

M A L T A.

R E P O R T

OF THE

COMMITTEE OF PRIVILEGES OF THE MALTESE  
NOBILITY ON THE CLAIMS OF CERTAIN MEMBERS  
OF THAT BODY,

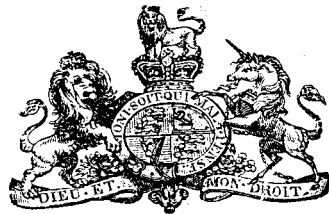
WITH THE

SECRETARY OF STATE'S REPLY.

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Presented to both Houses of Parliament by Command of Her Majesty.  
*August 1883.*

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1883.

## CONTENTS.

Serial No.	From or to whom.	Date.	Subject.	Page.
1	Governor Sir A. Borton.	May 1, 1883 (Rec. May 7, 1883.)	Transmitting the Report of the Committee of Maltese Nobility with regard to the claims of certain members of that body, together with a letter and report from two of the members of the said Committee.	1
2	To Governor Sir A. Borton.	May 11, 1883	Informing that certain additions have been made to the list of Titolati in accordance with the recommendations of the Committee of the Nobility.	17

MALTA.

No. 1.

GOVERNOR SIR A. BORTON, G.C.M.G., K.C.B., to the RIGHT HON. THE EARL OF DERBY. (Received May 7, 1883.)

MY LORD,

Palace, Valletta, May 1, 1883.

I HAVE the honour to transmit the Report of the Committee of Privileges of the Maltese Nobility, containing the result of their investigation into the titles of nobility appended to the above Despatch.

I also enclose a letter and report which I have received, for transmission to your Lordship, from two of the members of the said Committee.

I have, &c.  
(Signed) A. BORTON,  
Governor.

The Right Hon. the Earl of Derby,  
&c. &c. &c.

Enclosure 1 in No. 1.

MY LORD,

A COPY of the Despatch from Downing Street, dated 16th August 1882, addressed by the Earl of Kimberley to the Governor of Malta, having been communicated by the local Government to each of the Titolati of these islands, we, the undersigned, have been duly constituted into a committee of privileges, with functions analogous to those of the Committee of Privileges of the House of Lords. Preamble.

In pursuance of the instructions contained in that Despatch and its enclosures, we have fully considered the cases of four Titolati who were not included by the Commissioners, Judges Naudi and Pullicino, in the list of Titolati, and we have the honour of submitting to your Lordship the result of our inquiry in the following report.

TITLE OF BARONE DI BULEBEN, in the Islands of Malta.

2. These islands on the 24th of May 1530 were granted by the Emperor Charles V., King of Sicily, to the Sovereign Order of the Knights of St. John of Jerusalem in fee noble, free and absolute. First claim appended to Despatch of 16th August 1882.

The Grand Masters of this Order governed with royal prerogatives.

3. Grand Master de Rohan by a patent issued on the 23rd of July 1777 granted the title of Barone di Buleben to the Nobleman Gaetano Azopardi, with the explicit declaration that the grant was made "mera liberalitate munificentia et speciali gratia ac de certa sua scientia."

PATENT.

Frater Emmanuel de Rohan, etc. Custos. Nobili Cajetano Assopardij Vassallo nostro nobisq, dilecto salutem prosperosque ad vota successus. Laudabilia et diuturna obsequia, ac munera publica per Te tuosq. majores omni cum sedulitate, et fidelitate erga Nos, et Prædecessores nros. laudabiliter præstita, multiplicesque animi tui dotes quibus insignitus dignosceris promerentur, et Nos inducunt ut Tibi nrae munificentiae, et Splis. benevolentiae significationem aliquam exhibeamus. Cum itaque inter alia feuda, et Bona stabilia ab hoc Dominio et Principatu Melae et Gaudisii dependentia, et ad nram mensam Magtlem spectantia eidemq. mensae annexa, et incorporata reperitur Baroniam, et feudum de Buleben nunct cuius titulus Baronis usque ad huc, et de pnti vacat, huojque Baronis tituli concessionem ad nos, et pertinere dignoscatur; Hinc est, quod praemissar meritorum, obsequiorum tuor quae majorum intuitu pum Bnis de Buleben, titulum sive hoc, sive alio quovis modo vacantem, et ad nos nramque provisionem spectantem de mera nra liberalitate, largitate, munificentia, et spli. gratia ac de nra certa scia tibi Nobili Cajetano Azopardi tribuimus concedimus, et donamus, huodique titulo insignimus, ac Bnem. dt. Feudi de Buleben Constituimus, et ita nominari posse et deberi atque uti frui ac gaudere oibus. et singlis. juribus, honeribus,

et antelationibus quibus de jure, usu et consuetudine huoj. Barones utuntur, fruuntur et gaudent volumus, et decernimus sub annua recognitione tribuendi et consignandi, in festo S. Jacobi Apostoli Nobis, nrsque in Magisterio successoribus duos sclopos equestres bonae conditionis ac receptibiles, qua stante recognitione Te Nob. Cajetanum Azzopardi ab omni alio onere militiae tum pedestris, tum equestris eximimus, et liberamus, ac exemptum, et liberum esse volumus, et decernimus. Dummodo investituram huoj. Baroniae prout moris est a Nobis accipias, ac jusjurandum fidelitatis in manibus nris. facias Mandantes oibus. et singulis dae Domus nrae Fribus quacumque aucte. et Dignitate fungentibus nris., vero subditis et Vassallis sub Sacramento fidelitatis et homagii quo nobis et Religni nrae. sunt astricti, et sub pœnis Nobis, eisdemque nris. successoribus benevisis ne contra pus. nrum. concessionis tituli Baronis de Buleben privilegium aliquats. facere, vel venire praesumant immo illud observare et ab aliis observare studeant et procurent. In cujus Rei, etc. Bulla nra. Maglis Plumbea, etc. Datum Melitae, etc. die 23 Ms. Julii 1777.

4. This patent presents the characteristics inherent in a real, proper, and noble feud, without designating or tracing the order of descent; but according to feudal custom, concessions of feuds made by a deed "inter vivos," without limitations or restrictive clauses, and under an onerous title must always be interpreted as conceded not only to the grantee personally, but also to his male children "de primogenito in primogenitum" "in infinitum."

5. This recognised principle of feudal law cannot be considered inapplicable to the case in question only for the reason that the Sovereign Grand Masters in similar patents made use of different and restrictive clauses.

We are humbly of opinion that each feudal concession should be dealt with on its own merits, independently of limitations and restrictive clauses that the sovereign at the time being may have introduced in other deeds of similar concessions, and that it is wholly erroneous to attempt the interpretation of this grant by comparison with other grants made in favour of other people totally extraneous to the Azzopardi, wherein the grantor was evidently pleased either to limit and restrict his liberality, or to designate a different order of succession.

6. The legal interpretation of this grant must necessarily be made in accordance with the principles of the law, which principles cannot be altered unless there be in the deed of grant an explicit limitation.

7. It would be irrelevant to assert the non-perpetuity of this grant, from the fact that the fief of Buleben remained in the possession of the Crown.

8. Concessions of titles of nobility annexed to fiefs are governed by the same rules that obtain when the concession is of the corporeal fief itself, and it would be incomprehensible that the succession to a fief should be perpetual, while that of a title of nobility appended to a fief should be only personal.

9. Moreover, according to the principles of the civil law, all concessions and donations "inter vivos" and without restrictions, even if granted, not under an onerous but under a gratuitous title, are held as perpetual for the grantee himself and his successors.

10. This rule is in strict harmony with the known principle, that with royal concessions, wherein no prejudice results to third parties, the interpretation should be full, liberal, and extensive.

11. This maxim of law cannot be refuted on the plea that the Azopardi concession was not made "Motu proprio" of the Grand Master.

There is no established opinion in the local jurisprudence, that when in a patent of nobility there is not the expression "Motu proprio" that patent is to be held as granted on the petition of the Donee. In the original concession of 1777, independently of the "ampliazione" of 1778, there is no trace that the grant was not issued "Motu proprio" of the Grand Master; on the contrary, we find the words, "de mera nostra liberalitate largitate, munificentia, etc., etc., etc."

12. From the foregoing remarks it clearly results that the Noble Calcedonio Azopardi, as the eldest son of Barone Vincenzo, C.M.G., eldest son of Barone Calcedonio, senior, the eldest son of Barone Gaetano, is now the person, according to the original grant of 1777, entitled to use the designation and enjoy the dignity of Barone di Buleben as previously held by his ancestors.

13. The said Calcedonio Azopardi is also to possess the title of Barone di Buleben, not only as the first born son in the primogenial line of Gaetano, but likewise as the holder of the Azopardi primogenial estate.

14. By another patent or rescript, dated 25th April 1778, far from having revoked or altered the original grant of 1777, the same Grand Master extended that concession to any descendant of Baron Gaetano who in the course of time would be the holder

of the afore-mentioned "primogenitura," although such successor be not the first born son.

The wording of this patent or rescript as endorsed on Gaetano's petition is the following:—

ALTEZZA SERENISS<sup>MA</sup>.

Il Barone Gaetano Azzopardi Serv<sup>ro</sup> uñio, Vassallo fedeliss<sup>mo</sup> dell' A. V. S<sup>ma</sup> con ogni riverente ossequio espone, che nell' atto della concessione benignamente fattagli del Titolo della Baronìa di Buleben essendosi l' A. V. S<sup>ma</sup> degnata rescrivere, che per allora fosse solamente a suo favore spedito dalla Cancellaria il Diploma, si fa pertanto oggi lecito rappresentare ritrovarsi nella di lui Famiglia fondata una Primogenitura, in primo luogo a favore di quello, de' figli Maschi dell' oratore, che nominerà per succedervi e non nominando a favore del maggior' d'età, purchè non sia costituito in verun Ordine Sacro, ne' Professo in qualche Religione, dovendo poi quella sotto le stesse leggi passare da un Primogenito all' altro sin' alla estinzione di tutta la linea mascolina di quello de' figli dell' oratore, che avra egli nominato al godimento di da Primogenitura: Dopo di che subintrebbè in secondo luogo sotto le med<sup>e</sup> leggi l' altro Figlio Maschio dell' oratore, ed i di lui Discendenti Maschi di Primogenito in Primogenito, però, similmente sino all' estinzione di questa altra linea Mascolina, colla facoltà bensì in ciascun grado di successione al Possessore di d<sup>a</sup> Primogenitura, di poter tra suoi Figli maschi nominare quello che più li piacerà per succederli in essa, come il tutto più ampiamente si scorge nell' Istromenti d'erezione di d<sup>a</sup> Primogenitura stipolato negli atti del Not<sup>ro</sup> Domenico Geronimo Bonavita sotto li 10 Giugno 1751. Essendo dunque l'annuale rendita di tale Primogenitura più che sufficiente per dare il decoroso mantenimento al Possessore, anche nel caso, che non fosse provisto d' altri bene, l' oratore si fa lecito implorare umilmente dalla somma munificenza dell' A. V. S<sup>ma</sup> degnarsi ampliare la concessione del titolo della Baronìa di Buleben a favore di quello de' Figli dell' oratore, e suoi discendenti Maschi, che si troverà possedere col tempo la Primogenitura sud<sup>a</sup> il che riceverà a Grazia singolarissima dell' quale.

"Majester hospitalis Hyerusalem gratiam petitam oratori concedimus pro ejus filio " successore in Primogenitura de qua in precibus tm." Datum in Palatio die 25 Aprilis 1778.

15. Baron Gaetano Azopardi, after having duly obtained on the 27th July 1777 the investiture of the Baronial dignity conferred on him on the 23rd of the same month, presented the above petition, and obtained on the 25th of April 1778 the extension of the Barony di Buleben in favour of the one amongst his children and his male descendants that in due course of time might be in the possession of the Primogenitura mentioned and qualified in the above petition.

16. The wording of the rescript, and the purport of the petition itself when we construe the "tm" as "tantum," leave it fully evident that the original concession of the 23rd July 1777 was by the Grand Master extended in favour of any of Baron Gaetano's male children that would in the future succeed to the "Primogenitura" for the "seizin," of which a nomination in accordance with the deed of its grant is legally sufficient.

17. Neither from the whole purport of Gaetano's petition, nor from any particular phrase therein contained, can it be conjectured that the Baron wished to declare that the original patent was to determine after his decease.

The Baron, following the conception of the patent, enunciated in the same words of the patent that the investiture of the Barony had only yet been obtained by himself, without ever suggesting that the original grant was incompatible with the feudal law of succession.

Therefore, as far as the perpetuity of the original grant is concerned, it is clear and evident that the Baron did not in any way prejudice his successors.

18. What the Baron asked for and obtained was the descent of the title together with the "Primogenitura."

19. The word "ampliazione" has been very appropriately made use of in this instance, owing to the circumstance that this extension implies the future possessors of an elective Primogenitura, who in the absence of the patent or rescript of the 25th April 1778 would be defeated by the natural "Primogenitus."

20. An exceedingly weak conjecture against the perpetuity of this title would be the assertion that the Grand Master had not adopted the usual words "juxta preces" or "fiat ut petitur," but instead "gratiam petitam oratori concedimus," which latter words are fully equivalent to the others.

21. The generality of the grace and favour granted to the petitioner was not limited by the words "pro ejus filio successore in primogenitura de qua in precibus tm," and it

would be incomprehensible to sustain that the word "tantum" excluded the perpetuity of the title in favour of any successor beyond the son in the first degree.

22. The operative power of the "tm" is evidently intended to comply with the petitioner's request that the title should vest in the child that would have been legally chosen as the nominee to the Primogenitura to the exclusion even of the eldest son.

23. The legal interpretation of the word "filio," when there is not a conflicting statement in the whole of the deed, has always been regarded in local jurisprudence as clearly comprehending the Donee's successors of his body born, besides it clearly results that allusion was being made to future events dependent on the title of purchase of the Primogenitura "de qua in precibus," which is progressive and perpetual, so that with regard to the subject matter "filio" in the singular number was the only appropriate term to use.

24. The consequence is clear and manifest. Each child successor in the "Primogenitura" has the title vested in him; this is still more evident when we consider that the "tm" is only referable to its immediate words "'successore' in Primogenitura de qua in precibus," and not to the word "filio" preceding "successore."

25. On the strength of the above-examined two patents, dated 23rd July 1777 and 25th April 1778 respectively, Baron Gaetano Azopardi was succeeded in the Barony di Buleben by his son Calcedonio, both as "primogenito" and as the nominee elect to the primogenial estate.

#### INVESTITURE.

Notum sit quod cum alias titulum Baronis Feudi de Buleben sub die 23 mensis Julii 1777 Nobili Cajetano Azopardi pro ejus persona tantum concesserimus; quodque pariter vigore nostri Magistralis Rescripti sub die Aprilis 1778 editi Titulum huiusmodi etiam ad ejus filium Primogenituram habentem ampliaverimus, prout in huiusmodi concessionis diplomate et rescripto ad quæ habeatur relatio plenius continetur. Hinc est quod secuto obitu pcti Baronis Cajetano Azopardi M. Calc. Azopardi hujus Civitatis et Insulæ nrae Melitæ Civis attentata nominatione a pcto quod Mco Cajetano Azopardi ejus patre ad Primogenituram in Tabulis Nuptialibus ejusd Mçi Calcedonii Azopardi cum Mçi Vincentia Xaveria Agius initio secuta in Actis Notari Francisci Xaverii Bonavita sub die 18 Junii 1781 Nos et Ordinem nrum, sicut Cliens, etc. agnovit fidelitatem, etc. secum Jurisjurandi Sacramento promisit, ad quæ nobis nroque ordine, Ds Mcus Calcedonius Azopardi obligatus est, ac tenetur ob titulum Feudi pti de Buleben nuncupatum, Qui quidem titulos modo dicti Feudi ad pctum Mçum Calcedonium Azopardi ut supra pervenit et in nostro Vassallaggio et clintela esse dignoscitur a Nobisque dependet, quia in hac nra Insula Melitæ situm est; ad quod fidelitatis Sacramentum et Clinteralis Officii sponsonem admisimus sæpeditum Nobilem Calcedonium Azopardi isthæc, præstantem et jurantem eidem pro investitura nomine nostro nostræque Religionis vige, alterius rescripti sub die 5, m. Julii pti æditi chirotecam porrigentes, sub annua recognitione tribuendi et consignandi Nobis nostrisq in Magisteris successoribus duos scopos equestres bonæ conditionis ac receptibiles juxta præcalendatæ concessionis litteras. Vobis itaque, etc. ne in posterum homagij fidelitatis Nobis nom redditi prætextu dñi Nobilem Calcedonium Azopardi in dicto Baronis Titulo turbetis, nec a quocumq defensionem præstantes, ut pro Barone ubique haberi, etc. valeat. In cujus Rei, etc. Bulla nra. Maglis in cera, etc. Datum Melitæ, etc. Die 10 m Augusti 1788.

26. Arguments raised from this formula of investiture against the perpetuity of the title cannot but be fallacious and misleading.

The investiture had been duly given, according to the custom then prevalent in the Court of the Grand Master, to Baron Calcedonio the elder, in conformity with the request made by him on the 5th July 1778.

Baron Calcedonio, after reciting in his petition for this investiture that, owing to the previous petition of Baron Gaetano and the rescript of the 25th April 1778, the original grant of the 23rd July 1777 had been extended in favour of that son, who would have been nominated as successor to the "Primogenitura," he therewith filed an official copy of the deed whereby his father had nominated him as his successor in the Primogenitura.

This petition when duly laid before the Grand Master was honoured with his affirmative decree.

27. On the sheets containing the petition with the affirmative decree, the formula of the oath for the investiture was being drawn out, and appears to have been left incomplete. The same formula of investiture was afterwards entirely written upon separate papers from the petition and the decree, according to the practice of those times, and the

