, even when he became President, the Government entrusted to Sir Antonio, well noted for his scholarship, tact, massive energy, and zeal for work, the treatment of criminal causes.

Sir Antonio's great power of endurance and extraordinary capacity for long-protracted labour were really wonderful, the more so if contrasted with the apparent delicacy of his physical constitution. He often sat in complicated criminal cases from nine o'clock in the morning until an advanced hour of the night, retiring only for a very short period, seldom longer than half an hour, and taking no nourishment whatever except a cup of coffee. To cite just one example, during the trial of Enrico Assenza for forgery in 1860, which lasted for several days, he sat daily from 9 a.m. until a very late hour of the night. On the last day of the trial, he made a very deep impression on the assembled multitude, when, after listening to the opening address from the Crown Advocate and to the conflicting evidence brought forward on both sides, to Dr. Dingli's reply and the prisoner's rejoinder, he delivered, at a late hour, his address to the Jury in his clear high-sounding voice without showing the least sign of weariness or fatigue, and in less than two hours set forth in most logical order the whole facts of the case, examining in detail all the evidence and apportioning to each part its proper weight, explaining in his lucid style such points of law as bore upon the question at issue, thus rendering what appeared to be a most complicated case comparatively easy for the Jury to determine upon. The Jury returned a verdict of guilt and the accused was sentenced to six years imprisonment with hard labour. In the course of this trial, the accused raised several pleas of defence, (some of which had to be determined upon by a Court composed of three Judges), thus giving occasion to Sir Antonio to make several important pronouncements on interesting points of law.

In 1879, Her Majesty conferred upon Sir Antonio a signal honour by promoting him G.C.M.G. The whole Maltese people took occasion to render tribute to the man who had by now become a popular idol. A beautiful page man our native history was written on that fateful day. Addresses of congratulation signed by all classes of the population were presented to him by various deputations. The nobles ; the Council representatives of the people ; the lawyer, notaries, and legal procurators ; the doctors ; the traders ; — all gave him their homage. As the address presented by the Elected Members of the Council in the name of the whole Maltese nation stated, the honour conferred upon Sir Antonio “ha colmato di gioia e di soddisfaziane tutta la popolazione Maltese, che ha sempre ammirato ed onorato nel Supremo Giudice dei nostri tribunali la profonda dottrina, la intemerata integrita, la perfetta indipendenza e le altre virtu di mente e di cuore di che Ella e ornata.” *Risorgimento*, one of the leading papers of the day, rightly remarked that these spontaneous acts and touching manifestations were “dimostrazioni generali di affetto, di stima, e di popolarita immensa a nessun altra persona pubblica giammai fatta a Malta, almeno durante la dominazione del Governo inglese” (17).

And yet Sir Antonio had not yet reached the apex of his brilliant career. In 1878, Prince de Bismarck, one of the most remarkable characters of the 19th century, applied to

(17) 2 Ottobre, 1880.

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all the Governments of Europe asking them for a Report on their respective legislation, with some remarks on the same (18). As Crown Advocate, Sir A. Dingli was instructed to draw up the Report on the Civil Laws of Malta. Shortly afterwards, however, Sir Adrian was sent to Cyprus as Legal Adviser to the new Commissioner, Sir Garnet (later Viscount) Wolseley. In 1879, when Sir Adrian returned to the Island, the Secretary of State again pressed for the Report, but Sir Adrian was at the moment engaged in Council and other business requiring all his time and could not therefore immediately comply with the Secretary of State's request. He said he hoped to be able to prepare the Report in April during the short Easter vacation. But more important matters again cropped up which engaged the Crown Advocate's attention, and, consequently, in August, 1879, the Secretary of State asked the Governor whether he could find it possible, with the assistance of Sir A. Micallef, to furnish the required information relative to the Civil Laws of Malta for which the German Government had been waiting for fourteen months (19).

Sir Antonio was excellently versed in this matter and thoroughly informed and qualified to perform such a task. In the very short space of under two months, he compiled a lengthy Report which was transmitted to the Secretary of State on the 9th of October and thence conveyed to the German Chancellor (20). Some months later, the Secretary of State sent a very flattering despatch to Sir Antonio wherein he expressed the encomium with which his comprehensive and interesting Report had been received by Bismarck, to whom it had been directed at the request and charges of Her Majesty's Government (21). This Report, besides increasing the fame of the then President of the Court of Appeal, won for him marks of approval and appreciation of his ability both from the Government of Germany and from the Imperial Government, who thought it proper to express their admiration and high esteem of the rare talents of Sir Antonio Micallef with an official document of the highest importance which should interest all Maltese as it adds to the glory of their nation. It is a striking and convincing proof of the truth -of the maxim that "genius is of no country."

After having served his country for a period of fifty one years, Sir Antonio felt that he could no longer sustain the arduous tasks devolving upon him in virtue of his exalted office ;

(18) L.G.O.; S. of S. to Gov. ; 13th May, 1878. No. 32.

(19) L.G.O.; S. of S. to Gov. ; 5th August, 1879, No. 214.

(20) L.G.O.; Gov. to S. of S.; 9th October, 1879, No. 127.

(21) Moreover, the S. of S., writing to the Governor, stated: "I considered that this Report, having been drawn up evidently with great care by so distinguished a jurist as Sir Antonio Micallef, would be likely to prove of great use to the Government of Malta, as a presenting a valuable compendium of the Laws of the Colony and I have, therefore, caused it to be transmitted into English before being communicated to Count Munster. I enclose a copy of this translation and I would suggest that it seems very desirable: to have it printed. Should this be done I request that you will forward copies for the use of this Department". L.G.O.; S. of S. to Gov.; 17th December, 1879, No. 273. (The enclosed translation of the Report was sent to the Printing Office by the local Government. However, nothing was done, and, as far as is generally known, the Report is nowhere to be found).

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consequently, in September, 1879, he tendered his resignation which was regretfully accepted on the 2nd November, 1880 ; Sir Antonio was then septuagenarian (22). The Governor, acknowledging the highly meritorious and faithful services performed with ability and loyalty, and yet with firm character, fearless independence, by this distinguished law officer, recommended him for a full pension of Lm600 per annum (the amount of his salary) and rightly surmised that His Lordship, the Right Hon. Earl of Kimberley, (Secretary of State for the Colonies) would not consider the suggestion as too high a recognition of Sir Antonio's deserts. In fact, the Secretary of State, announcing his assent to the Governor's recommendation, stated that he was giving this assent as a recognition of the very important services which Sir Antonio had so ably and ungrudgingly rendered to the Government Of Malta, in the discharge of public duties altogether in excess and beyond the scope of those which he was paid to discharge (23).

In October, 1880, elections to the Council of Government were to be held. As Sir Antonio was about to retire, some of the local papers presented his name as a candidate, after having ascertained that, if elected to a seat in Council, he would accept it. A section of the Press, however, raised an objection to the validity of his election, asserting that, according to the Letters Patent of 1857 which precluded H.M.'s Judges from being Elected Members of the Council, he was ineligible. Notwithstanding that the validity of his election was thus placed in serious doubt, and that in consequence a number of electors did not vote for him, fearing lest they should be throwing away their vote : notwithstanding he did not, in any way, solicit votes or conduct canvassing on his own behalf : yet the country gave a palpable proof of the veneration in which it held its illustrious President of the Courts, and Sir Antonio was returned with a considerable number of votes. The matter, however, was not to be disposed of so easily. A protest was entered by Dr. Z. (later Judge) Roncali,

(22) The, following letter was laid oil the table of the Council of Government on the 7th December, 1880, at the request of Elected Members:

Chief Secretary's Office;

Valletta. 2nd November, 1880.

Sir,

I am to acquaint you that in conformity with instructions received from Her Majesty's Secretary of State for the Colonies, His Excellency has been pleased to accept the resignation of your seat on the Judicial Bench, as President of the Court of Appeal.

In signifying to you His Excellency's acceptance of your resignation, I am at the same time to convey to you the expression of His Excellency's deep regret that this Community will be deprived in future of services, which extending over so long a period as thirty eight yers have been continually distinguished for the loyalty, fidelity and makes ability with which they have been rendered, and for the advantages which they have conferred on the public at large.

To Sir Antonio Micallef.

VIC. HOULTON.

(23) L.G.O.; S. of S. to Gov.; 3rd January, 1881, No. 156. A letter to this effect, dated 14th January, was sent to Sir Antonio Micallef

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contesting the validity of Sir Antonio's election (24). It seems that the Law Officers of the Crown in Malta were not sure that things had been done in the legal way, and that the letter or the spirit of the Letters Patent had not been violated ; in case there had been violation, proper measures should be taken to put matters right.

It results from the Despatches that Sir Arthur Borton's opinion differed from that of the Law Officers. He wrote to ask for the Secretary of State's directions, stating: "3. As Your Lordship is aware, the spirit of the Letters Patent of 1857 and the purpose for which they were framed, was to prevent, in future, a Judge, *when holding office* (as was the case with Judge Bruno when an Elected Member in 1856), from being an Elected Member of the Council at one and the same time that he held a high judicial office under the Government, but as far as I can learn, no interference was ever contemplated with officers whose resignation had been accepted and who were no longer servants of the Government. 4, I may add that if no legal objection is shown to exist in the case of Sir Antonio's election, his becoming a Member of the Elected Bench would be likely to prove of service to the Government, and would add dignity and efficiency to the- Elected Bench (25). The Secretary of State diplomatically thought it advisable to have the question discussed in the Council of Government. The local government, fully awake to the implications that might arise out of such a discussion, thought it proper to communicate the Secretary of State's dispatch to Sir Antonio who did not for an instant hesitate to declare that his election was legal and valid, whatever might be the opinion expressed by the Legal Advisers of the Colonial Minister or those of the local Government. But, he went on, as it was not becoming for him to appear before the Council to advocate and contend for his election before his political adversaries, he would tender his resignation from a Member of that Council, provided the Government would proceed to a new partial election, in order to give the people an opportunity of electing in his stead a person who enjoyed their entire confidence.

The Government could not accept Sir Antonio's resignation before Dr. Roncali had withdrawn his caveat against Sir Antonio's election. The Chief Secretary to Government, therefore, called on Dr. Roncali at his office, and explained to him all the circumstances of the case ; the latter declared himself ready to withdraw the protest. A new election was held about two months later, in January, 1881, and Sir Antonio was returned by a clear majority. On the day the results became publicly known, the inhabitants of Misida assembled before Sir Antonio's residence in large numbers and cheered him in the most enthusiastic manner. A deputation headed by Count Dr. G. Messina, then presented Sir Antonio with an address of congratulation signed by two hundred of the inhabitants of Misida and Pieta expressing their great joy at his election as a representative of the people—a circumstance which did great honour to the population and to the Council—and their hope that he might long be spared to serve his country. Other addresses of congratulation, drawn up in similar terms, were sent to Sir Antonio from several parts of the country, to all of which he replied with heartfelt gratitude and overpowering emotion.

On the 19th January, 1881, he passed through the streets of Valletta amidst the applause

(24) Dr. Roncali would have been elected, had Sir Antonio's election been really null and void.

(25) L.G.U.; Gov. to S. of S.; 3rd November, 1880, No. 195.

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and cheering of the public on his way to the Tapestry Chamber, with his honest, old face wearing a rejuvenated expression. The Chamber itself was seldom so crowded as on that eventful occasion, when Sir Antonio took the oath of fealty and his seat as a representative of the people. Sir Antonio, evidently, did not intend to let the grass grow under his feet, but meant to do his duty by his constituents. He began by proposing measures affecting intimately the liberty and property of the people : measures which were the outcome of a man who had administered justice for almost thirty years in these Islands, and the fruit of much study and labour. At the first February sitting, he asked for leave to introduce an "Ordinance to amend and to consolidate the Police Laws." Subsequently, he introduced other important amendments to the local laws, such as, for example, the proposal to merge the Commercial Court into the Civil Court, to consolidate the Criminal, Civil, and Civil Procedure Laws, to amend the laws and fees affecting Advocates and Solicitors, and the laws respecting Notaries. He also submitted to the Council other valuable suggestions, among which was that of the re-establishment of District Committees ; this matter has again been raised by the Government very recently.

Of his Council perorations, the eloquent and exhaustive speech he delivered on the 30th November, 1881, is well worthy of notice. By way of introduction to an Ordinance to amend the Laws of Organisation and Civil Procedure, he proceeded to outline the history of the formation and enactment of the Code of Procedure. He then went on to unveil in classic, masterly style his ideas and projects on the new draft laws. Towards the conclusion of his speech, he opined that the Official Members of the Council of Government should have a free and unfettered vote on matters of legislation, and asserted that as far as he knew, the Secretary of State or the Governor were not interfering as to how the Official Members should vote. He ended up with a prophetic note : "Puo essere che ho sbagliato : ma se ho sbagliato non faro altro che sottomettermi al mio fato, e, dopo adoperati i mezzi legali presso le autorità competenti, ma inutilmente, passero alla mia, solitudine dicendo col Psalmista : *'Super flumina Babylonis illic sedimuset flevimus, cum recordaremur Sion.'* (Malta)." And so it came to be; disappointed and with a bitter sense of frustration he realised he was mistaken. By his resignation, less than four months after this memorable speech, he seemed to say : Forgive me if I am retiring to bewail in the solitude of Misida—*Super flumina Bab,ylonis*—the maladministration of the Government. Ho sbagliato! However, in my disillusionment, I augur future generations better times, when there will prevail the motto "*Cedant arma togae*".

Sir Antonio did not on that account cease from taking a deep interest in public affairs : he was too, public-spirited to forsake his country in time of need. As 'Public Opinion' (26), said, he drew up and submitted to the local and the Imperial Government several schemes for amending the Constitution of the Council of Government, in which he displayed deep acquaintance with the working of the British Constitution and with the Government of the

(26) 5th April, 1889. 'Public Opinion' was the organ of Mr. Savona, Director of Education, from 1880 to 1887

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most important Dependencies of the British Crown. Besides, by means of a series of letters directed to the Chief Secretary and to other Official and Elected Members of the Council, and duly published in *Risorgimento*, he projected many reforms of a Civil, Commercial and Criminal nature, some of which were subsequently adopted. In his endeavours to benefit his country he was assisted by the Marquis Bugeja who, when an Elected Member of the Council of Government, submitted several of Sir Antonio's views both to the local authorities and to Her Majesty's Government.

Finally, after some years, Sir Antonio had to desist from devoting himself to any kind of work : his health was, slowly but surely, deteriorating. , Death overtook him on the 5th April, 1889, at Notabile, where he had fixed his residence a few years previously. The news of his demise spread like wildfire filling with gloom all classes of the population : he was deservedly respected and esteemed. Until the beginning of the year he appeared to enjoy fairly good health ; he then contracted a somewhat serious illness from which, however, he had been slowly recovering. During the period of his sickness, the reading of ascetic books and of the Holy Bible were his greatest comfort in his sufferings ; whilst the recital of the Divine Office had been for a very long time his favourite spiritual indulgence. Almost daily he received the Holy Eucharist, until fortified with the grace of the Last Sacraments, he died the death of a true and fervent Catholic. His two outstanding virtues during this period were complete resignation to the will of God and detachment from all temporal and material interests. This detachment had been his guiding light throughout his long, laborious life ; he had been noted for his excessive modesty and humility, which were on a par with erudition, nobility and dignity. Of ambition he seemed to have none, unless that can be called ambition to do all that belongs to a man's duty in life as well as it is possible to do it : duty was the, one law that seemed continually to regulate and animate, his noble life. On his death-bed, he expressed his last wish to his son Alfonso Maria : he wanted his funeral and interment to take place as modestly and unostentatiously as possible, without pomp or any other sort of wordly display. His wish was faithfully adhered to, and, after having battled with marked success against the adversities of life for full seventy nine years, he was laid to rest in the family tomb in the Parochial Church of Casal Balzan. On the morrow of his death, as a sign of mourning, the Courts were closed.

Many appropriately remark that our legal literature is very meagre. Few realise how much scantier it would have been were it not for the frequent flourishes of Sir Antonio's prolific pen. In 1839, when he was still twenty nine years of age, his first legal publication saw the light of day ; it was an elaborate "Trattato delle Procedure Civili nel Foro di Malta". This was followed two years later by the first volume and four years later by the second volume of his "Diritto Municipale di Malta compilato sotto De Rohan G.M. or nuovamente corredato di Annotazioni". On both works he must have expended much time and labour ; both are the product of the most careful and exacting research work ; both were largely instrumental in securing for him in 1842 the important post of Crown Advocate. The former is a commentary on the Laws of Civil Procedure which were then very confused, scattered in various legal enactments ; the latter is a commentary on the Code De Rohan, with notes in

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which as the author says “abbiamo indicato l'origine della legge e l'antica giurisprudenza, il nesso col diritto Romano, Canonico e Siculo, le riforme e la nuova giurisprudenza, la consuetudine e gli usi dei Tribunali” (27). Whilst these annotations on the Code De Rohan is one of those books forming the backbone of the juridical library of any Maltese lawyer, the “Annotazioni alle Leggi Criminali”, which he published under the anonymous, in 1870, is invaluable for the advocate practising at the Criminal Bar. A minor, though useful work of his is a

(27) V. Prof. G.E. Degiorgio: Notes of History of Legislation. Page 8.