Agricultural Law in Malta*

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Introductory

The Maltese group of Islands consists of Malta and Gozo and the two small islets of Comino and Cominotto which are situated in the channel between the two main islands. The archipelago is in the central channel which connects the Eastern and Western basin of the Mediterranean Sea; the distance from Sicily is 80 Km., from Tunisia 320 Km., and from Tripoli 320 Km. The chain of islands stretches 29 miles from North West to South East. Malta is nearly four times the size of Gozo and the total area of the group is 114 square miles (306 square Kilometers). Agriculture is the chief industry of the islands though at first sight it would appear that there is no extensive cultivation owing to considerable tracts of fertile soil being concealed in the valleys or hidden behind the numerous and high stone walls which serve as boundaries and provide shelter for the crops from strong winds; the fields are small and for the most part composed of terraces by which the soil has been walled up along the contours of hills with enormous labour to save it from being

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washed away (1). The area under cultivation is 43,000 acres; the area under irrigation comprises but 4% of the area farmed; water is the prime necessity of the farmers and considerable works are being undertaken to extend the provision of water which would naturally increase production (2). Before the British domination Malta was governed by the Civil Law (Diritto Comune) with the usual additions of usages and of Municipal Laws the latest compilation of which was framed under Grand Master De Rohan and is known after him as "Codice di Rohan" (1784). Towards the second half of the last century the codification of the Maltese Laws was started by means of Separate Ordiances and those which related to property were consolidated by Ordinance VII of 1868. In the Revised Edition of the Laws of Malta in force on December 31, 1942, the Civil Code, including the Law of Persons occupies Chapter 23 of the Edition. Ordinance VII of 1868 closely followed the pattern of the Great French Codification and the various amendments most of them of slight importance, made since the year 1868, incorporated in the Revised Edition, have not weakened to any appreciable degree the unalloyed individualism sanctioned by the Code Civil. Agricultural legislation proper began making its appearance only after the Department of Agriculture was formed in 1919-1920, and the principal enactment which governs leases of rural tenements is the result of the War Emergency and will expire when the emergency is proclaimed ended.

In this article we propose to give a broad outline of Maltese Law affecting land ownership and tenure and while dealing more diffusely with typical Maltese institutions which have practically disappeared from other legislations.

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(1) N. ZAMMIT in a brochure written on the occasion of the Paris Exhibition 1867 writes in glowing words of the toil of generations of farmers who have accomplished this feat: "Cette activité infatigable l'emporte sur la nature avare de ses dons; elle a, on peut dire, façonné une campagne; elle impose un tribut à la stérilité, de la terre. Ce n'est pas que ce sol soit tout un rocher aride, c'est une hyperbole géographique. Mais promenez vos regards autour de vous sur ces champs, ces clôtures, ces prés, ces fermes; vous n'y rencontrerez partout que l'empreinte de la main de l'homme, la patience et la conclusion de son travail."

(2) STOCKDALE: Report on the present condition of Agriculture in the Maltese Islands (1934).

I—Ownership of land

According to a rough estimate one third of the land is owned by the Crown, another third is owned by the Church or under the administration of Ecclesiastical and Charitable Corporations and the balance is privately held. About one fifth to one quarter is the freehold of farmers farming their own land; owing to the affluence of the farmer class after the war and to the high prices ruling, a considerable portion of the land privately held has passed in the hands of the tenant. State and Church owned land is not easily alienable in full ownership, but emphyteusis in perpetuity or for a long period used to be largely resorted to by both Institutions, which contract conveys to the grantee the utile dominium or quasi-ownership of the land subject to the payment of gound-rent. The division of property under the existing laws of Succession applies not only to lands held in ownership or under an emphyteusis but also to those held under an ordinary lease and consequently the majority of the farms are small, averaging between 3 to 4 acres in extent so that it may be reckoned that the area under cultivation is divided into 11,000 holdings.

The only remedies afforded by the law against this fragmentation of holdings are the right of preference allowed in leases in favour of co-possessors and the right of pre-emption. The right of preference will be dealt with later or under the heading of leases. Pre-emption is the right granted to co-owners *pro indiviso* in the case of sale of undivided portions of things immovable by their nature and of the *dominium utile* (Section 1509 of the Civil Code) as well as in the case of *datio in solutum* (Section 1529) and of any emphyteutical or sub-emphyteutical grant (Section 1576). This right is also granted to persons related to the seller by consanguinity and to owners of neighbouring tenements. A similar right is that of preference which is competent to the "dominus" in the case of alienation of the *dominium utile* or of the improvements by way of sale, transfer *in solutum* or sub-emphyteutis and to the emphyteuta in the case of transfer of the *dominium directum* by way of sale or transfer *in solutum*, Section 1595 (1) and (2). These rights are competent by law and are not dependent on any agreement such as the Retratto Convenzionale and Vente à Réméré of the Italian and French Civil Law which correspond to the Right of redemption (*Jus luendi grazia*) of Maltese Law (Section 1530 and following sections).

The consolidation of land ownership may be the result also of the Retrait Successorial which is given to the co-heirs in case any of them assign his rights to a stranger in order to exclude him from the division (Section 953). These rights apply not only in case of rural tenements but also in case of urban tenements. In the case of neighbouring tenements mere contiguity is not sufficient to attribute right of pre-emption; it is necessary that an easement exist between the two tenements and in this case another advantageous result achieved by means of the rights of pre-emption is that of extinguishing the easement by merger (Sect. 517 (1). The advantages deriving from pre-emption and rights of a similar nature are however largely offset by the obstacle created thereby to the free circulation of property, prospective acquirers are discouraged by the knowledge that a third party may come forward and assume in their stead the transaction which may have cost them much time and trouble and it is for this reason that the contracting parties resort to all kinds of uses in order to evade the right of pre-emption which has thus become a prolific source of litigation. This explains the disappearance of these rights from other legislations.

II—Modes of acquisition of ownership.

The ownership of the land extends by right of accession to the fruits thereof and all constructions, plantations or works made therein (Sections 604 and 605); the list of things immovable by nature given by Section 345 includes, besides lands and buildings, springs of water, conducts which serve for the conveyance of water in a tenement, trees attached to the ground, fruits of the earth or trees, so long as they are not separated from the ground or plucked from the trees and any movable thing annexed to a tenement permanently to remain incorporated therein. The things immovable by destination according to Art. 524 of the Code Civil are not mentioned by Maltese Law and they must be considered as moveables. The consequence is that under Maltese Law a movable thing can become immovable only in consequence of accession; it appears that the Maltese Legislator has accepted on this point the ideas expounded by Marcadé in his Commentaries on Art. 523-525 of the Code Civil.

The fruits of the earth or of trees, even before they are detached, are considered as movables for the purpose of making

them liable to attachment and also when they are the subject of a sale or other disposal, as things distinct from the earth or a tree and to be separated therefrom (Section 346). The usufructuary may sell the fruits that are pending, and, in such case, if the usufruct terminates before the fruits are gathered the sale shall continue to be operative and the owner is entitled to receive the price of such fruits as have not yet been gathered but he shall have no action against the buyer who may have paid the price of such fruits to the usufructuary before the termination of the usufruct. (Sect. 379).

In connection with occupancy Section 599 pays homage to the honey industry to which, according to tradition Malta (Lat. Melita) owes its name: "The owner of a swarm of bees has the right to pursue them over the tenement of any other person, subject to his obligation of making good any damage caused to such tenement, where the owner has not pursued the bees within ten days to be reckoned from the day on which he became aware of the tenement on which they had settled or has discontinued the pursuit for ten days, the possessor of such tenement shall be entitled to take and retain them".

III—Emphyteusis, Leases, and Share Tenancy.

The case of farmers farming their own land accounts only for a relatively small portion of the cultivated land; lands which are leased by the farmers account for the bulk of production and, it may be added, for the bulk of agricultural lands. Lease may be of two kinds: (a) Long or perpetual lease or Emphyteutis and (b) Short Lease.

(A) *Emphyteusis.*

Emphyteusis has proved itself to be a very suitable kind of tenure especially in the case of land requiring or liable to improvement and it used to be freely resorted to both by the Government and by the Church, because while it simplifies the management of the property it stimulates the tenant to do his utmost to improve the land by securing his tenure to him and to his successors in perpetuity or, at least, for a lengthy period. Emphyteusis is defined by Section 1576 as a contract whereby one of the contracting parties grants to the other, in perpetuity or for a time, a tenement for a stated yearly rent or ground-rent, which the latter binds himself to pay to the former either in

money or in kind, as an acknowledgment of the tenure. The emphyteuta (*padrone utile*) has practically all the rights of an owner: he may alter the surface of the tenement provided he does not cause any deterioration; he is entitled to any profit which the tenement may yield and has the right to recover the tenement from any holder even if such holder is the *dominus*; he is also entitled to the treasure trove found in the tenement saving the portion due to the discoverer (Section 1585). All improvements made by the emphyteuta appertain to him during the continuance of the emphyteusis and he may alter their form; but he may not destroy them without the express consent of the *dominus* (Section 1587). On the other hand the emphyteuta is bound to carry out any obligation imposed by law on the owners of lands and to keep and in due time restore the tenement in good repair (Sections 1586 and 1588).

The division of the land among the successors of the emphyteuta or the alienation by him of portions thereof to third parties does not produce the division of the ground-rent, which owing to its being an acknowledgment of the tenure is indivisible saving any agreement to the contrary. Ground-rent is also inalterable so that the concession in favour of an ordinary tenant of the abatement or remission of rent in case of loss of crops (Sections 1666-1678) is not available to the emphyteuta; indeed even if the tenement perishes in part and the remaining part is not capable of yielding a rent equivalent to the ground-rent the emphyteuta may not claim a reduction of the ground-rent though he may demand the dissolution of the emphyteusis (Section 1603 which is derived from the Constitution of the Emperor Zeno Cod. Just. 4. 66. 1).

These rules apply even if the amount of the ground-rent has been fixed with reference to the value of the fruits of the tenement. As a rule an emphyteusis also provides for the carrying out of improvements within a stated period and failure to fulfil this obligation or failure to pay the ground-rent for three years (*mora triennalis*) is generally sanctioned by the forfeiture of the emphyteusis. This apparent bias in favour of the landlord is compensated by the length of tenancy, the moderation of the ground-rent, the right of the emphyteuta to demand payment of the price of the improvements or of a part thereof in case of premature cessation of the emphyteusis regard being had to the

enhanced value of the tenement and to the remaining period of the emphyteusis (Section 1611). Emphyteusis has been acknowledged as a contract which gives a fair deal to landlord and tenant (provided the landlord does not impose different and more exacting conditions) and therefore conducive to the improvement of tenements and to the betterment of the conditions of the farmer class (1). A Government Commission reported over seventy-five years ago in favour of the perpetual emphyteusis of all Crown lands but the report was not acted upon and the rumours which have been current for some time of impending legislation to enable the emphyteuta to redeem the ground-rent and thus pay off the superior owner had acted as a deterrent to emphyteutical grants.

B. *Agricultural Leases* (a) *Time limit of contracts.*

The time limit of a contract of lease may be expressly agreed upon by the contracting parties or else implicitly derived from circumstances tending to show what the contracting parties' intention was concerning the duration of the lease. In the absence of such an agreement or of such circumstaces, the letting of a rural tenement shall be deemed to be made for such period as is necessary for the gathering of the produce of four years, or else, if the tenement is not capable of producing fruits, for the period in respect of which the rent is calculated. According to custom, in default of an agreement to the contrary, the "rural" year begins on August 15th and expires on August 15th of the following year.

The law requires on pain of nullity that leases of rural tenements entered into for a period exceeding four years be expressed in a public deed or a private writing (See Judgments recorded

(1) P. CARLO GIACINTO, Prof .of Botany, *Saggio di Agricoltura per le Isole di Malta e Gozo*, Messina 1811, writes (p. 29).

"... Nei tempi passati alcuni Signori e tutti i luoghi pii andavano a gara in dare i loro fondi suddetti (grandi siti incolti) con tenui annue pensione ai buoni contadini o in enfiteusi per tre generazioni oppure per anni 99. Terminano alla giornata molte delle dette enfiteusi, sono quindi costretti i livellarii, pagare il duecento o trecento di più all'anno per avere gli stessi terreni a semplice affitto .Oh quanto più volentieri molti di essi intraprenderebbero la coltivazione di qualche nuovo terreno se averlo potessero alle medesime condizioni di quel di prima... perchè gli affitti dei terreni sono sempre portati (nelle locazioni brevi)dai proprietarii al ragguaglio dei prodotti dei quali sono capaci".

in Vol. VII, p. 375 and Vol. XXIV, p. I, p. 300 of the "Collezione ecc.").

As will be seen later on, however, leases under the Metayer System are dissolved by the death of the lessee, notwithstanding that the term of the lease may be still running.

It is to be noted, moreover, that when a tenement is granted on lease for a period exceeding sixteen years, such grant shall be deemed to be an emphyteutical grant if it is made under conditions in accordance with the provisions governing emphyteutical grants rather than with those relating to contracts of letting and hiring. In such cases the grant is null and void unless it is expressed in a public deed.

The provisions of the law governing the dissolution, the tacit renewal and the right of preference in leases having for their object rural tenements were, up to the year 1941, exclusively contained in the Civil Code.

In the year 1941, however, the enforcement of the abovementioned provisions of the Civil Code was suspended with regard to practically the major and most important part of rural tenements by the coming into force of certain Regulations enacted under the Emergency Powers (Defence) Act 1939 and 1940, as applied to Malta by the Emergency Power (Colonial Defence) Orders in Council 1939 and 1940.

Before attempting to summarize the contents of the Regulations, as subsequently re-enacted in the year 1943, it is convenient to begin with an outline of the general provisions relating to the subject-matter under consideration as laid down in the Civil Code. Leases for rural tenements excluded from the operation of the said Regulations continue to be governed by the Civil Code which, besides, will automatically come into force again for all rural tenements as soon as these Regulations lapse : unless in the meantime it is otherwise ordained.

In dealing with the dissolution of leases of rural tenements the Civil Code lays down that such leases cease "*ipso iure*", without the necessity for either of the contracting parties to give notice to the other, on the expiration of the term of the contract. This rule obtains not only when such term is expressly agreed upon by the contracting parties, but also when, in the absence of such an agreement, it is presumed by the law itself. On the contrary leases having urban tenements for their object cease

"*ipso iure*" on the expiration of the term only when such term is expressly agreed upon by the contracting parties. With regard to urban tenements, in fact, the necessity for either of the contracting parties to give notice to the other to quit at a certain specified time before the expiration of the term is not dispensed with whenever the duration of the lease is presumed as provided in the law.

A contract of lease may cease even before its term has elapsed if the lessor has reserved to himself the power of dissolving such lease in case of sale or other alienation of the tenement given on lease. Unless otherwise agreed upon in the contract, however, the alienee who desires to avail himself of the power thus reserved in the contract whereby a rural tenement was given on lease is bound to give notice to the lessee one year before.

The dissolution of a lease may also be demanded before the expiration of its term if the lessee uses the thing let for any purpose other than that for which it was intended, or in a manner which may prejudice the lessor. With special reference to rural tenements, the law, lays down moreover, that the lessor may demand the dissolution of the lease should the lessee abandon the cultivation thereof or should he fail to cultivate them as a "*bonus pater-familias*", provided the lessor may suffer thereby a prejudice in respect of which no security was given him. In a Judgment recorded in Volume XXII, part II, page 414 of the "Collezione di decisioni delle Corti Superiori dell'Isola di Malta" it was held that the tenant who takes possession of the water existing in a rural tenement and transports it to another place causes a prejudice to the landlord who is thereby entitled to demand the dissolution of the contract. Such water, in fact, as exists in a rural tenement is to be used for irrigation and what is left of it after having served such purpose is to be saved for future use.

A renewal of the lease is deemed to have taken place whenever, on the expiration of the term of lease, the lessee continues and is suffered to continue in the enjoyment of the rural tenement let to him. The renewal is deemed to have taken place for such a period of time as is necessary for the gathering of the produce of one year and on the same conditions and with the same rights and duties obtaining under the original grant.

A renewal of the lease having a rural tenement for its object is deemed to have taken place not only at the expiration of the term expressly agreed upon, but also when such term is presumed according to law. In a judgment of the Court of Appeal of Malta, recorded in Vol. XXVI part I, page 199 of the above mentioned "Collezione di decisioni", it was laid down that the same rule did not apply to leases having urban tenements as their object when the duration of such leases was presumed as provided in the law. As the law expressly provides that in such cases the contract shall not cease unless previous notice is given by either of the contracting parties, should the lessee remain and be suffered to remain in the enjoyment of the tenement, the lease will be deemed to have continued under the original grant without ever having been renewed.

In respect of a new lease of a rural tenement, the law grants a right of preference to each of the co-owners of such tenement on the same conditions offered by others. If there be no claims on the part of co-owners the said right of preference is granted to the lessee of the last preceding lease.

In order validly to exercise the right of preference, the lessee of the last preceding tenancy is to accept the conditions offered by or agreed upon with others, or else, as the case may be, he is to accept the conditions proposed to him by the lessor, even though he could prove that the lessor intended to let out the tenement to others on less onerous conditions, provided in the latter case the conditions proposed to him by the lessor are by the Court deemed reasonable.

The law enumerates several cases wherein the right of preference granted to the tenant in the last preceding lease is not competent. The greater part of these cases deal with certain specified facts, the verification of which during the last preceding lease renders the lessee in such tenancy not meritorious of the right of preference. The remaining two cases are the following: (i) if the lease is granted for not less than one year to a person related to the lessor by consanguinity or affinity up to the degree of cousin inclusively, and (ii) if the lessor declares on oath that he does not intend to let out the rural tenement before the lapse of one year, or that he does not intend to let it out, within the said time, on conditions less onerous than those refused by the lessee.

Having thus outlined the provisions contained in the Civil Code with regard to the dissolution and tacit renewal of the right of preference in leases of rural tenements, we shall now deal briefly with the above-mentioned Regulations which were first enacted in 1941 and subsequently repealed and re-enacted in 1943 under the Emergency Powers (Defence) Acts 1939 and 1940, as applied to Malta by the Emergency Powers (Colonial Defence) Orders in Council 1939 and 1940.

These Regulations lay down the conditions under which, notwithstanding anything to the contrary contained in the Civil Code, the sitting tenant of certain rural tenements, hereinafter specified, is empowered to resist an undue increase of rent or a change of conditions of the lease or an order of eviction from such tenements.

The rural tenements with which the said Regulations are concerned are those consisting mainly of arable land which are habitually given or taken on lease for the growing of crops and cognate agricultural purposes, and include farm-houses and outbuildings which are let as an integral part of the rural tenements themselves. We shall refer to such rural tenements as "fields" this being also the term by which they are denoted in the Regulations. Leases of grazing grounds, orchards, vineyards, holdings mainly used for the growing of trees and vines and such other rural tenements as do not come under the definition of a "field", are not provided for under these Regulations but under the Civil Code.

The right to resist an undue increase of rent, a change of conditions or an order of eviction is granted to the person (hereinafter referred to as the tenant), to whom a field is leased by the person (hereinafter called the landlord) who is entitled to receive in ownership the rent of that field, or, if there be more than one co-owner, by the person who habitually receives a specified portion of the rent. In case of more than one tenant, only those tenants to whom the field is leased jointly and specifically are entitled to exercise the rights under consideration.

The benefits deriving under the said Regulations are granted not only to those tenants who work the fields themselves but also to those tenants who sublet the fields, in whole or in part, to others with the consent of the landlord. For the purpose of these Regulations, the lease of a field previously held by the

sitting tenant's lineal ascendant or descendant, by his widow or widower, or by his son-in-law or widow daughter-in-law, while not married, is deemed to have been held by the sitting tenant himself.

The said Regulations deal exclusively with contracts of letting and hiring for an agreed total period not exceeding sixteen years for a rent in money or other consideration payable yearly in one or more instalments and with tacit renewal of such contracts. It is expressly laid down, however, that long leases (emphyteusis) and leases under the Metayer System are not provided for under the Regulations.

The landlord who desires to increase the rent or change the conditions of the lease or obtain an order of eviction is to give the tenant at least three months' previous notice by means of an official letter, whereupon, if the sitting tenant considers that the change of rent or conditions or the order of eviction constitute an undue hardship on himself, he may, not later than one month before the proposed change or order would come into effect, submit an application for the disallowance or modification thereof to a Board, called the Agricultural Leases Control Board, constituted under the Regulations in question.

The tenant's opposition to an increase of rent and, or alternatively, to a proposed change of condition will be upheld by the said Board if, by comparison with rents and conditions of tenancy, prevailing in comparable fields in the same parish, such increase or change would not appear to be equitable. For this purpose, the Board will have regard principally to the average quality and depth of the soil, the nature of the sub-soil, the direction in which sloping land is facing, the accessibility of the field and its distance from the closest village.

The Board, moreover, will uphold the tenant's opposition, even though the increase of rent and change of conditions appear to be justifiable, if this is due to improvements of a permanent character effected in the field during the preceeding eight years by the tenant himself or by a member of his family without there having been any undertaking or compulsion to effect such improvements.

With regard to the tenant's opposition to eviction, the Board's decision is not governed by hard and fast rules, for although several cases are enumerated wherein the Board is not

to allow the tenant's application, the Regulations also lay down that the tenant's opposition is not to be upheld when there are good reasons for resisting it. Naturally, however, for the purpose of deciding which are good reasons, the cases under which the Regulations expressly set aside the tenant's application are of invaluable assistance.

These cases deal with certain actions or omissions on the part of the tenant such as do not warrant the conferment upon him of the privileges obtaining under the Regulations. Apart from considerations concerning the behaviour of tenants, the Regulations consider a good reason for not allowing the tenant's application the landlord's proof that he requires the field to be used for agricultural purposes by himself personally or by any member of his family personally for a period of not less than four consecutive years.

The following are actions and omissions on the part of the tenant upon the proof of which the tenant's opposition may not be upheld :

1. If he sublets the field without the consent of the landlord to any person other than a co-tenant thereof or a member of his family.

2. If, during the last two years of the tenancy, he allows the field to lie fallow for at least twelve consecutive calendar months;

3. If, during the same period, he fails to repair such walls of the field as it was his undertaking to repair, or deliberately damages carrob, fig or other fruit trees in the field by excessive cutting back on through habitually allowing goats to graze thereupon, or habitually disregards other conditions of the lease;

4. If, during the same period, on at least two occasions he delays in paying the rent or an instalment of the rent due for more than one month after payment has been demanded by the landlord.

The occupation, however, on payment of compensation by or on behalf of the Fighting Forces of a part of a field is not a good reason for resisting the tenant's opposition under the first two cases above-mentioned.

(c) *Remission or abatement of rent in case of loss of crops.*

The benefit of the remission or abatement of rent derives its existence from the commutative nature of the contract of let-

ting and hiring. Rent is paid by the tenant in consideration of the enjoyment of the thing which the lessor binds himself to grant him. In applying this principle to leases of rural tenements yielding fruits, the law entitles the lessee to demand the remission or, as the case may be, an abatement of the rent whenever, by a fortuitous event, the whole crop of one year is lost or at least so much of it is lost that the value of the seeds and the expense of gathering in such fruits is not equivalent to one half of the rent agreed upon. In the former case the lessee is entitled to demand the remission of the whole rent and in the latter an abatement of the rent corresponding to the difference between the value of the remaining fruits and the amount of rent agreed upon.

If the time of the lease does not exceed one year, the lessee shall be entitled to a remission or to an abatement of the rent, as the case may be, in the event of the happening, during such year, of the circumstances above-mentioned.

If, on the other hand, the lease is made for more than one year and the total or partial loss of the crop of the year is suffered during the last year of tenancy, the remission or abatement of rent is allowed only if, on striking a balance between any excess and deficiency of the previous years, there remains no profit sufficient to reduce the loss sustained in that year to less than one half of the rent. If, however, the total or partial loss does not occur during the last year of tenancy, the balance above-mentioned is struck only in respect of the previous years. If no remission or abatement is found to be due, the lessee may not renew the demand in respect of the same year on account of loss sustained in the following years but if, on striking the said balance, the loss is found to be greater than one half of the rent, the issue of the remission or abatement of rent is definitely settled only at the expiration of the lease, when another balance is struck of any excess and deficiency in respect of the crops gathered during the whole term of the lease. Before the expiration of the lease it is lawful for the Court only provisionally to exempt the lessee from the payment of the rent in proportion to the loss sustained. In this case, however, if, during the continuance of the lease, the lessor grants to the lessee the remission or abatement of the rent of one year in consideration of the loss sustained in that year, he is not entitled to demand the

payment of the amount remitted if no remission or abatement of rent is found to be due at the expiration of the lease, unless he shall have reserved to himself such right in granting the remission or abatement.

The remission or abatement of rent may no longer be claimed :

1. If the lessee fails during the time of the ripening of the fruits and before the gathering thereof, to demand, by writ of summons, that the loss be ascertained;

2. If the lessee pays the rent without reserving to himself the right to recover it in the event of any loss, unless such rent has been paid in advance;

3. If the loss of the fruits occurs after they have been separated from the soil, provided the lease is not made under the Metayer System;

4. If the cause of the loss existed and was known at the time the lease was contracted;

5. If the lessee, by an express convenant, undertakes to bear any loss caused by fortuitous events. Such covenant applies only to ordinary fortuitous events, such as hail or the excessive abundance or scarcity of rain, and does not apply to extraordinary fortuitous events, whether foreseen or unforseen.

(d) *Improvements by tenants.*

There are no express provisions for agricultural improvements carried out by tenants of rural tenements and the general terms of Section 1653 allow of its being applied also to such leases and to the crops and plantations existing at the termination of the lease. The distinction is made between improvements made without the consent of the landlord and those made with his consent. In the latter case the landlord will have to pay for the improvements unless he has safeguarded himself by a stipulation to the contrary; in the former case the lessee may remove them restoring the thing to the condition in which it was before they were made : provided as regards improvements existing at the termination of the lease that he can obtain some profit by taking them away and provided the lessor does not elect to keep them and pay to the lessee a sum equal to the profit; in case of trees and vines this means practically that the landlord pays for their value as fire-wood.

With regard to crops and application of manure or other improvements of the soil e.g., by recent digging, trenching, filling and ploughing it is the custom that the accounts take place and are settled between the former tenant and the new tenant, the landlord thus keeping himself free from any disbursements; in the case of market-garden produce to the cultivation of which the better class soils are devoted in Malta as a rule the former tenant is allowed to retain possession of the field after the termination of the lease until he has disposed of the produce. The question of improvements is engaging the Government's attention and legislation intended to afford security of tenure and a right of compensation in respect of improvements has been actively studied and would probably have been enacted had it not been for the Constitutional Crisis and the imminence of the grant of Self-Government. In the meantime the Emergency Regulations already referred to do not allow improvements voluntarily effected by the tenant to be taken into account for the purpose of supporting the landlord's demand to the rent.

(e) *Obligations of the tenant.*

Obligations of the tenant consist in (*a*) payment of rent; (*b*) the cultivation of the holding according to the rules of good husbandry; (*c*) the carrying out of repairs.

(*a*) With regard to the payment of rents it is the custom that payment is made yearly on August 15th, in arrears; very often the rent is divided into two instalments payable in either on August 15th and on December 25th or on Easter and on November 11th (St. Martin's Feast). When payments are made on any other date but August 15th that is due to an extension of the time for payment allowed or agreed to by the landlord so that e.g., the Easter payment is a postponed payment of the rent due for the year ending August 15th last (v. judgments reported in the Malta Judicial Reports Vol. XXI, p. 2, p. 331 and Vol. XXII, p. I, p. 64). In this connection it is interesting to recall the provisions of the law of sale concerning the fruits of the thing sold. The principle laid down by Section 1444 is that from the day of the sale all fruits shall belong to the buyer, fruits which are uncut and unplucked at the time of the sale shall belong to the buyer although they had been sown by the seller (Sect. 1445). The rent of rural tenements which had not

fallen due at the time of the sale shall also belong to the buyer (Section 1446). There has been much uncertainty and litigation as to the meaning of the expression "Not fallen due". A judgment of the Civil Court of the primary instance held that in case that the rent of the rural tenement was by agreement payable in advance the buyer was entitled to it if the sale had taken place before the expiring of the period for which the rent was paid; and that if according to the usages above referred to the payment of rent due for the year ending the 15th August were postponed to November 11th, Christmas and Easter, supposing the sale to have taken place between August 15th and any of the said dates it would be owing to the seller.

This Judgment was reversed by the Court of Appeal (Vol. XXIV of the Judicial Reports, p. 641) which ruled that if by agreement the rent is payable in advance the seller will be entitled to it if payment had already become due after the sale.

(*b*) That the cultivation of the holding be carried out according to the rules of good husbandry is a tacit condition; it is sometimes expressly stipulated and accompanied by the sanction of the termination of the lease before the expiring of the period agreed upon, at the demand of the landlord.

(*c*) The repairs generally envisaged are those of the rubble boundary walls whch also serve the purpose of holding the soil in case of fields on different levels. These walls may be built of loose stones and they must be twelve feet high in the case of party walls between two courtyards or between two gardens in which there are chiefly oranges or lemon trees; eight feet high if between two gardens in which there are chiefly trees other than those mentioned above and five feet high if between two fields (Section 445); the custom is that if the portion of the wall (whether party wall or not) to be rebuilt does not exceed the length of one cane the expense is to be borne by the tenant; if it exceeds it is to be borne by the landlord.

(C) *Metayage.*

Contracts of leases under the Metayer System, whereby the lessee binds himself to cultivate land under a covenant of sharing the produce with the lessor, have in common with contracts of partnership the sharing of the profits, the element of trust commonly known as the "*affectio societatis*". Whereas, however,

a contract of partnership, is based on the trust which all parties are supposed to have in one another, in a contract of lease under the Metayer System, the element of trust is only presumed on the part of the lessor in favour of the lessee, the latter being the only person responsible for the good administration of the rural tenement and for the gathering of the fruits which such tenement is capable of yielding.

The provisions of the law are in line with the foregoing considerations :

1. According to Section 1675 of the Civil Code the lessor is to bear a proportionate part of the loss of the fruits, even if such loss occurs after the fruits have been separated from the soil, provided the lessee is not in default for delay in delivering to the lessor the latter's share of the profits.

2. Section 1705 of the said Code introduces an exception to the general rule contained in Section 1703 by laying down that the lessee of a rural tenement let to him under the Metayer System cannot sub-let such tenement unless such power is expressly granted to him by the lessor.

3. Section 1678 of the said Code introduces an exception to another general principle by laying down that the lease of a rural tenement entered into under the Metayer System is dissolved by the death of the lessee.

As was pointed out in a judgment recorded in the "Collezione" above mentioned in Volume XXIV, part I, page 602, our law has put an end to the controversy as to whether a contract of this kind should be classified with contracts of letting and hiring or else with contracts of partnership, by means of the above-quoted Section of the Civil Code, wherein the contract in question is called "a lease".

IV—Servitudes.

As Maltese law (Sections 437-525) closely follows the French Civil Code, it is our intention to mention only those provisions, peculiar to our land laws, concerning (*A*) The distances from the boundary to be observed in planting trees, (*B*) The servitudes of Right of way and of Water-course and analogous matters, (*C*) Acquisition of Easements by Prescriptions.

(A) *Distances.*

It is not lawful for any person to plant in his own tenement tall stemmed trees at a distance of less than 8 feet or other trees

at a distance of less than four feet from the boundary between his tenement and that of his neighbour; vines, shrubs and hedges and all other dwarfed trees not exceeding the height of seven feet may be planted at a distance of not less than one foot and a half from the said boundary. Notwithstanding the observance of the said distances, however, the neighbour may if the trees are causing him damage demand that they be uprooted at the expense of the owner: in which case the Court may allow the owner the option either to uproot the trees or to cause ditches or other works to be made at his expense sufficient to prevent all damages.

A person over whose tenement the branches of the neighbour's trees extend may compel him to cut such branches and may gather the fruits hanging from them.

Moreover if the roots extend into his tenement, he may cut them off himself (475).

(B) *Right of way and water-course.*

The two more important servitudes for agricultural purposes are those of right of way and of water-course, which may be either necessary or voluntary (created by the act of man). There is a legal servitude of the right of way in two cases: (*a*) for the purpose of repairing a wall or other work common between two neighbours (Section 483) and (*b*) for the purpose of giving an enclave tenement an outlet to the public road (Sec. 484). The legal servitude of water-course is attributed to a tenement which cannot receive water from fountains or other deposits of public water except through neighbouring rural tenements belonging to other persons. These servitudes may be claimed and enforced by the owner of the tenement but so far as the matter is one of possession the *actio spolii* may be exercised by the tenant and against the neighbouring tenant (Sections 571 and 572). Moreover litigation concerning right of way and water-course or the right of drawing water from cisterns is not uncommon between farmers of separate portions of a tenement or of separate tenements belonging to one owner; in which case though there can be no servitude yet rights of a personal nature come into being on the strength of an agreement of the tenants between themselves or by reason of the conditions imposed by the common landlord and in case of difference of opinion it is necessary to determine on very uncertain evidence the manner in which these rights are

to be exercised according to the kind of cultivation and to the season of the year. In questions of possession the rights and obligations of the dominant and servient tenements are determined by the mode of enjoyment during the preceding year or when the easements are exercised at intervals of more than one year, by the last user thereof (Section 574). Another matter which has a tendency to become the source of contention is that concerning the flow of water which is governed by Section 440 in the sense that tenements at a lower level are subject in regard to tenements at a higher level to receive such waters and materials as flow or fall naturally therefrom without the agency of man; this section expressly forbids the owner of the lower tenement to do anything which may prevent such fall or flow and the owner of the higher tenement from doing anything to aggravate the servitude; but the prohibtion of the law is often disregarded and contentions arise between the tenants with the owners' intervention. Another important provision (Section 442) grants the right to the owner of the higher tenement to lead the water running through the public road into his own tenement in preference to the owner of the lower tenement; when however one of the owners requires the water for the use of man or for watering animals or for watering trees which are ordinarily watered, preference will not depend on the situation (higher or lower) of the tenement but on the purpose for which the water is wanted (Section 443).

(C) . *Acquisition of Easements by prescription.*

Servitudes created by the act of man are distinguished into continuous and non-continuous, and apparent and non-apparent. Those which are continuous and apparent may be acquired by virtue of a title, by prescription and by the disposition of the owner (Section 494); continuous non-apparent servitudes and discontinuous servitudes whether apparent or not can only be created by title(Section 505). Our legislator (Manuscript of Sir Adriano Dingli who was the author of Ord. VII of 1868) has taken care to add (in order, as he states, to avoid a serious difficulty of interpretation to which the French Code gave rise), that they cannot be established by prescription or by the disposition of the owner (Sec. 506, I). The second paragraph of this Section contains a peculiar provision which has been the object of much discussion and of judicial pronouncements. It runs as

follows: "Nevertheless, the easement of right of way for the use of a tenement may be acquired by prescription of 30 years, if such tenement has no other outlet to the public road; and any other easement which on the eleventh of February, 1870, was already acquired under previous laws, may not be impeached". Dr. J.J. Cremona in an article published in the local quarterly Review "Scientia" (January-March 1944, Vol. XL), on the acquisition of easements by prescription expresses the opinion that this provision was borrowed from the Sicilian Code which laid down (Art. 694): "Nevertheless right of way for the service of certain specified tenements may also be acquired by thirty years possession, provided such way be not regarded abusive and it will be considered abusive if there be some other way sufficient for the service of the same tenements". After some uncertainty it has now become a settled point that the effect of the provision contained in the last paragraph of Section 506 is that the right of way established by prescription in favour of a tenement which was enclave, cannot be revoked under the provision of Section 486 in case that the right of way ceases to be necessary in consequence of the opening of a new road or to the incorporation of a tenement with another tenement contiguous to the Public Road (Judgment of His Majesty's Court of Appeal in re Sammut "utrimque", October 18th, 1921, and in re Sant v. Cassar, May 11th, 1934). The principal argument in favour of this interpretation is that otherwise Section 505 could not have any effect whatsoever once that the right of any servitude established by law in favour of an enclavè tenement need not be attributed to such tenement over again by prescription. It may be that this argument is not entirely sound because another effect might be that of preventing the change of the position and mode of the easement after continuous use during thirty years (v. Art. 685 of the French Civil Code). The ruling of an earlier judgment of the Court of Appeal (in re Randon vs. Pace, 16th June, 1893. Judicial Reports Vol. XIII, 288 and 514) was to the effect that if the reason for the establishment of the easement of right of way had been the necessity thereof, on the cessation of such necessity the servitude should also cease if such was the probable intention of the parties at the beginning. This judgment quoted that of the Court of Appeal of Venice 6th April, 1876 reported in Giur. Italiana Vol. 28, p. I, Sez. 2851, PACIFICI MAZZONI,

Trattato delle Servitù Prediali, 787; PARDESSA's *Servitù Prediali*, No. 266. The last part of the 2nd paragraph of Section 506 refers to the acquisition of Easements in virtue of immemorial prescription wich was abolished by Ord. III of 1863. The requisites for such prescription according to a judgment given by the First Hall of the Civil Court in re Cassar Desain vs. Piscopo Macedonia January 9th, 1877 are that the witnesses must have been already born in 1823; that they give evidence *de visu* for a period of forty years and also evidence *de auditu a majoribus quod majores ita viderint et nihil in contrarium audiverint et de publica voce et fama*, according to the gloss to Chapter I de Prescript. No. 6to. *Decretalium* expounded in judgment No. 56, 7th Part of the *Rota Romana* among the *Recentiores*. Evidently such conditions cannot concur any longer and the possibility of proving the acquisition of an Easement by prescription ab immemorabili may be excluded.

V—Hiring of farm hands, "communio inter fratres" and hiring of animals.

The farms being as a rule of a small size are run by the farmer and his family, and outside labour is resorted to only occasionally during spring-time when farming operations are exceptionally busy. Farm hands are engaged by the day and for short periods: their timetable is from sunrise to sunset. The Maltese farm was at one time a self-supporting unit and even up to our own time the custom is that during the lifetime of the parents and sometimes even after their death, whatever the age of the children or grand-children, all the profits and all the investments are regarded as being the sole ownership of the head of the family. This custom is hard to die even though it has received a setback as a consequence of the levying of succession duties. After the parents' death a *communio inter fratres* sets in characterized by the pooling of all profits, absence of any accounts, payment from the common fund of all expenses for the upkeep of the farm and of the family and for the needs of all and single who however do not draw any wages; under these conditions marriage is not encouraged, and if it does take place, those of the partners who marry, as a rule are obliged to leave the partnership and sometimes, *pro bono pacis*, to surrender their share of the leased fields. The requisite of a public deed

which is required for the validity of such general partnerships (Section 1743) is ignored by the farmers without any evil consequence since the Courts in any case take into account the fact that a common ownership exists and allow the liquidation and partition thereof.

Most farmers own the animals they require for farm work, and transport. Leases of cattle are not common and in the Maltese Civil Code the chapter "Of Leases of Cattle" of the French Civil Code (Art. 1800-1831) has been left out; similar leases may however be agreed upon and the usual clauses are that the tenant pays the hire and is responsible for the maintenance of the cattle for any injury owing to his fault (V. *Judicial Reports*, Vol. III, p. 892).

VI—Sale of produce.

The sale is effected through brokers who sell the produce to the green-grocers on a commission basis. Regulations governing the sale of agricultural produce by *pitkali* (middlemen) were issued on the 20th April, 1945. The *pitkali* cannot sell agricultural produce otherwise than by auctions and bids must be made *viva voce*; no longer than one hour after the final bid the broker is to issue a voucher attesting the weight or quantity of the lot sold by acceptance of that bid and the gross price at which the sale of that lot was effected both to the vendor of the lot and to the purchaser. The transactions must also be entered on a book showing the quantity and nature of the produce received by the *pitkali* from each farmer, when and to whom the produce was sold and the price realized at the sale. While *pitkali* have thus been brought under control, Cooperative Agricultural Marketing Societies have come into existence and the first cooperative law was enacted on July 8th, 1946, to provide for the Constitution and Regulation of Cooperative Societies (Ordinance XXXIV of 1946).